CITY MANAGER'S/STAFF'S REPORT
CITY COUNCIL MEETING DATE: September 20, 2010

ITEM NO:

SUBJECT: The purpose of this agenda item is to hold a public hearing considering Submittal No. 2007-0055, the City of Selma's 2035 General Plan Update, and Environmental Impact Report.

DISCUSSION: The General Plan Update process started in mid 2007. To receive input, the City, Consultant, Planning Commission, and City Council conducted several public workshops and received comments from numerous individuals and agencies.

On July 14, 2010, the Selma Recreation and Community Services Commission held a public hearing to review the Recreational and Open Space Element of the General Plan. Following the public hearing the Recreation and Community Services recommended, by resolution, that the Selma Planning Commission recommend approval of the Recreational and Open Space Element of the General Plan Update to the Selma City Council with the following amendments /recommendations:

- That the Commission finds that Policy No. 5.6.25 is of particular importance to the Commission and that the Commission recommends that when the stated goal of maintaining park acreage at a ratio of 5.0 acres per 1,000 people is reviewed it be evaluated in a manner that ensures only accessible and usable acreage is considered.

- That the Commission recommends that any development of a youth athletic complex/facilities or community athletic complex/facilities be not less than 40 acres in size.

These recommendations are included in the Recreation and Community Services Commission Resolution No 2010-0001

The Planning Commission held multiple public meetings to discuss the 2035 General Plan Update. At a noticed public hearing on July 26, 2010, several property owners came forward or submitted letters requesting changes to the proposed Land Use Designation as follows:

1. Mr. Velazquez, owner of 2036 S. Highland Avenue which is located on the northeast corner of Highland Avenue and Highway 43, requested that his 1.15 acre parcel be re-designated Community Commercial from Medium Low Density Residential.

2. Mr. Miramontes, owner of 1601-1631 Whitson Street which is located on the southwest corner of Whitson Street and McCall Avenue, requested that his .34 acre parcel be re-designated Service Commercial from High Density Residential.

3. Mr. Gomez, owner of 2180 Nebraska Avenue which is located north of Nebraska Avenue, between Bauder and Wilson Streets, requested that his .72 acre parcel be re-designated Community Commercial from Medium Low Density Residential.

4. Mr. Ward, owner of 1939 Whitson Street which is located west of Whitson Street between Second and First Streets, requested that his .66 acre parcel be re-designated Service Commercial from Community Commercial.

5. Mr. Emmitt, owner of approximately 32.25 acres located north of Dinuba between Shaft and Thompson Avenues, requested that 15 acres be up-zoned from single family (R-1) to Multi-Family (R-3). The parcel is currently within the city limits.

6. Mr. Maxwell requested that his 20 ± acre parcel located west of Highland Avenue between Saginaw and Nebraska Avenue, be re-designated Community Commercial and High Density Residential.

7. Mr. Raven, owner of approximately 13 acres located north of Dinuba between Duke and McCall Avenues, requested that his property be re-designated Neighborhood Commercial and High Density Residential.

8. Mr. Balakian, the owner of approximately 27 acres located north of Dinuba on the east and west side of McCall Avenue requested that the land fronting McCall Avenue be re-designated Community Commercial and the remainder of one of the parcels high density residential.

9. Mr. Kazarian, owner of 8630 Manning Avenue located North of Dinuba and East of Leonard Avenue, was included in the Selma Study Area for this General Plan Update and felt that the study area boundary would benefit the City more if it only included the area just adjacent to Manning Avenue.

Staff and Quad Knopf were directed by the Planning Commission to evaluate each request and bring recommendations back at their next meeting. Staff was to determine the impacts these changes might have on the current EIR for the General Plan. Will these impacts cause the recirculation of the EIR and further studies? The Planning Commission will review staff's finding at the August 23, 2010 meeting.

Staff received two new requests after the July 26, 2010 meeting. These requests were similarly evaluated for re-designation.

10. Richard & Linda Riedel, owner of 1919 Whitson Street, is requesting their parcel be re-designated Service Commercial.

11. Mary Piona, owner of 2048 Highland Avenue, is requesting her parcel be re-designated Community Commercial.

The July 26, 2010 public comment period was continued to August 23, 2010. On August 23, 2010, the Planning Commission held a second noticed public hearing. Staff presented the following recommendations regarding the changes requested at the July 26, 2010 meeting:

1. Request for 2036 S. Highland Avenue to be re-designated Community Commercial from Medium Low Density Residential.

   Staff can support this request. The parcel is currently within the city limits and the existing commercial business (restaurant), was incorporated in the studies for the General Plan Update. There is a commercial land use designation to the south and this designation request will be consistent with surrounding zoning.

   The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is recommended to the City Council as an amendment attached to the Planning Commission resolution.

2. Request for 1601-1631 Whitson Street to be re-designated Service Commercial from High Density Residential.

   Staff supports this request. The parcel is currently within the city limits and the existing commercial businesses (auto repair & accounting office) were incorporated in the studies for the General Plan Update. The parcel has commercial uses to the north and east and is fronting a main street. The land use designation request will be consistent with surrounding zoning.

   The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is

recommended to the City Council as an amendment attached to the Planning Commission resolution.

3. Request for 2180 Nebraska Avenue to be re-designated Community Commercial from Medium Low Density Residential.

   Staff **cannot** support this request. The parcel is within the city limits however it is completely surrounded by residential land uses and a school. One constraint for this parcel could be the requirement to provide onsite parking for a commercial venture. Staff could support a higher residential land use to Medium High Density if the zoning requirement could be met. Staff may support this change only after further studies are made.

   The Planning Commission concurred with Staff's finding and does not recommend that this request be included in the General Plan Update.

4. Request for 1939 Whitson Street to be re-designated Service Commercial from Community Commercial.

   Staff supports this request. The parcel is currently within the City limits and the existing commercial businesses (auto repair & offices), were incorporated in the studies for the General Plan Update. The

   The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is recommended to the City Council as an amendment attached to the Planning Commission resolution.

5. Request for approximately 32.25 acres to be up-zoned from Single Family (R-1) to Multi-Family (R-3).

   Staff **cannot** support this request at this time. Staff may support this change only after further studies are made.

   The Planning Commission concurred with Staff's finding and does not recommend that this request be included in the General Plan Update.

6. Request for approximately 20 ± acres to be re-designated Community Commercial and High Residential from Residential Reserve.

   Staff **cannot** support this request at this time because of the higher density and possible impacts this change may cause. The parcel is not currently within the Selma city limits. This proposal may be

supported at a later date only after further studies are completed that were not done during this General Plan Update.

The Planning Commission concurred with Staff's finding and does not recommend that this request be included in the General Plan Update.

7. Request for approximately 13 acres to be re-designated Neighborhood Commercial and High Residential.

   Staff **cannot** support this request at this time because of the possible impacts this change may cause in regards to traffic and other environmental concerns. The parcel is not currently within the Selma city limits. Staff may support this change only after further studies are made.

   The Planning Commission concurred with Staff's finding and does not recommend that this request be included in the General Plan Update.

8. Request for approximately 27 acres to be re-designated, with the property fronting McCall Avenue Community Commercial and the remainder of one parcel high density residential.

   Staff **cannot** support this request at this time because of the possible impacts this change may cause in regards to traffic and other environmental concerns. The parcel is not currently within the Selma city limits. Staff may support this change only after further studies are made.

   The Planning Commission concurred with Staff's finding and does not recommend that this request be included in the General Plan Update.

9. Request for realignment of the proposed General Plan Study Area to include land adjacent to Manning Avenue between Leonard and Highland Avenues for future growth.

   Staff can support this change because the adjusted area is similar in size to the current study area. No change in Land Use designation is being requested. The Planning Commission concurs with staff.

   The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is recommended to the City Council as an amendment attached to the Planning Commission resolution.

10. Richard & Linda Riedel, owner of 1919 Whitson Street, is requesting their parcel be re-designated Service Commercial.

    Staff supports this request. The parcel is currently within the City limits and the existing commercial businesses (auto repair & offices), were incorporated in the studies for the General Plan Update. The

    The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is recommended to the City Council as an amendment attached to the Planning Commission resolution.

11. Mary Piona, owner of 2048 Highland Avenue, is requesting her parcel be re-designated Community Commercial.

    The Planning Commission accepted the recommendation of staff and the re-designation change to the Proposed General Plan is recommended to the City Council as an amendment attached to the Planning Commission resolution.

At the August 23, 2010, hearing the following request was submitted to the Commission without staff recommendation. The Commission took no action on this request:

12. Mr. Hal Lore, from Lore Engineering requested that 11609 Highland Avenue be changed from Medium Low Residential to High Density Residential. The request is being made to allow a multi-family project adjacent to an existing temple. (See map on page 11)

This request is being sent to the City Council for your consideration. Staff has reviewed the impacts to the current EIR and unable to support this request at this time without further studies.

At both hearings requests were made to expand the current Sphere of Influence for the City of Selma. Staff is unable to support this request at this time. Expansion of the City of Selma Sphere of Influence may be considered and studied at a later date.

Also at the Planning Commission hearings, requests were made to extend the Collector street designation along the Stillman Street Alignment in the Circulatory Element.

At the August 23, 2010 Planning Commission hearing Consolidated Irrigation District presented the Planning Commission with comments regarding the Environment Impact Report along with several exhibits

supporting those comments. These comment letters are attached for your review.

Following the public hearing the Planning Commission considered and passed Resolution No. 10-0010 recommending adoption of General Plan Update 2035, with amendments and certification of Environmental Impact Report for submittal no. 2007-0055

COST:		**BUDGET IMPACT:**
None		None
FUNDING:		**ON-GOING COST:**
Funding Source: None Fund Balance: None		None

RECOMMENDATION: Conduct public hearing and approve the Selma General Plan Update and Environmental Impact Report with overriding considerations.

Bryant Hemby, Asst. Planner — Date

City Manager, D-B Heusser — Date 14 Sept 2010

We _____ *and* _____
D-B Heusser, City Manager *Roberta Araki, Interim Finance Director*

do hereby agree that the funding for the above is correct and that enough funds exist to cover the expenditure

Attachments: Page No:

1. Current General and Proposed 2010 – 2035 General Plan Map..... 9
2. Map showing proposed Adjusted Study Area..... 10
3. Map showing proposed re-designation changes..... 11
4. Letter from Mr. Esraelian & Mr. O'Brian..... 12-13

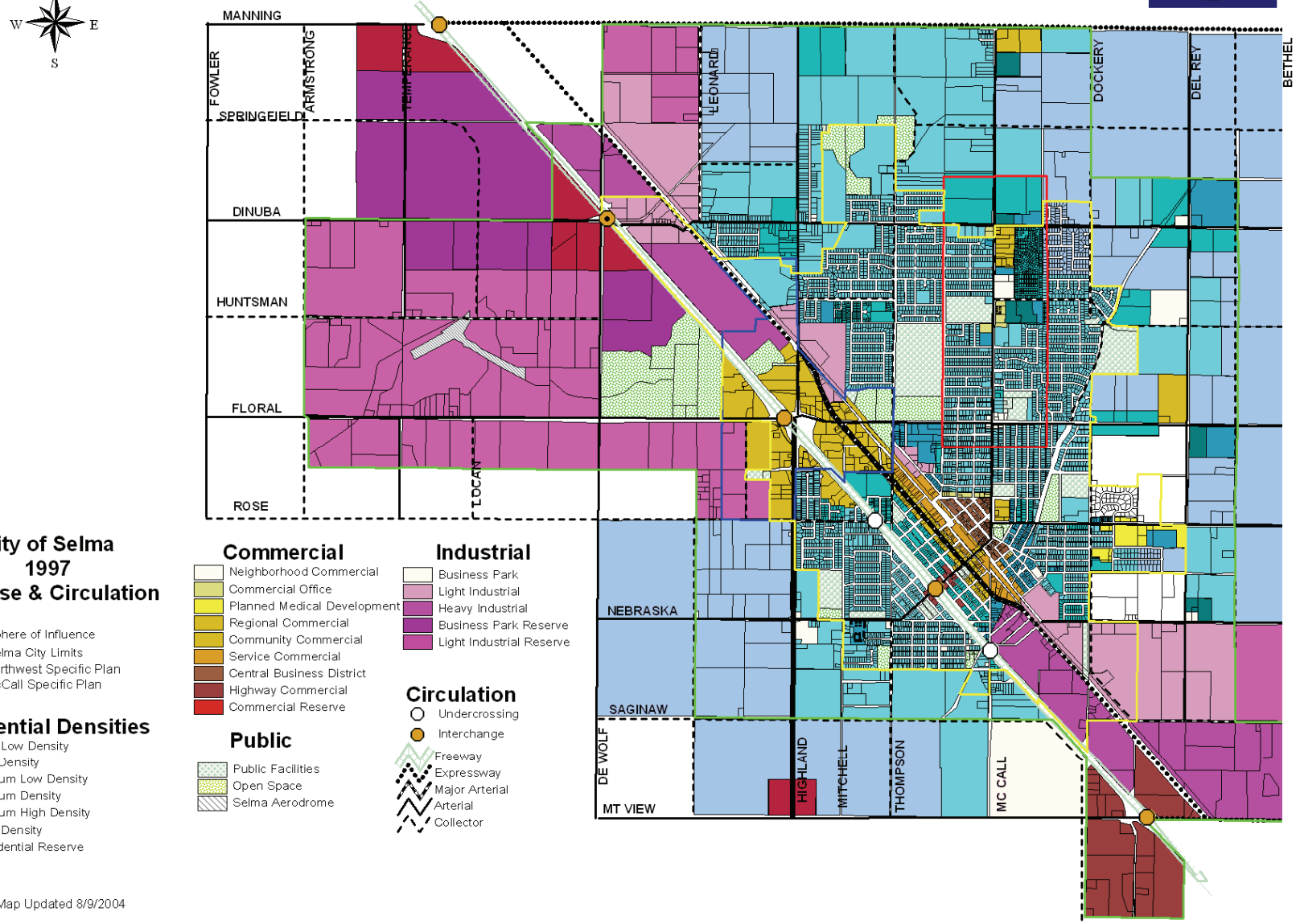
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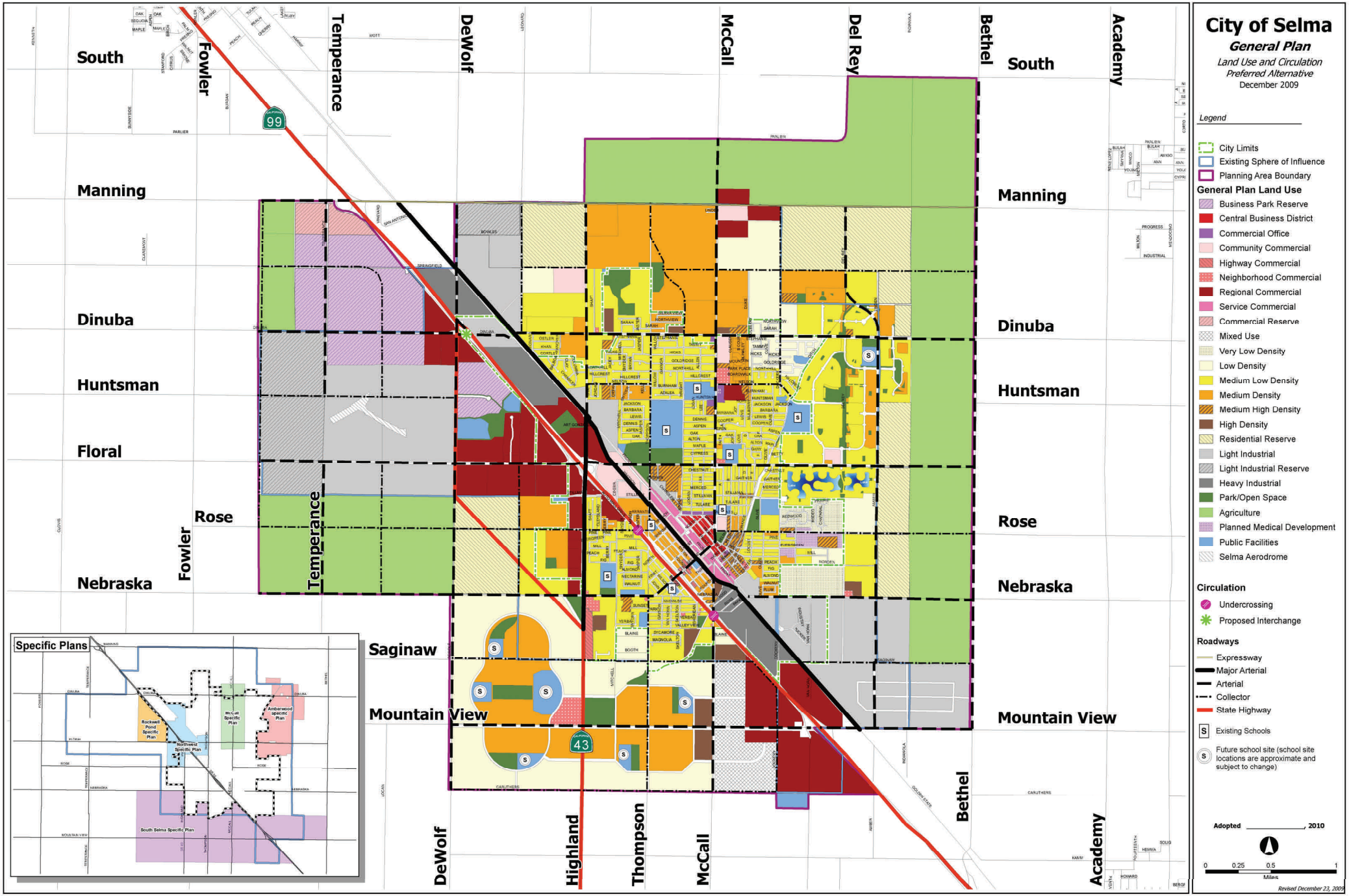
5. Consolidated Irrigation District's comment letter..... 1-13
   (See index on page 13 for supporting documentation)

Section 3

6. Planning Commission Resolution..... 1-4
7. August 23, 2010 Planning Commission Minutes.....(to follow later)
8. August 23, 2010 Planning Commission Staff Report..... 5-14
9. July 26, 2010 Planning Commission Minutes..... 15-19
10. July 26, 2010 Planning Commission Staff Report..... 20-23
11. July 14, 2010 Recreation and Community Services Commission resolution..... 24-34
12. Final EIR for the General Plan Update (*Separate Document*)

CITY OF SELMA
GENERAL PLAN





City of Selma

General Plan

Land Use and Circulation
Preferred Alternative
December 2009

Legend

- City Limits
- Existing Sphere of Influence
- Planning Area Boundary

General Plan Land Use

- Business Park Reserve
- Central Business District
- Commercial Office
- Community Commercial
- Highway Commercial
- Neighborhood Commercial
- Regional Commercial
- Service Commercial
- Commercial Reserve
- Mixed Use
- Very Low Density
- Low Density
- Medium Low Density
- Medium Density
- Medium High Density
- High Density
- Residential Reserve
- Light Industrial
- Light Industrial Reserve
- Heavy Industrial
- Park/Open Space
- Agriculture
- Planned Medical Development
- Public Facilities
- Selma Aerodrome

Circulation

- Undercrossing
- Proposed Interchange

Roadways

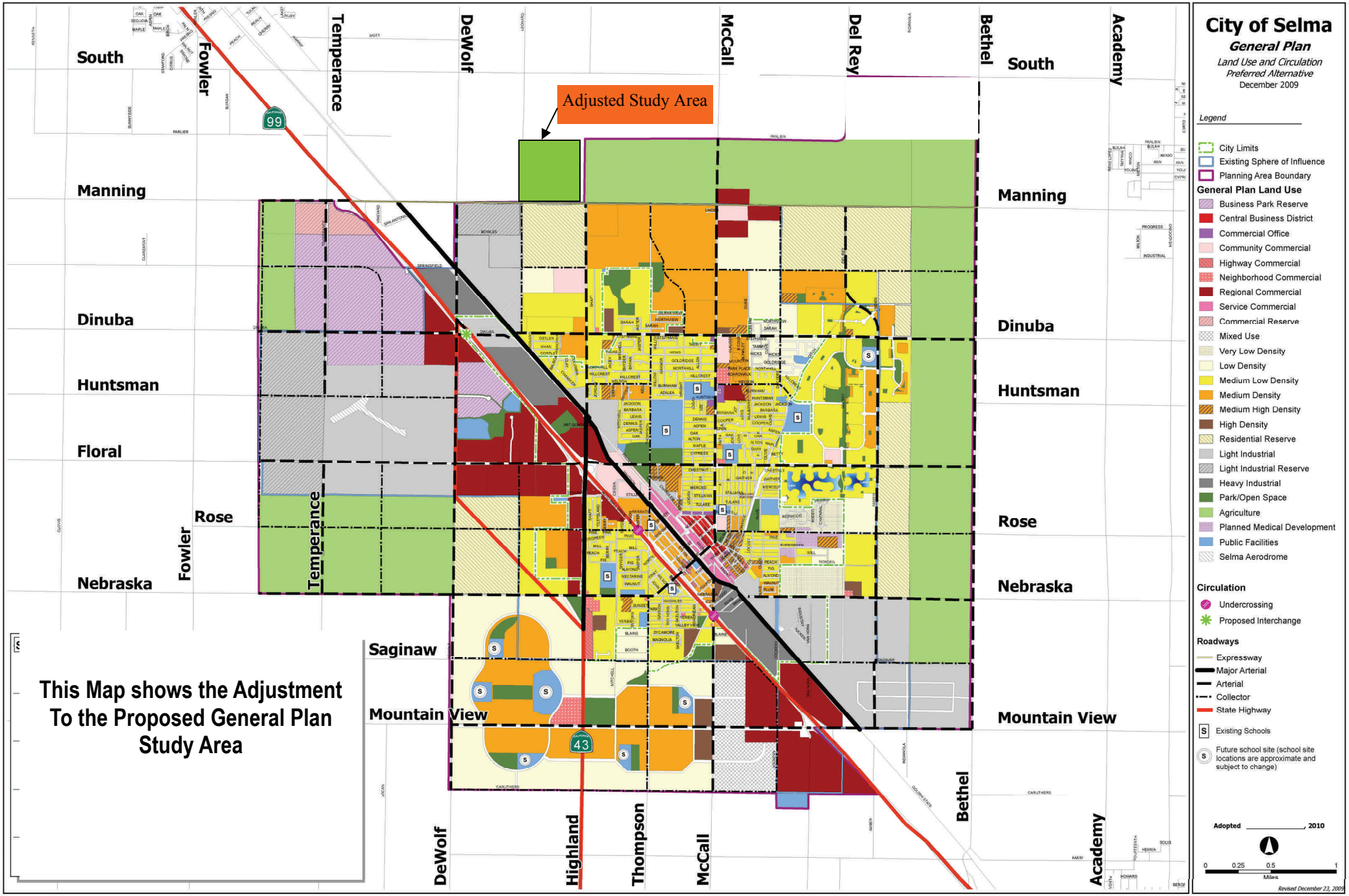
- Expressway
- Major Arterial
- Arterial
- Collector
- State Highway

- S — Existing Schools
- S — Future school site (school site locations are approximate and subject to change)

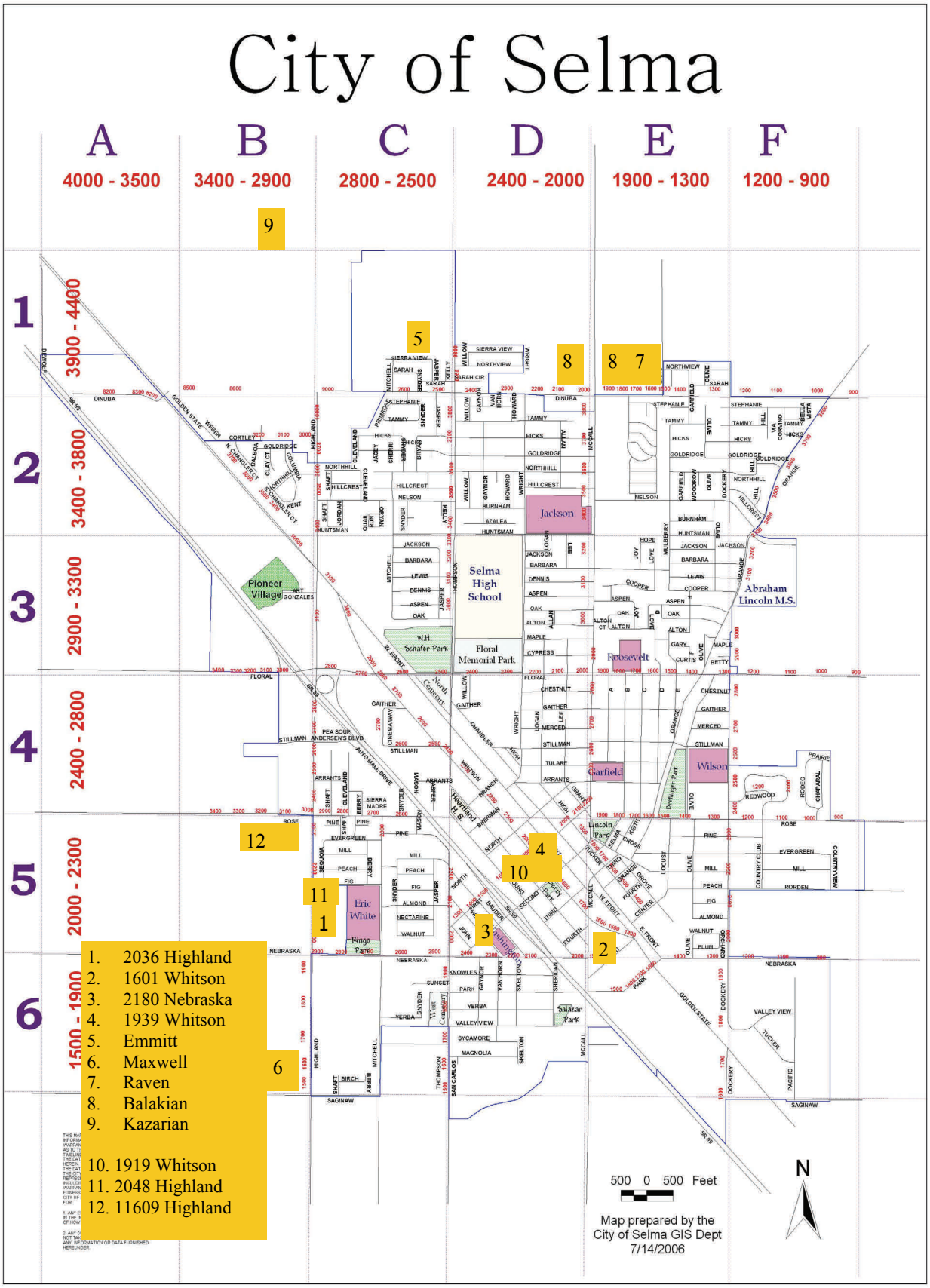
Adopted _____, 2010

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Miles

Revised December 23, 2009


City of Selma
General Plan
Land Use and Circulation
Preferred Alternative
December 2009
Adjusted Study Area
This Map shows the Adjustment To the Proposed General Plan Study Area
South
Manning
Dinuba
Huntsman
Floral
Rose
Nebraska
Saginaw
Mountain View
Fowler
Temperance
DeWolf
McCall
Del Rey
Bethel
Academy
Highland
Thompson
Legend
City Limits
Existing Sphere of Influence
Planning Area Boundary
General Plan Land Use
Business Park Reserve
Central Business District
Commercial Office
Community Commercial
Highway Commercial
Neighborhood Commercial
Regional Commercial
Service Commercial
Commercial Reserve
Mixed Use
Very Low Density
Low Density
Medium Low Density
Medium Density
Medium High Density
High Density
Residential Reserve
Light Industrial
Light Industrial Reserve
Heavy Industrial
Park/Open Space
Agriculture
Planned Medical Development
Public Facilities
Selma Aerodrome
Circulation
Undercrossing
Proposed Interchange
Roadways
Expressway
Major Arterial
Arterial
Collector
State Highway
Existing Schools
Future school site (school site locations are approximate and subject to change)
Adopted _____, 2010
0 0.25 0.5 1
Miles
Revised December 23, 2009

City of Selma



1. 2036 Highland
2. 1601 Whitson
3. 2180 Nebraska
4. 1939 Whitson
5. Emmitt
6. Maxwell
7. Raven
8. Balakian
9. Kazarian

10. 1919 Whitson
11. 2048 Highland
12. 11609 Highland

August 23, 2010

AUG 23 2010

City of Selma Planning Commission
Selma City Council
1710 Tucker St.
Selma, CA. 93662

Dear Sirs:

On July 26, 2010 I appeared before the Selma Planning Commission requesting The Selma Planning Commission and City Council extend the current City of Selma Sphere of Influence boundary ¼ to ½ mile to the south of Saginaw Avenue, beginning at Highland Avenue and west to DeWolf Avenue to include but not limited to 20 acres owned by Pete Esraelian et,al. at 8373 E. Saginaw Ave. and 40 acres owned by Sam Esraelian, et. al. at 8625 E. Saginaw Ave. DeWolf Avenue is natural and critical to the City's Sphere of Influence.

Expanding the City of Selma Sphere Influence is critical. The City of Selma must be more aggressive and motivated for future economic development of our City. The lack of aggressive expansion of The City of Selma Sphere of Influence in past years has and is presenting problems for our City's development.

I also mentioned in my appearance before the Commission on July 26th that I felt the Selma golf course should be included in the Selma Sphere if Influence. Let's not under estimate the influence and impact a golf course has on a community.

I hope that in the attempt to rush an already delayed adoption of the new general plan, we are not overlooking important additions such as my request and other deserving and common sense public and property owner requests.

Respectfully,

Pete Esraelian

Pete Esraelian
2135 Huntsman Ave.
Selma, CA. 93662
(559) 896-3822

August 23, 2010

AUG 23 2010

City of Selma Planning Commission
Selma City Council
1710 Tucker St.
Selma, CA. 93662

Dear Sirs;

On July 26, 2010, I had a representative speak on my behalf before the Selma Planning Commission requesting the Selma Planning Commission and City Council designate in the proposed new Selma General Plan a future public park in west Selma, west of the C.I.D. "84" Canal and midway between Floral, Rose and DeWolf Avenues. To show importance of this addition, the City is presently looking at a particular park site in that area.

In the same regard, the Selma Sphere of Influence should be moved west to DeWolf Avenue. Present and future development of the City requires the Sphere of Influence boundary be expanded.

Also I would suggest Stillman Street be shown on the new Selma General Plan, extended west to DeWolf Ave.

Your consideration of the park and expansion of the Sphere of Influence are both important to the future of the City of Selma.

In my opinion the development of the City of Selma has been hurt by the encroachment of three neighboring cities because the City of Selma has limited the expansion of Selma City limits and City of Selma Sphere of Influence.

Sincerely,

Larry O'Brien
11344 S. DeWolf Ave.
Selma, CA. 93662

Larry O'Brien

SECTION

2

CONSOLIDATED IRRIGATION DISTRICT

AUG 23 2010

OFFICERS	2255 Chandler Street- PO Box 209 - Selma, California 93662	DIRECTORS
ROBERT NIELSEN JR., President PHILLIP G. DESATOFF, Manager/Treasurer MARGARET MACIAS, Secretary VERONICA ARROYO, Assessor Collector SUMMERS Engineering, Engineer	Phone (559) 896-1660 - Fax (559) 896-8488	THOMAS E. FEAVER, FOWLER LARRY S. CRUFF, SELMA STEVE FRAUENHEIM, SANGER BOB PETERSEN, KINGSBURG ROBERT NIELSEN JR., CARUTHERS

August 23, 2010

Planning Commission
City of Selma
c/o the Community Development Department
1710 Tucker Street
Selma, CA 93662

SUBJECT: Further Comments re Proposed Final EIR for the Selma City General Plan Update 2035

Dear Commissioners:

We are deeply concerned that the Final EIR has failed to adequately respond to our prior comments and those of the other commenters. The EIR fails to meet the required legal standard as an adequate informational document for decisionmakers and the public. It also fails to provide feasible and enforceable mitigation for the impacts that will be generated by the significant growth facilitated by the General Plan. For that reason, the Commission should reject the proposed Final EIR and send it back for a major rewrite and recirculation.

The following represent the critical concerns:

- Unsupported Projections Regarding Population Increases.

One of the basic and fundamental factual premises of the proposed General Plan and EIR is that the City's population will increase at a rate of 4% per year. (DEIR, pp. 3-35 and 3-178.) The DEIR acknowledges that relevant Census data and numbers from the Department of Finance do not support the growth projection, but that it was "determined by the City Council of Selma." (See also the Quad Knopf Selma General Plan Update Water Supply Assessment at Appendix K of the DEIR pg. 1-2) There is no substantial evidence cited anywhere in the Plan or EIR to support this arbitrary "determination". Yet

it is this "determination" that is used to justify proposed conversion of hundreds of additional acres of prime agricultural land around the City.

In response to comments regarding the false population projection relied upon by the City in preparing the General Plan, the City resorts to fuzzy math based upon a selective analysis of previous years, and not the most recent years where data is available. (FEIR, p. 3-53 to 3-54.)

In fact, the City's population in July 2009 was 22,846. (City-data.com.) The population change since 2000 was +17.5%, or 2% per year. (*Id.*) Census information from 1990-2000 indicates 2.8% average annual change (see attachment). The California Department of Finance data for population change in the City of Selma between 2008 and 2009 is 0.3%. (See attachment.) This is also confirmed in the City's own consultant's Water Supply Assessment (Appendix K) cited above.

An artificially inflated population projection results in the unnecessary identification of farmland and open space for conversion to urban uses. This is an abuse of discretion and a violation of the State Planning Laws and of CEQA.

In defending the false population projections the City refers to the Urban Development Boundaries ("UDB") that will contain urban development until the population pressure requires further expansion into prime agricultural areas. (See FEIR, p. 3-54 to 3-55.) The City of Fowler, in its comments, correctly notes that these boundaries have not been identified. If the City intends to rely on these UBD for the mitigation of the severity of the impacts associated with the Plan's conversion of agricultural lands to urban uses, the identification and adoption of the UBDs may not be deferred under CEQA.

As a result of the City's failure to identify the UBDs, the Update fails to fulfill its most basic purpose of guiding future development because the Land Use Element does not meaningfully describe or illustrate the location and intensity of land uses. Absent this information, it is impossible to intelligently assess Project impacts or have any degree of certainty as to where, and when each type of growth would occur under the General Plan. Accordingly, the General Plan Update does not meet the requirements of the Planning and Zoning Code, including Government Code section 65302, and the EIR fails as an informational document.

- Impacts of Agricultural Land Conversion on Groundwater.

Attached hereto is a letter from CID's engineer Scott Jacobsen responding in detail to the FEIR's responses. As the letter indicates, the FEIR responses are riddled with factual and methodological errors. Most importantly they misstate their own expert's conclusions with respect to the groundwater impacts of the development proposed by the General Plan. The City's own expert, Schmidt, concludes that absent certain mitigations, the urban development proposed under the General Plan will produce a 19,000 acre feet annual ground water deficit. This clearly negates the claim in the FEIR of no potential impact.

Schmidt then suggests two mitigation measures to avoid the groundwater overdraft — requiring CID to continue to do groundwater recharge within the Plan area and have the City's wastewater be percolated to groundwater within the Plan area. Both of these require major changes in current programs by agencies outside City control – agencies with no reason to make such changes. In fact the second mitigation would require building an entirely new wastewater treatment plant and percolation ponds for the City. The mitigation measures cannot reasonably be implemented by the City and are therefore illusory. In any event the Schmidt proposed mitigations are not incorporated into the Table of Proposed Mitigations Table 2-3. The FEIR continues to propose in Mitigation Measure 3.8.3.3 that "The City of Selma shall adhere to CID's Groundwater Mitigation and Banking Program...".

Even this proposed mitigation measure is not structured as an enforceable mitigation measure. It is not proposed as an enforceable General Plan Policy or Land use regulation. The City has been offered a cooperative agreement with CID to achieve exactly this mitigation but has repeatedly refused to proceed with the agreement. Therefore unless the City reverses its current position and the mitigation measure is implemented in an enforceable agreement with CID or General Plan policy, it is illusory. It will not mitigate the impacts the City's own expert identified below the level of significance.

Additional Comments re Groundwater impacts:

- The analysis should not assume that CID will continue to deliver the same volume of imported surface water previously used on the converted land to the remaining agricultural lands adjacent to the development

- Use of the Rockwell Pond to retain urban storm water will not mitigate the groundwater impacts that CID has identified. There would be no net increase in groundwater recharge since the undeveloped project land currently can percolate the majority of local precipitation. If anything, diverting new storm water into Rockwell Pond would occupy space that might otherwise be used to recharge imported water, and this would reduce the pond's total recharge capacity.

- Impacts to District Drainage Facilities.

The Draft EIR recognizes that the City of Selma utilizes CID canals for stormwater runoff and that such runoff could result in potential water quality impacts resulting from oils and chemicals that are spilled through storm run-off without filter or catch basins." (DEIR, p. 3-129) It then goes on to focus on measures primarily to control water quality aspects of such run-off.

CID, in its comments on the DEIR, incorporated by reference a series of studies, including an Urban Impacts Study Dated July 2007 and an updated study dated November 2007. The November study is attached as Exhibit G to the Draft EIR. Those

Urban Impact studies specifically addressed the impacts of urban development on CID facilities and storm drainage. Not only did it raise the impact of increased contamination from the increased stormwater, but also the impact of increased quantity of flows into the canals during storms and safety and vandalism issues relating to urban development near CID canals.

The Final EIR does not address many of the issues raised in the studies incorporated in CID's comments. While it indirectly addresses quantity issues in the proposed mitigation measure, there is no meaningful discussion of the impacts of increased stormwater flows and the stress they put on CID canals at a time when the canals are near capacity. Nor is there any discussion of the increased risk to human safety of siting residential development adjacent to open CID canals. These are issues specifically cited by the trial Court (at pp, 47-48) as significant impacts in the recent decision in *CID v. City of Selma* Fresno Superior Court case number 08CECG01591, attached as an Exhibit to this letter. As a result the Final EIR fails to address significant impacts of urban development. These issues need to be addressed.

The Final EIR does propose in Mitigation 3.8.3.2 no "net additional increase" in stormwater flowing into CID canals. However the manner in which it is proposed raises a serious question whether the mitigation is real and enforceable.

CEQA specifies that "A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." (Pub. Resources Code § 21081.6(b); see also Guidelines § 15126.4(a)(2).) Here the proposed mitigation does not meet this requirement.

The Final EIR offers a revised Mitigation Measure 3.8.3.2 as the main justification and evidence that the drainage impacts on CID have been mitigated. However that mitigation measure is both vague and does not propose an enforceable policy or regulation that would insure mitigation.

The mitigation measure as revised simply states that "It *[sic]* will not allow a net increase in the quantity or [*sic*] water or contaminants currently entering the CID system. Existing City Storm drainage entering the CID system be removed in a phased program. Storm drainage from new development will be retained in City facilities." (FEIR, p. 3-77.)

Who the "It" refers to is unclear as is the reference to "quantity or water". How it will be determined whether a project creates a "net" increase in quantity of water flowing into the CID canals is also left completely undetermined. Most importantly, however, the requirement is not proposed as an enforceable regulation as required by 15126.4(a)(2).

In the table ES-1 Summary of Potential Impacts, Proposed Mitigation Measures and Level of Significance, the very first mitigation measure proposed 3.1.3.1 is "Modify Policy 1.33c as follows..." The EIR then goes to spell out in detail revised languages for the General Plan policy 1.33c relating to exterior lighting. Thus, the mitigation measure is proposed as a revised policy of the General Plan which if adopted will be enforceable as a GP policy.

In the case of drainage however, the EIR does not use this approach. It proposes a mitigation requirement that is not tied to anything. It is not proposed as a specific General Plan policy as are many other mitigation measures in the EIR. It is not proposed as city ordinance requirement. It is simply a statement in an EIR that in and of itself has no continuing legal enforceability. It is therefore not "incorporated into the project" as required by CEQA. There is no assurance that it will be implemented and therefore no assurance that CID's canals will actually be protected from additional inflows.

In this regard, the City of Selma is repeating the same mistake it made in the *CID v Selma* case cited above. In that case, the City Attorney stated in a letter that the project would not use the CID canals for drainage. However the Court found that there was no enforceable mitigation measure or project condition actually adopted by the City to assure that the project would not use the CID canals for drainage. The Court stated (at pg 48:15-20):

> *Here the statements of the City Attorney were not actually implemented in the conditions of approval as required by CEQA. Therefore whether the project will actually drain into the CID canals is unknown. In the absence of such basic information, CID has made a fair argument of a potentially significant impact, requiring an EIR.*

Consequently the FEIR needs to be modified to address the impacts of the massive growth proposed on CID canals as to stormwater quantity and safety. Further the proposed mitigation measure should be rewritten as a formal General Plan policy or proposed city ordinance to assure that it will be enforced.

- Impacts on Agriculture.

In response to comments raising concerns about conversion of agricultural lands, the City cites to the **depublished** *Friends of the Kangaroo Rat v. California Dept. of Corrections* (2003) 111 Cal. App. 4th 1400, claiming that compensatory mitigation for conversion of prime agricultural lands does not "qualify" as mitigation. (FEIR, p. 3-95.) Further, and inexplicably, Mitigation Measure 3.2.3.2 was revised in the FEIR to be permissive and not mandatory. (See FEIR, p. 2-17.) Comments from the Department of Conservation were disregarded. (FEIR, p. 3-95.)

Contrary to the City's response to comments letter, requiring the purchase of conservation easements *is* mitigation under CEQA. In a recent unpublished case from

the Third District Court of Appeal, the court disagrees with the **depublished** *Friends of the Kangaroo Rat* case, and holds:

> Under CEQA, mitigation is not limited to measures that would entirely avoid the environmental impacts of a project; rather, mitigation includes measures that would substantially lessen the significant environmental effects of the project. Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, conservation easements can diminish the development pressures created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project. In this respect, conservation easements fall well within the concept of mitigation under CEQA. (*South County Citizens for Responsible Growth v. City of Elk Grove*, 2004 Cal. App. Unpub. LEXIS 1208. Copy attached.)

Many jurisdictions require purchase of conservation easements as mitigation for the conversion of agricultural lands to urban uses. The following are references to policies from the general plans and agricultural mitigation programs showing that agricultural mitigation is feasible and widely accepted as effective:

1. City of Brentwood Municipal Code Chapter 17.730
2. City of Davis Municipal Code Chapter 40A.03.0
3. City of Gilroy Agricultural Mitigation Policy
4. Santa Clara County Local Agency Formation Council Agricultural Mitigation Policies
5. City of Winters Habitat Mitigation Policy
6. Yolo County Code (excerpts of Title 8: Land Development and Zoning, Chapter 2: Zoning, Article 24: General Provisions)
7. Yolo County Local Agency Formation Commission Agricultural Conservation Policy
8. Stanislaus County Agricultural Element
9. Stanislaus County Agricultural Mitigation Program Guidelines
10. South Livermore Valley Area Plan
11. Napa County General Plan
12. Solano County General Plan
13. City of Stockton Public Facilities Fee Program

As set forth in detail in their comment letter, the Department of Conservation, the state agency responsible for preserving and protecting the state's farmland, supports the use of conservation easements as mitigation under CEQA as well.

Even if the City were correct that conservation easements, by themselves, did not constitute adequate mitigation for conversion of agricultural land, the City would still be required to consider and adopt other measures that could mitigate these significant impacts. For example, the City could adopt mitigation requiring the enhancement of

low-value agricultural land; the creation of new farmland by restoring land that is suitable for agriculture but is currently either vacant or used for urban purposes such as parking lots, or; the acquisition of water rights necessary to enable higher-value farming. Such measures—on their own or coupled with a conservation easement over the newly-created or -enhanced farmland—must be considered and adopted if feasible to reduce the Project's admittedly significant impacts to agricultural resources. The attached Farmland Protection Action Guide (See attachment "Department of Conservation Farmland Protection Action Guide"), prepared by the Institute for Local Self Government, provides many examples of measures to conserve farmland and mitigate for agricultural impacts.

The City's response to comments regarding conversion of agricultural lands is inadequate. The City relies on case law that is no longer valid precedent, and ducks the issue in a way that simply does not satisfy the requirements of CEQA.

- Cumulative Impacts. The EIR's analysis of water supplies and groundwater consumption should not be limited to the site specific groundwater impacts relative to the total overdraft in the region. It should consider the cumulative impacts from this development and other developments that have recently been built, recently approved or that have filed applications with the City.

- LAFCO Mediation and Interim Mitigation. The City of Selma, along with the four other cities within the boundaries of CID are currently participating in a mediation process facilitated by Fresno LAFCo to address the impacts of urban conversion and annexation on the District. As part of that mediation, the participants agreed in principle to proposed interim CEQA Mitigation Procedure for Hydrology and Water Quality". There is substantial evidence showing that the City has not adequately evaluated the cumulative impacts of the project, and yet the City now seeks to push the project through with the inadequate CEQA review and without honoring the commitment to the interim mitigation measures.

- Global Climate Change Impacts.

In its response to comments pointing out the flaws in the DEIR's analysis of global climate change and greenhouse gas ("GHG") emission impacts from the project, the City simply refers back to the DEIR. (DEIR p. 3-48.) Section 3.17 of the DEIR does not include a comprehensive analysis, that section does not even identify baseline levels of GHG emissions in the basin, nor does it discuss the net increase in GHG emissions that would result from the project.

Energy consumption

The California Natural Resources Agency recently reaffirmed that "CEQA's requirement to analyze and mitigate energy impacts of a project is substantive, and is not merely procedural." (http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf , p. 71.) Pursuant to CEQA Greenhouse Gas Guidelines promulgated under SB 97, Appendix F

of the Guidelines was revised to clarify that an EIR *shall* consider energy implications of the proposed project, and where applicable, items that should be considered include the energy supply and energy use patterns of the region, the effects of the project on local and regional energy supplies, and measures to reduce energy consumption. (CEQA Guidelines, Appendix F.)

The FEIR fails to conform to Appendix F because its description of Project energy use is limited to noting the PG&E supplies the City with electricity, and natural gas is provided by PG&E and Southern California Gas Company. (DEIR, p. 3-198.) To properly assess the Project's energy consumption, the City should provide information on the extent to which onsite renewable energy is being used in the City, and discuss whether the City currently has any programs or requirements relating to energy efficiency, renewable energy or green building requirements.

The FEIR does not address energy impacts directly, as they are included in the inadequate sections on Air Quality Impacts and Global Climate Change. In response to comments that the DEIR's analysis of Global Climate Change impacts was inadequate, the City simply refers back to the analysis in Section 3.17 of the DEIR, and essentially says, "it's all in there." It is not all there, and in the midst of the confused analysis of energy consumption, the City offers a few feeble "mitigation measures" that simply do not satisfy CEQA.

For example, in the Air Quality and Global Climate Change sections, the DEIR references the following measures (emphasis added):

Policy 1.21 The City will ***encourage*** Leadership in Energy and Environmental Design (LEED) features for new construction including commercial, residential, industrial and public facilities. LEED was established to provide the building industry with design tools and standards which create high performing, environmentally friendly, sustainable buildings.

Policy 2.60 The City shall ***encourage*** the use of energy efficient and non-polluting fuels and modes of transportation.

MM 3.3.3.1 requires the use LEED technologies ***to the extent practical and feasible***.

Policy 5.3 ***Encourage*** reduction of the City's peak electrical load by 10% through energy efficiency, shifting the timing of energy demands, and conservation measures.

The City is required by CEQA to adopt all feasible mitigation measures, and yet it relies entirely on a series of vague and aspirational measures aimed at reducing energy consumption. Given their vagueness, uncertainty and lack of enforceability, the FEIR does not, and cannot, quantify or describe the actual energy conservation benefits that will result from these measures. As noted by the Attorney General in "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions, California Attorney General's Office,"

"[w]hile a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented." (See attached.)

The City does not have a single specific and enforceable policy to reduce non-renewable energy consumption.

Greenhouse Gas Emissions:

With respect to greenhouse gas emissions, the City adopted **one** permissive mitigation measure, requiring truck-idling restrictions during construction and the development of certain design features "where feasible."

Mitigation Measure 3.17.3.1: The City of Selma will require the following: (1) When approving new development, require truck idling to be restricted during construction; and (2) Require new development to implement the following design features, ***where feasible***: [list of features such as recycling programs and promotion of pedestrian traffic].

In response to comments regarding necessary reduction in Vehicle Miles Traveled ("VMT"), the City refers the commenter back to the DEIR. (FEIR, p. 3-74.) Section 3.17 addresses VMT as follows: "the General Plan land use plan creates a compact development pattern that offers a wide variety of density typologies and minimizes vehicle miles traveled." (DEIR, p. 3-307.) The section also notes the following: "CO hotspots are temporary and localized areas of high CO concentration, occurring at heavily congested intersections or roadways with heavy traffic. Policies 2.5, 2.34, 2.49, 2.50 and 2.54 of the proposed General Plan are designed to reduce vehicle miles traveled (VMT) and promote alternative modes of transportation." (DEIR, p. 3-306-307.)

The policies referred to for reduction of VMT are all aspirational and permissive in nature, and none of them meet the requirements for enforceability under CEQA.

Policy 2.5 ***Encourage*** benches, telephones and shaded areas at major transit destinations so people can utilize the transit system safely and comfortably. The City shall determine such need based on site plan review procedure and other planning implementation methods.

Policy 2.34 Right-of-way essential to the circulation system ***should be*** dedicated and/or developed to the appropriate extent and width when a division of property or development occurs. The City shall coordinate street improvements with the County of Fresno so that the same requirements apply within the urban area boundary outside the City limits.

Policy 2.49 Street lighting shall be provided for all public streets and pedestrian signals shall be provided at all traffic signal locations.

Policy 2.50 New development shall be required to plant and maintain appropriate trees or other devices in order to achieve shading of at least 50% of all hardscaped parking and pedestrian surfaces.

Policy 2.54 The City of Selma shall work with Caltrans and transit service providers to establish a park and ride lot or lots within the community to serve the needs of regional and local commuters

"SMART GROWTH" FACTORS

The proposed Plan Update has several components that will promote smart growth development scenarios, which will help reduce potential GHG emissions. Many of these are mentioned in the Goals and Policies section above. The proposed Plan Update encourages use of alternative modes of transportation that produce less greenhouse gas emissions than vehicular travel, or none at all. Also, policies encourage people to walk, ride bicycles, take public transportation, and rideshare when commuting to work. Finally, the General Plan land use plan creates a compact development pattern that offers a wide variety of density typologies and minimizes vehicle miles traveled. (DEIR, p. 3-306.)

In summary, VMT is addressed by the City through a short list of policies and a loosely worded item labeled in the DEIR as "'SMART GROWTH' FACTORS," most of which are designed to enhance pedestrian comfort and "encourage" certain behaviors. This does not meet CEQA's requirements.

Proposed Mitigation for the Project's Greenhouse Gas Impacts is Vague, Unenforceable, and Improperly Deferred

While the EIR properly acknowledges that Project greenhouse gas impacts are significant, it fails to adopt all feasible mitigation and alternatives to minimize this impact as required under CEQA. (Pub. Res. Code § 21002.) Like its treatment of energy impacts, mitigation for the full range of the Project's greenhouse gas impacts is improperly vague, unenforceable and deferred. As recently set forth by the Court of Appeal in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, "the novelty of greenhouse gas mitigation measures is one of the most important reasons that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Id.*)

Rather than propose meaningful mitigation for the Project's greenhouse gas impacts in the EIR, the City simply provides a list of hortatory policies that the City claims will mitigate greenhouse gas emissions. (DEIR, p. 3-306 to 3-309.) There is not even a commitment to the preparation of a climate action plan. In invalidating an EIR for improperly deferring mitigation of greenhouse gas impacts, the Court in *Communities For a Better Environment v. City of Richmond*, held that the "solution was not to defer the specification and adoption of mitigation measures until a year after Project approval; but, rather, to defer approval of the Project until proposed mitigation measures were

fully developed, clearly defined, and made available to the public and interested agencies for review and comment." In that case, the City of Richmond had included a commitment to develop a climate action plan. In this case, the City has not even come close to that type of commitment. If the City of Richmond's promise to prepare a Climate Action Plan within a year was insufficient, the City of Selma's vague analysis and permissive policies with no mention of a Climate Action Plan most certainly is not enough.

With only vague, permissive policies as currently contemplated, land uses would be locked in that could frustrate attainment of emission reduction objectives. The time to analyze and commit to sustainable, low-carbon growth is when the General Plan is developed, not after.

Incorporation by Reference of Other Comments

CID incorporates by reference all of the comments made by other agencies on the DEIR in its response to the FEIR. As with CID's own comments, most of these other agency comments have been given little meaningful response in the FEIR. The issues they raised remain weaknesses of the FEIR and General Plan that the City should correct before the Plan is approved.

Attachments

The following attachments are part of CID's comments on the FEIR.

1. Census 1990 - Census 2000 Population Growth
   With Comparison To State Of California Department Of Finance 2000 Estimate
   Fresno County And Its Jurisdictions

2. California Department of Finance: City/County Population Estimates with Annual Percent Change, 2008-2009

3. Decision in CID v. City of Selma Fresno Superior Court Case No. 08CECG01591

4. South County Citizens for Responsible Growth v. City of Elk Grove, 2004 Cal. App. Unpub. LEXIS 1208

5. Department of Conservation Farmland Protection Action Guide

6. Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions
   California Attorney General's Office

7. Comment Letter from Summers Engineering, Inc., dated August 23, 2010

SUBJECT:Further Comments re Proposed Final EIR for the Selma City General Plan Update 2035

In its present form the FEIR is wholly inadequate as an informational document both for you the decision-makers, and to inform the public as to the impacts of the new General Plan. We strongly urge you to send the FEIR back for further work in light of these comments.

Very truly yours,

Phil Desatoff
General Manager

LIST OF EXHIBITS TO BE PRESENTED TO PLANNING COMMISSION AT HEARING

1. Census 1990 - Census 2000 Population Growth
   With Comparison To State Of California Department Of Finance 2000 Estimate
   Fresno County And Its Jurisdictions

2. California Department of Finance: City/County Population Estimates with Annual Percent Change, 2008-2009

3. Decision in CID v. City of Selma Fresno Superior Court Case No. 08CECG01591

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AUG 23 2010

Consolidated Irrigation District

August 23, 2010 Comments

Census 1990 – Census 2000

Exhibit 1

AUG 23 2010

CENSUS 1990 - CENSUS 2000 POPULATION GROWTH
FRESNO COUNTY AND ITS JURISDICTIONS
WITH COMPARISON TO STATE OF CALIFORNIA DEPARTMENT OF FINANCE 2000 ESTIMATE

JURISDICTION	CENSUS 1990 AND 2000					STATE DEPT. OF FINANCE
	APRIL 1, 1990	APRIL 1, 2000	APRIL 1, 1990 - APRIL 1, 2000			JAN. 1, 2000
	Population	Population	Population Change	Percent Change	Average Annual Percent Change	Population
FRESNO COUNTY	667,490	799,407	131,917	19.8%	1.8%	805,005
CLOVIS	50,323	68,468	18,145	36.1%	3.1%	70,746
COALINGA	8,212	11,668	3,456	42.1%	3.6%	15,179
FIREBAUGH	4,429	5,743	1,314	29.7%	2.6%	6,136
FOWLER	3,394	3,979	585	17.2%	1.6%	3,865
FRESNO	354,091	427,652	73,561	20.8%	1.9%	420,594
HURON	4,766	6,306	1,540	32.3%	2.8%	5,867
KERMAN	5,448	8,551	3,103	57.0%	4.6%	7,801
KINGSBURG	7,245	9,199	1,954	27.0%	2.4%	9,417
MENDOTA	6,821	7,890	1,069	15.7%	1.5%	7,844
ORANGE COVE	5,604	7,722	2,118	37.8%	3.3%	7,905
PARLIER	7,938	11,145	3,207	40.4%	3.5%	11,383
REEDLEY	15,791	20,756	4,965	31.4%	2.8%	20,940
SANGER	16,839	18,931	2,092	12.4%	1.2%	19,039
SAN JOAQUIN	2,311	3,270	959	41.5%	3.5%	3,255
SELMA	14,757	19,444	4,687	31.8%	2.8%	18,684
UNINCORPORATED	159,521	168,683	9,162	5.7%	0.6%	176,350

Regional Data Center

Consolidated Irrigation District

August 23, 2010 Comments

City/ Council Population Estimates

Exhibit 2

E-1: City/County Population Estimates with Annual Percent Change
January 1, 2008 and 2009

State/County/City	Total Population 1/1/2008	1/1/2009	Percent Change
California	37,883,992	38,292,687	1.1
Alameda	1,537,719	1,556,657	1.2
Alameda	74,015	74,683	0.9
Albany	16,152	16,884	4.5
Berkeley	106,498	107,178	0.6
Dublin	46,859	47,922	2.3
Emeryville	9,712	10,087	3.9
Fremont	213,124	215,636	1.2
Hayward	148,935	150,878	1.3
Livermore	83,451	84,409	1.1
Newark	43,793	44,035	0.6
Oakland	419,095	425,068	1.4
Piedmont	11,079	11,165	0.8
Pleasanton	69,324	70,097	1.1
San Leandro	81,841	82,472	0.8
Union City	73,269	73,977	1.0
Balance Of County	140,572	142,166	1.1
Alpine	1,227	1,201	-2.1
Amador	38,035	38,080	0.1
Amador	211	209	-0.9
Ione	7,451	7,716	3.6
Jackson	4,353	4,319	-0.8
Plymouth	1,043	1,032	-1.1
Sutter Creek	2,711	2,681	-1.1
Balance Of County	22,266	22,123	-0.6
Butte	219,427	220,748	0.6
Biggs	1,765	1,777	0.7
Chico	86,772	87,713	1.1
Gridley	6,363	6,417	0.8
Oroville	14,408	14,639	1.6
Paradise	26,208	26,287	0.3
Balance Of County	83,911	83,915	0.0
Calaveras	45,885	45,987	0.2
Angels City	3,575	3,575	0.0
Balance Of County	42,310	42,412	0.2
Colusa	21,811	21,997	0.9
Colusa	5,705	5,900	3.4
Williams	5,285	5,287	0.0
Balance Of County	10,821	10,810	-0.1

Contra Costa	1,048,242	1,060,435	1.2
Antioch	99,994	100,957	1.0
Brentwood	50,584	51,908	2.6
Clayton	10,778	10,864	0.8
Concord	123,700	124,599	0.7
Danville	42,602	43,043	1.0
El Cerrito	23,306	23,440	0.6
Hercules	24,309	24,480	0.7
Lafayette	23,948	24,087	0.6
Martinez	36,122	36,348	0.6
Moraga	16,128	16,204	0.5
Oakley	33,189	34,468	3.9
Orinda	17,529	17,669	0.8
Pinole	19,260	19,383	0.6
Pittsburg	63,352	63,771	0.7
Pleasant Hill	33,357	33,547	0.6
Richmond	103,899	104,513	0.6
San Pablo	31,172	31,808	2.0
San Ramon	61,187	63,176	3.3
Walnut Creek	65,266	65,860	0.9
Balance Of County	168,560	170,310	1.0
Del Norte	29,352	29,547	0.7
Crescent City	7,668	7,680	0.2
Balance Of County	21,684	21,867	0.8
El Dorado	178,860	180,185	0.7
Placerville	10,321	10,373	0.5
South Lake Tahoe	23,850	23,896	0.2
Balance Of County	144,689	145,916	0.8
Fresno	928,066	942,298	1.5
Clovis	93,866	95,128	1.3
Coalinga	19,037	19,109	0.4
Firebaugh	6,799	6,807	0.1
Fowler	5,562	5,671	2.0
Fresno	485,335	495,913	2.2
Huron	7,539	7,836	3.9
Kerman	13,534	14,064	3.9
Kingsburg	11,234	11,427	1.7
Mendota	9,764	9,870	1.1
Orange Cove	10,751	10,930	1.7
Parlier	13,299	13,555	1.9
Reedley	25,538	25,723	0.7
Sanger	25,353	25,417	0.3
San Joaquin	4,055	4,060	0.1
Selma	23,238	23,301	0.3
Balance Of County	173,162	173,487	0.2
Glenn	29,070	29,239	0.6
Orland	7,322	7,420	1.3
Willows	6,472	6,486	0.2

Balance Of County	15,276	15,333	0.4
Humboldt	132,177	132,755	0.4
Arcata	17,476	17,610	0.8
Blue Lake	1,160	1,169	0.8
Eureka	26,006	26,002	0.0
Ferndale	1,437	1,441	0.3
Fortuna	11,318	11,351	0.3
Rio Dell	3,268	3,279	0.3
Trinidad	311	311	0.0
Balance Of County	71,201	71,592	0.5
Imperial	175,622	179,254	2.1
Brawley	26,411	26,948	2.0
Calexico	38,585	39,337	1.9
Calipatria	7,761	8,108	4.5
El Centro	43,152	44,259	2.6
Holtville	6,442	6,515	1.1
Imperial	12,702	12,970	2.1
Westmorland	2,396	2,427	1.3
Balance Of County	38,173	38,690	1.4
Inyo	18,106	18,049	-0.3
Bishop	3,543	3,536	-0.2
Balance Of County	14,563	14,513	-0.3
Kern	814,995	827,173	1.5
Arvin	16,464	16,675	1.3
Bakersfield	327,637	333,719	1.9
California City	14,330	14,828	3.5
Delano	53,716	53,972	0.5
Maricopa	1,130	1,140	0.9
McFarland	13,379	13,559	1.3
Ridgecrest	27,951	28,353	1.4
Shafter	15,561	15,812	1.6
Taft	9,188	9,117	-0.8
Tehachapi	13,060	13,631	4.4
Wasco	24,938	25,434	2.0
Balance Of County	297,641	300,933	1.1
Kings	153,572	154,743	0.8
Avenal	16,551	15,871	-4.1
Corcoran	25,974	25,893	-0.3
Hanford	51,614	52,687	2.1
Lemoore	24,340	24,818	2.0
Balance Of County	35,093	35,474	1.1
Lake	63,805	64,025	0.3
Clearlake	14,189	14,390	1.4
Lakeport	5,024	5,146	2.4
Balance Of County	44,592	44,489	-0.2

Lassen	35,956	35,550	-1.1
Susanville	17,636	17,402	-1.3
Balance Of County	18,320	18,148	-0.9
Los Angeles	10,301,658	10,393,185	0.9
Agoura Hills	23,203	23,337	0.6
Alhambra	88,754	89,171	0.5
Arcadia	56,169	56,547	0.7
Artesia	17,455	17,551	0.5
Avalon	3,512	3,540	0.8
Azusa	48,475	48,932	0.9
Baldwin Park	81,122	81,445	0.4
Bell	38,543	38,759	0.6
Bellflower	76,713	77,194	0.6
Bell Gardens	46,499	46,786	0.6
Beverly Hills	35,774	36,090	0.9
Bradbury	942	953	1.2
Burbank	107,412	108,082	0.6
Calabasas	23,590	23,735	0.6
Carson	97,818	98,159	0.3
Cerritos	54,649	54,855	0.4
Claremont	37,057	37,780	2.0
Commerce	13,460	13,550	0.7
Compton	98,674	99,431	0.8
Covina	49,271	49,541	0.5
Cudahy	25,728	25,880	0.6
Culver City	40,464	40,657	0.5
Diamond Bar	60,015	60,407	0.7
Downey	112,735	113,469	0.7
Duarte	22,826	23,090	1.2
El Monte	125,336	126,308	0.8
El Segundo	16,903	16,999	0.6
Gardena	61,430	61,810	0.6
Glendale	205,980	207,303	0.6
Glendora	52,067	52,474	0.8
Hawaiian Gardens	15,810	15,885	0.5
Hawthorne	89,498	89,979	0.5
Hermosa Beach	19,426	19,491	0.3
Hidden Hills	2,003	2,013	0.5
Huntington Park	64,374	64,617	0.4
Industry	794	797	0.4
Inglewood	118,201	118,868	0.6
Irwindale	1,714	1,727	0.8
La Canada Flintridge	21,155	21,218	0.3
La Habra Heights	6,105	6,151	0.8
Lakewood	83,005	83,508	0.6
La Mirada	49,818	49,939	0.2
Lancaster	143,512	145,074	1.1
La Puente	43,009	43,269	0.6
La Verne	33,858	33,981	0.4
Lawndale	33,346	33,593	0.7
Lomita	20,936	20,989	0.3

Long Beach	489,864	492,682	0.6
Los Angeles	4,022,450	4,065,585	1.1
Lynwood	72,740	73,174	0.6
Malibu	13,624	13,712	0.6
Manhattan Beach	36,315	36,718	1.1
Maywood	29,800	29,984	0.6
Monrovia	39,103	39,531	1.1
Montebello	65,291	65,667	0.6
Monterey Park	64,176	64,874	1.1
Norwalk	109,074	109,567	0.5
Palmdale	146,209	151,346	3.5
Palos Verdes Estates	13,967	14,046	0.6
Paramount	57,638	57,874	0.4
Pasadena	147,293	150,185	2.0
Pico Rivera	66,640	66,899	0.4
Pomona	162,679	163,408	0.4
Rancho Palos Verdes	42,720	42,800	0.2
Redondo Beach	67,099	67,646	0.8
Rolling Hills	1,956	1,969	0.7
Rolling Hills Estates	8,138	8,149	0.1
Rosemead	57,095	57,594	0.9
San Dimas	36,669	36,878	0.6
San Fernando	25,083	25,292	0.8
San Gabriel	42,521	42,829	0.7
San Marino	13,378	13,393	0.1
Santa Clarita	176,030	177,150	0.6
Santa Fe Springs	17,689	17,784	0.5
Santa Monica	90,926	92,494	1.7
Sierra Madre	11,051	11,083	0.3
Signal Hill	11,337	11,430	0.8
South El Monte	22,264	22,615	1.6
South Gate	102,225	102,770	0.5
South Pasadena	25,644	25,832	0.7
Temple City	35,480	35,747	0.8
Torrance	148,115	149,111	0.7
Vernon	95	95	0.0
Walnut	32,112	32,486	1.2
West Covina	112,022	112,648	0.6
West Hollywood	37,348	37,580	0.6
Westlake Village	8,814	8,858	0.5
Whittier	86,452	86,788	0.4
Balance Of County	1,083,392	1,091,978	0.8
Madera	150,249	152,331	1.4
Chowchilla	18,706	19,051	1.8
Madera	56,467	57,318	1.5
Balance Of County	75,076	75,962	1.2
Marin	256,511	258,618	0.8
Belvedere	2,143	2,158	0.7
Corte Madera	9,484	9,739	2.7
Fairfax	7,385	7,434	0.7

Larkspur	12,161	12,255	0.8
Mill Valley	13,858	14,006	1.1
Novato	52,552	52,921	0.7
Ross	2,385	2,401	0.7
San Anselmo	12,557	12,644	0.7
San Rafael	58,034	58,363	0.6
Sausalito	7,475	7,532	0.8
Tiburon	8,887	8,941	0.6
Balance Of County	69,590	70,224	0.9
Mariposa	18,297	18,306	0.0
Mendocino	89,743	90,206	0.5
Fort Bragg	6,857	6,868	0.2
Point Arena	491	492	0.2
Ukiah	15,686	15,711	0.2
Willits	5,008	5,080	1.4
Balance Of County	61,701	62,055	0.6
Merced	253,471	256,450	1.2
Atwater	27,317	27,369	0.2
Dos Palos	4,976	5,010	0.7
Gustine	5,148	5,203	1.1
Livingston	13,662	13,940	2.0
Los Banos	35,705	36,198	1.4
Merced	79,886	80,542	0.8
Balance Of County	86,777	88,188	1.6
Modoc	9,668	9,698	0.3
Alturas	2,793	2,782	-0.4
Balance Of County	6,875	6,916	0.6
Mono	13,653	13,504	-1.1
Mammoth Lakes	7,341	7,254	-1.2
Balance Of County	6,312	6,250	-1.0
Monterey	426,670	431,892	1.2
Carmel-By-The-Sea	4,031	4,037	0.1
Del Rey Oaks	1,619	1,632	0.8
Gonzales	8,762	9,025	3.0
Greenfield	17,235	17,547	1.8
King City	11,799	12,024	1.9
Marina	19,083	19,265	1.0
Monterey	29,198	29,244	0.2
Pacific Grove	15,401	15,536	0.9
Salinas	150,215	152,597	1.6
Sand City	298	312	4.7
Seaside	34,048	34,240	0.6
Soledad	27,826	28,050	0.8
Balance Of County	107,155	108,383	1.1
Napa	136,064	137,571	1.1

American Canyon	16,215	16,503	1.8
Calistoga	5,277	5,331	1.0
Napa	76,738	77,831	1.4
St Helena	5,893	5,960	1.1
Yountville	3,252	3,263	0.3
Balance Of County	28,689	28,683	0.0
Nevada	98,874	98,718	-0.2
Grass Valley	12,891	12,817	-0.6
Nevada City	3,065	3,043	-0.7
Truckee	16,113	16,241	0.8
Balance Of County	66,805	66,617	-0.3
Orange	3,107,500	3,139,017	1.0
Aliso Viejo	45,212	45,683	1.0
Anaheim	345,349	348,467	0.9
Brea	39,910	40,176	0.7
Buena Park	82,416	83,385	1.2
Costa Mesa	113,478	116,479	2.6
Cypress	49,330	49,647	0.6
Dana Point	36,825	37,082	0.7
Fountain Valley	57,675	58,309	1.1
Fullerton	136,992	137,624	0.5
Garden Grove	172,335	174,715	1.4
Huntington Beach	201,127	202,480	0.7
Irvine	207,848	212,793	2.4
Laguna Beach	25,025	25,208	0.7
Laguna Hills	33,280	33,434	0.5
Laguna Niguel	66,591	67,201	0.9
Laguna Woods	18,363	18,477	0.6
La Habra	62,370	62,822	0.7
Lake Forest	77,983	78,344	0.5
La Palma	16,105	16,205	0.6
Los Alamitos	12,141	12,217	0.6
Mission Viejo	99,781	100,242	0.5
Newport Beach	84,231	86,252	2.4
Orange	140,270	141,634	1.0
Placentia	51,405	51,932	1.0
Rancho Santa Margarita	49,551	49,704	0.3
San Clemente	67,616	68,316	1.0
San Juan Capistrano	36,624	36,870	0.7
Santa Ana	351,521	355,662	1.2
Seal Beach	25,877	25,913	0.1
Stanton	39,108	39,480	1.0
Tustin	73,743	74,825	1.5
Villa Park	6,231	6,276	0.7
Westminster	92,627	93,284	0.7
Yorba Linda	67,866	68,399	0.8
Balance Of County	120,694	119,480	-1.0
Placer	333,766	339,577	1.7
Auburn	13,306	13,432	0.9

Colfax	1,860	1,878	1.0
Lincoln	39,300	40,060	1.9
Loomis	6,642	6,677	0.5
Rocklin	54,046	54,754	1.3
Roseville	109,437	112,343	2.7
Balance Of County	109,175	110,433	1.2
Plumas	20,786	20,632	-0.7
Portola	2,039	2,016	-1.1
Balance Of County	18,747	18,616	-0.7
Riverside	2,078,601	2,107,653	1.4
Banning	28,148	28,457	1.1
Beaumont	31,317	32,403	3.5
Blythe	21,627	21,329	-1.4
Calimesa	7,423	7,498	1.0
Canyon Lake	10,994	11,128	1.2
Cathedral City	51,972	52,447	0.9
Coachella	40,317	41,000	1.7
Corona	146,698	148,597	1.3
Desert Hot Springs	25,939	26,552	2.4
Hemet	73,205	74,361	1.6
Indian Wells	5,000	5,093	1.9
Indio	80,962	82,230	1.6
Lake Elsinore	49,556	50,267	1.4
La Quinta	42,743	43,778	2.4
Menifee	0	67,705	0.0
Moreno Valley	182,945	186,301	1.8
Murrieta	99,576	100,714	1.1
Norco	27,143	27,160	0.1
Palm Desert	50,686	51,509	1.6
Palm Springs	47,019	47,601	1.2
Perris	53,340	54,323	1.8
Rancho Mirage	16,975	17,180	1.2
Riverside	296,191	300,430	1.4
San Jacinto	35,491	36,477	2.8
Temecula	99,873	102,604	2.7
Wildomar	0	31,321	0.0
Balance Of County	553,461	459,188	-17.0
Sacramento	1,418,763	1,433,187	1.0
Citrus Heights	87,119	87,565	0.5
Elk Grove	139,119	141,430	1.7
Folsom	70,537	71,018	0.7
Galt	23,860	24,133	1.1
Isleton	815	818	0.4
Rancho Cordova	60,736	61,817	1.8
Sacramento	474,470	481,097	1.4
Balance Of County	562,107	565,309	0.6
San Benito	57,517	58,016	0.9
Hollister	36,878	37,054	0.5

San Juan Bautista	1,866	1,891	1.3
Balance Of County	18,773	19,071	1.6
San Bernardino	2,044,895	2,060,950	0.8
Adelanto	28,012	28,265	0.9
Apple Valley	69,654	69,861	0.3
Barstow	23,806	24,213	1.7
Big Bear Lake	6,215	6,255	0.6
Chino	82,481	84,173	2.1
Chino Hills	78,465	78,725	0.3
Colton	51,596	51,684	0.2
Fontana	187,324	189,021	0.9
Grand Terrace	12,465	12,484	0.2
Hesperia	87,260	88,184	1.1
Highland	52,175	52,372	0.4
Loma Linda	22,498	22,619	0.5
Montclair	36,790	36,964	0.5
Needles	5,769	5,793	0.4
Ontario	172,608	173,188	0.3
Rancho Cucamonga	175,706	177,736	1.2
Redlands	71,371	71,646	0.4
Rialto	99,147	100,022	0.9
San Bernardino	204,249	204,483	0.1
Twentynine Palms	30,492	30,832	1.1
Upland	74,668	75,035	0.5
Victorville	106,765	109,441	2.5
Yucaipa	51,138	51,317	0.4
Yucca Valley	21,136	21,239	0.5
Balance Of County	293,105	295,398	0.8
San Diego	3,131,552	3,173,407	1.3
Carlsbad	103,406	104,652	1.2
Chula Vista	230,397	233,108	1.2
Coronado	23,030	23,028	0.0
Del Mar	4,561	4,591	0.7
El Cajon	97,555	98,133	0.6
Encinitas	63,615	64,145	0.8
Escondido	143,259	144,831	1.1
Imperial Beach	28,092	28,243	0.5
La Mesa	56,445	56,881	0.8
Lemon Grove	25,511	25,650	0.5
National City	56,144	56,522	0.7
Oceanside	178,102	179,681	0.9
Poway	50,744	51,126	0.8
San Diego	1,333,617	1,353,993	1.5
San Marcos	82,419	83,149	0.9
Santee	55,850	56,848	1.8
Solana Beach	13,447	13,547	0.7
Vista	95,400	96,089	0.7
Balance Of County	489,958	499,190	1.9
San Francisco	835,364	845,559	1.2

San Francisco	835,364	845,559	1.2
San Joaquin	682,316	689,480	1.0
Escalon	7,089	7,163	1.0
Lathrop	17,341	17,671	1.9
Lodi	63,050	63,313	0.4
Manteca	66,123	67,754	2.5
Ripon	14,843	15,260	2.8
Stockton	288,499	290,409	0.7
Tracy	81,143	81,714	0.7
Balance Of County	144,228	146,196	1.4
San Luis Obispo	268,290	270,429	0.8
Arroyo Grande	16,968	17,080	0.7
Atascadero	28,477	28,438	-0.1
El Paso De Robles	29,813	29,949	0.5
Grover Beach	13,159	13,254	0.7
Morro Bay	10,506	10,555	0.5
Pismo Beach	8,568	8,660	1.1
San Luis Obispo	44,521	44,750	0.5
Balance Of County	116,278	117,743	1.3
San Mateo	736,951	745,858	1.2
Atherton	7,454	7,468	0.2
Belmont	26,000	26,250	1.0
Brisbane	3,850	3,938	2.3
Burlingame	28,782	29,060	1.0
Colma	1,608	1,623	0.9
Daly City	105,935	107,099	1.1
East Palo Alto	32,800	33,174	1.1
Foster City	30,214	30,429	0.7
Half Moon Bay	13,008	13,208	1.5
Hillsborough	11,239	11,395	1.4
Menlo Park	31,396	31,865	1.5
Millbrae	21,323	21,536	1.0
Pacifica	39,497	39,995	1.3
Portola Valley	4,625	4,671	1.0
Redwood City	77,040	77,819	1.0
San Bruno	43,315	43,811	1.1
San Carlos	28,562	28,839	1.0
San Mateo	95,492	96,557	1.1
South San Francisco	63,554	65,020	2.3
Woodside	5,608	5,666	1.0
Balance Of County	65,649	66,435	1.2
Santa Barbara	426,915	431,312	1.0
Buellton	4,687	4,740	1.1
Carpinteria	14,235	14,409	1.2
Goleta	30,319	30,476	0.5
Guadalupe	6,524	6,534	0.2
Lompoc	42,857	42,892	0.1
Santa Barbara	90,074	90,308	0.3

Santa Maria	90,873	92,542	1.8
Solvang	5,398	5,446	0.9
Balance Of County	141,948	143,965	1.4
Santa Clara	1,829,480	1,857,621	1.5
Campbell	39,992	40,420	1.1
Cupertino	55,059	55,840	1.4
Gilroy	50,947	51,508	1.1
Los Altos	28,172	28,458	1.0
Los Altos Hills	8,800	8,889	1.0
Los Gatos	30,170	30,497	1.1
Milpitas	69,135	70,817	2.4
Monte Sereno	3,565	3,619	1.5
Morgan Hill	39,051	39,814	2.0
Mountain View	73,618	74,762	1.6
Palo Alto	63,098	64,484	2.2
San Jose	985,307	1,006,892	2.2
Santa Clara	115,018	117,242	1.9
Saratoga	31,458	31,679	0.7
Sunnyvale	136,952	138,826	1.4
Balance Of County	99,138	93,874	-5.3
Santa Cruz	265,782	268,637	1.1
Capitola	9,988	10,073	0.9
Santa Cruz	57,975	58,982	1.7
Scotts Valley	11,665	11,764	0.8
Watsonville	51,555	51,882	0.6
Balance Of County	134,599	135,936	1.0
Shasta	181,622	183,023	0.8
Anderson	10,540	10,765	2.1
Redding	90,192	90,898	0.8
Shasta Lake	10,243	10,269	0.3
Balance Of County	70,647	71,091	0.6
Sierra	3,363	3,358	-0.1
Loyalton	848	842	-0.7
Balance Of County	2,515	2,516	0.0
Siskiyou	45,725	45,973	0.5
Dorris	859	863	0.5
Dunsmuir	1,823	1,825	0.1
Etna	748	752	0.5
Fort Jones	654	655	0.2
Montague	1,489	1,494	0.3
Mount Shasta	3,583	3,608	0.7
Tulelake	965	967	0.2
Weed	3,015	3,024	0.3
Yreka	7,401	7,443	0.6
Balance Of County	25,188	25,342	0.6
Solano	424,397	426,729	0.5

Benicia	27,815	27,977	0.6
Dixon	17,477	17,573	0.5
Fairfield	106,142	106,440	0.3
Rio Vista	8,044	8,222	2.2
Suisun City	28,031	28,856	2.9
Vacaville	96,404	96,450	0.0
Vallejo	120,416	121,055	0.5
Balance Of County	20,068	20,156	0.4
Sonoma	482,297	486,630	0.9
Cloverdale	8,541	8,595	0.6
Cotati	7,382	7,409	0.4
Healdsburg	11,656	11,782	1.1
Petaluma	57,187	57,739	1.0
Rohnert Park	42,879	43,020	0.3
Santa Rosa	159,317	161,496	1.4
Sebastopol	7,680	7,734	0.7
Sonoma	9,901	9,970	0.7
Windsor	26,445	26,676	0.9
Balance Of County	151,309	152,209	0.6
Stanislaus	522,313	526,383	0.8
Ceres	42,520	42,998	1.1
Hughson	6,144	6,193	0.8
Modesto	208,497	210,088	0.8
Newman	10,510	10,739	2.2
Oakdale	19,205	19,608	2.1
Patterson	21,090	21,168	0.4
Riverbank	21,606	21,805	0.9
Turlock	69,689	70,256	0.8
Waterford	8,703	8,816	1.3
Balance Of County	114,349	114,712	0.3
Sutter	95,306	96,554	1.3
Live Oak	8,445	8,571	1.5
Yuba City	62,616	63,647	1.6
Balance Of County	24,245	24,336	0.4
Tehama	62,179	62,836	1.1
Corning	7,200	7,396	2.7
Red Bluff	13,776	13,776	0.0
Tehama	427	425	-0.5
Balance Of County	40,776	41,239	1.1
Trinity	13,932	13,959	0.2
Tulare	433,764	441,481	1.8
Dinuba	20,917	21,237	1.5
Exeter	10,621	10,665	0.4
Farmersville	10,487	10,771	2.7
Lindsay	11,505	11,684	1.6
Porterville	51,481	52,056	1.1

Tulare	57,184	58,506	2.3
Visalia	120,543	123,670	2.6
Woodlake	7,463	7,769	4.1
Balance Of County	143,563	145,123	1.1
Tuolumne	56,435	56,335	-0.2
Sonora	4,666	4,666	0.0
Balance Of County	51,769	51,669	-0.2
Ventura	827,267	836,080	1.1
Camarillo	65,120	66,149	1.6
Fillmore	15,538	15,639	0.7
Moorpark	36,620	37,086	1.3
Ojai	8,114	8,157	0.5
Oxnard	193,892	197,067	1.6
Port Hueneme	22,090	22,171	0.4
San Buenaventura	107,705	108,787	1.0
Santa Paula	29,389	29,725	1.1
Simi Valley	125,002	125,814	0.6
Thousand Oaks	127,984	128,564	0.5
Balance Of County	95,813	96,921	1.2
Yolo	198,326	200,709	1.2
Davis	65,568	66,005	0.7
West Sacramento	46,885	47,782	1.9
Winters	7,025	7,052	0.4
Woodland	55,657	56,399	1.3
Balance Of County	23,191	23,471	1.2
Yuba	71,803	72,900	1.5
Marysville	12,725	12,838	0.9
Wheatland	3,518	3,548	0.9
Balance Of County	55,560	56,514	1.7

Consolidated Irrigation District

August 23, 2010 Comments

Decision in CID v. City of Selma Fresno Superior Court

Case No. 08CECG01591

Exhibit 3

T08CECG01591-MWS:ag

FILED
JUL 13 2010
FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

AUG 23 2010

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

CONSOLIDATED IRRIGATION DISTRICT, Petitioner, v. CITY OF SELMA; AND CITY OF SELMA CITY COUNCIL, Respondent, AND DOES 1-20, inclusive LARRY J. RAVEN; PATRICIA RAVEN; AND RAVEN DEVELOPMENT, INC. Real Parties in Interest, AND DOES 21-40, inclusive.	No. 08CECG01591 Dept. 74 STATEMENT OF DECISION Date: March 29; April 16, 2010 Time: 9:00 a.m. Petition Filed: May 7, 2009

The above-referenced Petition for Writ of Mandate come on for hearing on March 29, and April 16, 2010, in Department 74 of the above-referenced Court, the Honorable Mark W. Snauffer, Judge, Presiding. The appearances of counsel were noted on the record. Following the arguments of counsel at the time, the matter was taken under advisement. For the reasons set forth below, the Petition is granted. The Court's Statement of Decision follows.

SUPERIOR COURT
County of Fresno

I. INTRODUCTION

This action challenges the Respondent City of Selma's April 7, 2008, adoption of the Mitigated Negative Declaration and approval of Vesting Tentative Tract Map No. 5361, General Plan Amendment, Zone Change (prezoning,) and the Initiation of Dinuba-Duke Raven Reorganization Annexation application to the Fresno Local Agency Formation Commission (hereinafter referred to as "the Project".) The Petition alleges that in approving the Project without an environmental impact report and adequate mitigation of the environmental impacts, Respondent violated the requirements of the California Environmental Quality Act ("CEQA").

This action has been brought by the Consolidated Irrigation District (hereinafter "the District" or "CID") as part of broader effort to address a critical regional and statewide environmental problem - the overdrafting of the Upper Kings Basin underground water aquifer. According to CID, the cities of Fresno County have increased their pumping for urban consumption without adequate consideration of the impacts on the aquifer or any effort to mitigate those impacts. In particular, CID alleges that the City of Selma has chosen not to work with the District, leaving the District with no alternative but to challenge the City's planning decisions that contribute to the cumulative degradation of the aquifer. Through this action the District seeks to have this Court require the City to comply with laws of this state, and consider the impacts of its action on agriculture, air quality and the groundwater.

CID contends that the Project will have significant impacts to water resources, including, but not limited to the

following: impacts to groundwater supply and groundwater recharge, impacts to public water supplies, changes in drainage patterns and surface runoff, and cumulative impacts to water resources. The Project will also have significant impacts to agricultural and air quality and will have cumulative impacts in all of these areas, none of which were adequately addressed in the Initial Study and Mitigated Negative Declaration (MND) adopted for the Project. (1 AR 129-241.) CID argues that the City ignored substantial evidence in the Administrative Record ("Record" or "AR") of these significant impacts and failed to conduct meaningful environmental review of the Project's serious impacts, violating the requirements of CEQA.

The Administrative Record in this case as originally submitted by the City was in three volumes, totaling less than 1000 pages. This includes two copies of the MND and multiple duplicate attachments, running over 200 pages each. (See, e.g., 1 AR 3-243; and 2 AR 319-623.) The City's Record did not include most of the studies and other submittals made by CID with respect to the impacts of development on groundwater. Petitioner moved successfully to augment the record in order to get the documents submitted by the District added to the Record. Those documents are contained in the Supplemental Administrative Record, which is referred to as Volumes 4 and 5.

CID contends that the City's examination of the Project failed to comply with the most essential review and disclosure requirements of CEQA, thereby depriving decision makers and the public of the ability to consider the relevant environmental issues in any meaningful way. The MND prepared by the City

included no significant analysis by the City of the groundwater impacts of the project and ignored significant studies that document those impacts. The MND fails to answer CID's concerns regarding drainage. It dismissed the impact of permanently removing the land from agricultural production, citing the City's planning objectives as justification. The discussion of air quality notes that the City is in a non-attainment area but does not address any air quality and greenhouse gas impacts that this project may generate.

CID contends that in order to proceed without preparation of an EIR, the City downplayed these impacts, ignoring or discounting the opinions of responsible agency experts submitted with respect to the project. (1 AR 253-258.) In accordance with CEQA, the City was required to prepare an Environmental Impact Report for the Project to address these potentially significant impacts. Despite requests from Fresno Local Agency Formation Commission ("LAFCo") and CID the City simply failed to do so. Moreover, the City chose to review this project in isolation from the many other projects in the immediate area (see the list of recent projects at 2 AR 623 and map at 2 AR 624.) Had the City performed the good faith environmental review required by CEQA, considering this project in the context of the multiple other development projects in the area, the cumulatively significant impacts on agricultural resources, groundwater, drainage, and air quality would have been addressed.

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II. FACTUAL BACKGROUND

A. The Project

The Project at issue in this case was denominated "the Casa Bella Subdivision" by the owners, the Ravens, and also commonly referred to by its vesting tentative tract map number "VTTM No. 5361". It consists of a proposed single family residential subdivision consisting of 160 single family residential lots on 44.22 acres. The Project site is located in the County of Fresno, adjacent to and immediately northeast of the boundaries of the City of Selma, east of Duke Avenue and north of E. Dinuba Avenue (APN Nos. 358-021-21, 62 and 63.) The site at the time of project consideration was in agricultural use, planted in vineyards and is zoned by the County of Fresno for agricultural use. (1 AR 18-19)[1] The project site is adjacent to other residential development and land still actively in agriculture (2 AR 376.) A similar residential subdivision of 106 lots (VTTM #5520, also known as "the Hill project") immediately adjacent to this project was processed in tandem with this subdivision but each project was analyzed by the City separately (1 AR 246 and 253.) The Hill project was subsequently withdrawn by the applicant.

The Project entitlements involve the following: (1) a City General Plan amendment from low density residential to medium low density residential, (2) adoption of an Ordinance amending Title XI, Chapter 2, Section 2, of the Selma Municipal Code (Zone

[1] The initial study for the project containing the project description cited here at 1 AR 19 described the project as being located in the City of Selma. In the subsequent negative declaration considered by the City Council, the project description first correctly describes the project as immediately outside the city(2 AR 369,) but then on the next page once again states that the project is in the city (2 AR 370.)

Boundary Map) to prezone the property to R1-7 (7,000 square foot minimum lot size); (3) a Resolution initiating Dinuba-Duke Raven Reorganization (Annexation No. 2005-0022) to annex territory including the Project area and adjacent public right of ways to the City of Selma and the Selma-Kingsburg-Fowler County Sanitation District, and detach from CID; (4) approval of Vesting Tentative Tract Map No. 5361 and (5) a Resolution approving Environmental Assessment No. 2005-0022 for the entitlements. (1 AR 19.)

The project will be served public water by California Water Service Company, the private utility that provides public water within the City of Selma. California. California Water Service obtains its water from the Kings River Basin underground aquifer by a well. (1 AR 26.) The project wastewater will be handled by the Selma-Kingsburg-Fowler County Sanitation District (SKF) which transports the sewage from the City of Selma to a treatment plant located near the Fresno-King County line. (4 AR 1367)

B. The Environmental Review Conducted by the City

The City prepared an initial study and proposed mitigated negative declaration (MND) for the project dated November 26, 2007. (1 AR 3 -243.) The initial study/negative declaration is set forth on pages 1 AR 3 - 32. An appendix to the MND contains three technical studies: 1) a cultural resource assessment (1 AR 33-54,) 2) a Habitat Assessment (1 AR 55 - 85) and 3) a Traffic Impact Study (1 AR 86 - 243.) A slightly revised version dated February 27, 2008 was presented to the City Council. It is located at 2 AR 352 - 653. It includes the same appendices and a new mitigation monitoring program (2 AR 337 - 339) and

comments and responses prepared by the Selma City Attorney at 2 AR 593 - 618. The response by the City Attorney to the comments by CID and LAFCo are contained at 2 AR 609 - 613. The revised MND (2 AR 352 - 653) was presented to and adopted by the City Council by resolution 2008-18R on April 7, 2008 (3 AR 705-720.)

The MND comes to the following conclusion with respect to the environmental impacts of this project (2 AR 384):

> Based upon the information provided in this Initial Study, the proposed project could result in impacts related to air quality, biological resources, cultural resources, hazards and hazardous materials, noise, and transportation and traffic. However, recommended mitigation measures would reduce these potential impacts to less than significant levels (see discussions throughout this Initial Study, incorporated by reference herein.) Therefore, approval and implementation of the proposed project with the mitigation measures outlined herein would not be likely to substantially degrade biological, historical, or cultural resources. Approval and implementation of the proposed project could contribute to environmental impacts that could cause adverse effects on humans. However, recommended mitigation measures would reduce the potential impacts to less than significant levels (see discussions throughout the Initial Study above, incorporated by reference herein.)

The MND Mitigation Monitoring Program (2 AR 337-339) lists only six mitigation measures included in the MND: air quality, biological resources, cultural resources, hazards and hazardous materials, noise, and transportation and traffic. These same six mitigation measures are recited in the final resolution adopting the MND at 3 AR 707-709.

The MND makes a specific finding that the project will

result in no significant impact on agriculture (2 AR 374,) hydrology (2 AR 379) and utilities and service systems (2 AR 384.) With respect to air quality, it concludes that with adoption of a mitigation measure to control construction dust, any impact on air quality is mitigated below the level of significance (2 AR 374-375)

C. The Administrative Record

The MND for this project concluded that there was no significant impact on groundwater:

> Although the project will utilize groundwater for domestic purposes, this amount of water use is not considered significant and will not significantly lower the groundwater table of the aquifer or interfere substantially with the recharge of the underground aquifer.(2 AR 379)

This determination was made notwithstanding technical studies supplied by Petitioner to the City, which documented a significant overall overdrafting of the Upper Kings River Aquifer and significant impact of conversion of agricultural land to urban use on groundwater consumption.

CID began submitting studies and comments to the City with respect to the impacts of conversion of agricultural land to urban use on groundwater in the year before this specific project was processed. (See reference to those activities by LAFCo at 1 AR 246 and CID at 1 AR 248 and 250 and the CID Urban Impacts study dated April 2007 located at 3 AR 629, the WRIME Study dated July 5, 2007 at 5 AR 1339 - 1361).) As noted in the letter by LAFCo commenting on this project, CID and the cities within the District including Selma were working together with LAFCo and a facilitator

to develop regional measures to address the groundwater concerns (1 AR 246.)

The first letter from CID dated January 18, 2008, at 1 AR 248 cites two of these 2007 studies submitted by CID to the City which document the overdrafting and the impact of urban conversion on groundwater: The Upper Kings Basin Integrated Regional Water Management Plan (IWRMP) and an Urban Impacts Study prepared by Summers Engineering. It requests that the City enter into an agreement with CID to mitigate the significant impacts of the project on groundwater and district facilities.

The IWRMP

The IWRMP (located at 4 AR 913 - 1361) was completed in July of 2007. It is the outcome of a two-year collaborative planning and facilitated process that included the completion of a wide range of technical studies, preparation of briefings and technical memorandums, development of the Kings Basin Integrated Groundwater and Surface Water Model (Kings IGSM,) extensive stakeholder involvement and community affairs process and numerous meetings among various work groups and Water Forum participants. (4 AR 927) It is a massive study of the Upper Kings Groundwater Basin prepared by WRIME Engineering under the sponsorship of the Upper Kings Water Forum[2] in coordination with the California Department of Water Resource. It was prepared specifically to assist local jurisdictions in addressing the groundwater issues in their environmental documents (5 AR 1227) and to encourage

[2] The Upper Kings Water Forum includes 3 water districts--CID, Fresno Irrigation District, and Raisin City Irrigation District, 3 counties--Fresno, Tulare and Kings, 10 cities—including Selma—3 state agencies and others)

development of a coordinated approach to solving the overdrafting problem (4 AR 1086.)

The IWRMP documents the long term overdrafting of the Upper Kings Basin which it estimates averages at about 100,000 to 150,000 acre feet per year (4 AR 926.) The IWRMP further goes on to analyze the long term trends and the activities that contribute to the overdrafting. It projects that by 2030 there will be over 65,000 acres of new urban area within the Upper Kings Basin, of which 55,000 acres were converted from agricultural use. (4 AR 1043) It notes that when land is converted from agriculture, the water consumption shifts from mostly surface water to exclusive use of groundwater, other than for the cities of Fresno and Clovis. (4 AR 1049.) The table at 4 AR 1050 projects water consumption for the cities in the Upper Kings Basin. It indicates that by the year 2030, the City of Selma's water consumption from groundwater will increase from 5779 acre feet per year to 16,020 acre feet—a tripling of its water consumption.

The result of the IWRMP projection is discussed at 4 AR 1055. The report concludes that groundwater levels "are significantly lower for 2030 conditions in Fresno and the urban areas of CID". A map graphically depicting the change in groundwater levels from 2005 to 2030 is at 4 AR 1059. The Report goes on to calculate the annual net depletion of underground storage at 4 AR 1069. If no new urban development occurred, the annual loss would remain at 46 TAF (46 thousand acre feet per year.) However with projected growth to 2030, the loss increases to 54 TAF, due to the increased urban development and reliance on groundwater.

Based on this analysis the IWRMP makes the following findings that are relevant here:

- "New development contributes to the water supply problem and has impacts that must be mitigated at the time of project approval. Cities must recognize their contribution to regional problems and work with the water districts and counties to provide mitigation for water supply and flood-related impacts." (4 AR 1144)
- "Water and land use planning must be closely coordinated and consistent with state law. New development must work with the cities and water districts to demonstrate that there is a long-term, sustainable water supply."(Id)
- "Within one year of the adoption of the IRWMP, a groundwater impact fee on urban development shall be considered by the local irrigation districts and incorporated entities as one of the mechanisms to mitigate the effects of new development on groundwater resources. Such a fee would be assessed on a per acre basis only upon completion of appropriate studies and findings by the cities and districts. The fee would be dedicated solely and exclusively to acquire new water supplies or fund conjunctive use capital facilities or improvements" (4 AR 1145)

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If the recommendations of the IWRMP are not adopted, the report predicts the following adverse results:

"If the IRWMP is not implemented it is anticipated that overdraft will continue resulting in:

- Increased pumping costs;
- Declining water levels;
- Potential conflicts between overlying water users for available groundwater supplies;
- Potential loss of supply to downstream users that may make claim to the water;
- Loss of economic activity at the farm level;
- Inability to respond to dry year conditions;
- Reduced supply reliability; and
- Limitations planned development and inability to comply with revised state laws requiring proof of adequate and sustainable water supplies." (5 AR 1229)

The April 2007 Draft Urban Impacts Report

The Summers Engineering April 2007 Draft Urban Impacts Report (located at 3 AR 629 - 692) is a further effort by the District to develop information and mitigation measures with respect to the impacts of urban development on groundwater specifically within CID. That report states that its purpose is to "indentify the impacts that urban development has on District assessment revenue, local groundwater storage and water supplies, and the operation and maintenance of District facilities." The report goes on to develop a proposed mitigation program and impact fee calculation. (3 AR 633)

The April 2007 Urban Impacts Report first addresses the loss of revenue to the district resulting from annexations to cities. Annexations result in a loss of up to 70% of the assessment revenue for the land annexed. (3 AR 636.)

The report then analyzes the impacts of urban

development on groundwater within the District. The report summarizes the District's operations and notes the important function of the District in providing for groundwater recharge within the District. The report states

> "There are no known potable surface water treatment plants within the District. Therefore all urban water that is delivered for domestic purposes is groundwater that is pumped by city wells. The cities served by those wells are receiving direct benefits from CID's groundwater recharge program through lower pump lifts and increased reliability of their water supply" (3 AR 639-640)

Summers Engineering proceeds to estimate the additional groundwater consumption when land changes from agricultural to urban housing development. The report concludes that urban housing use consumes 1.75 acre feet per acre more per year than does agricultural use. (3 AR 644) The report explains that this additional consumption is the result of the complete reliance on groundwater, less percolation of rainwater due to impermeable surfaces, and indoor consumption that does not get returned to the local groundwater. (3 AR 641-642.)

The April 2007 Report also discusses the impact of urbanization on district canals and other facilities. The report notes that increased urbanization brings more people into close proximity to district canals and other facilities. Vandalism and dumping in the canals increases. This requires additional safety measures such as fencing and gates, which restrict access and increase the complexity and cost of maintenance operations. (3 AR 649-651.)

The District canals are also used for storm water

drainage. Such use increases the District operations costs but provides a valuable service to the cities within the District. (3 AR 652 and 658) The Report goes on to calculate the annual cost to CID for all these impacts of urban development. That cost is estimated at $1,155,631 per year which is set forth in a table at 3 AR 655.

Summers next proceeds to develop a per acre or per dwelling fee that could mitigate the impacts of such development. First, Summer Engineering calculates a value for the groundwater consumed by urban development, using current market rates for such water. (3 AR 646) Then Summers developed a 20 year list of recharge and "betterment" projects that would allow for greater recharge to mitigate the impacts of the increased groundwater consumption of urban development and increase operational requirements in an urban setting. The cost is estimated and then spread over anticipated development over the next 20 years. Costs of increase operations due to urbanization and storm water drainage are calculated. The result appearing in a table (Table 9) is a total mitigation fee of $13,886 per acre or $3,703 per dwelling assuming an average of 3.75 dwellings per acre. (3 AR 670)

The WRIME Engineering Groundwater Impact Analysis

Subsequent to this Summers Engineering Study, CID commissioned WRIME Engineering, the author of the IWRMP, to prepare an analysis "to quantify the potential regional and local groundwater effects of urban growth in the CID service areas". (5 AR 1339 - 1361) That report employed the Kings Basin Integrated Groundwater Surface water Model (Kings IGSM) to specifically

quantify and analyze the impacts within the CID territory (Id.)

The WRIME report in summary determined that total annual groundwater pumping for urban uses increased from 18,700 acre feet in 2005 to 43,000 acre feet in 2030. Reduction in acreage devoted to agriculture reduced surface water usage in recharge further reducing groundwater recharge by 11,700 acre feet. The result would be a 10 foot decline in water levels throughout the CID service area and a 15 to 19 foot decline along the Highway 99 corridor. (4 AR 1339) Urban development added an additional 36,000 acre feet to the annual overdraft by 2030. (5 AR 1340)

The map located at 5 AR 1354 depicts graphically the projected change in groundwater levels in 2030 from those in 2005. Around the City of Selma a noticeable depression occurs as a result of the increased urban groundwater pumping.

"Urban Impacts White Paper" dated November of 2007[3]

Subsequent to the April 2007 study, Summers Engineering prepared an abbreviated and updated version of the study titled "Urban Impacts White Paper" dated November of 2007. That study was also submitted by CID to the Selma Planning Department for consideration with respect to the Casa Bella Project and was ordered by the Court to be included in the Record at 5 AR 1362.

The primary changes from the April Report include the following:

- A simplified graphic showing how the increased water consumption of urban residential use is calculated (5 AR 1366)

[3] The Court expressly finds that the White Paper and Gilkey Memorandum were submitted to the City during the administrative process and were properly included in the record by order of the Court. (AR 1362-1379)

- The report contains an expanded explanation of the reason urban uses consume more groundwater. It includes an explanation that all indoor consumption ultimately ends up being transported to the regional SKF sewer treatment plant located near the southerly boundary of the District where it is treated and put into percolation ponds. However, since groundwater in the District migrates downgradient from northeast to southwest, the treated effluent that percolates into the groundwater at the plant is effectively lost for the purpose of mitigating groundwater impacts upgradient in the City of Selma and other cities within the District. (5 AR 1366-1367.)
- The report calculates the total annual groundwater consumption within the District at 64,800 acre feet. Agriculture consumes 49,400 acre feet per year and cities consume 15,400 acre feet. CID brings in 51,000 acre feet on average in recharge, thereby more than covering the agricultural consumption of its farmers. (5 AR 1368)
- Instead of including the elaborate mitigation calculations of the prior report, the November White Paper refers to a Memo prepared by Mark Gilkey, General Manager of CID, dated August 9, 2007 proposing as an alternative to development fees proposed in the April 2007 Study, imposition of a water rate charge on all urban consumers to fund the needed mitigation (5 AR 1374)

The Gilkey August 9, 2007 Memorandum

In August of 2007, Mark Gilkey, the general manager of CID, working with Summers Engineering, prepared a memorandum (at 5

AR 1374 - 1379) outlining an alternative to funding new recharge facilities and betterment projects solely out of development fees. This was done as part of the ongoing negotiations with the cities and LAFCo to develop a regional solution to the groundwater issue. It was hoped that a broader based utility mitigation rate or fee on all municipal groundwater pumping would spread the cost more equitably and permit a reduced mitigation fee on new development.

The memorandum proposes in Table A (5 AR 1379) that a utility mitigation rate of $5.18 per month for each single family unit equivalent (FUE) could fully fund the program of water recharge facility improvements necessary to address the groundwater recharge issue. That would not address the other impacts of urban development on district facilities and storm water. These could be addressed by a reduced development fee of about $1750 per acre or $470 per home. (4 AR 1378)

California Water Service Letter

The California Water Service (Cal Water) commented on the project in a letter dated January 15, 2008. (1 AR 251-252 and 3 AR 693 -694) In that letter, Cal Water noted that the ability to serve this area was outlined in their December 2006 Urban Water Management Plan. The letter goes on to state (at 3 AR 693):

> With respect to what would be the effect of continuing to pump groundwater supplies at average or reduced demands during multiple dry years, it is very likely that groundwater levels would decline when compared to those associated with normal hydrologic conditions - as groundwater monitoring records demonstrate in previous droughts, but the quantity of supply would be adequate to meet demands of the Selma District and the reference Projects. Prior experience has shown that during ensuing periods of excessive annual precipitation, CID

> will increase the quantity of recharge to the groundwater. This should restore static groundwater levels to near those observed prior to the drought. Cal Water has observed this cycle in hundreds of wells throughout its districts in California over the past 70 years. However, to insure a longer term sustainable groundwater supply, Cal Water anticipates collaborating with CID in the preparation of its Water Supply and Facilities Master Plan on a program to increase recharge quantities within or in the vicinity of Selma. (Emphasis added.)

The December 21, 2007 Letter by Fresno LAFCo

Fresno Local Agency Formation Commission (LAFCo) is a responsible agency under CEQA since its discretionary approval is required for the annexation of the project into the City of Selma. LAFCo submitted substantial comments with respect to the project and the environmental assessment: an initial letter dated December 21, 2007 (1 AR 244-247,) and a second letter dated February 19, 2008 after receipt of the City Attorney's response to their initial comments (1 AR 262 -264).

In its first letter, LAFCo notes the City's limited discussion of groundwater in the MND and raises the IWRMP's and CID's documentation of overdrafting in the Upper Kings Basin. The letter goes on to state:

> "These reports represent new information that was not available for consideration in the California Water Service Company's Urban Management Plan for Selma nor in the Environmental Impact Report prepared for the City of Selma's General Plan Update. As such, this new information must be addressed in the initial study prepared for VTTM 5361." (1 AR 245)

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LAFCo comments that while the impact of a single project on the overdraft may be small, the cumulative impact of numerous such projects may rise to a level of significance. Therefore the cumulative impacts must be addressed for this project. It cites the fact that this project was being processed by the City simultaneously with a very similar nearby subdivision. The discussion of hydrological impacts in both MND's was identical, but neither MND acknowledges the existence of the other project or their combined impacts. (1 AR 244-245)

LAFCo responds to the MND's conclusion that consumption of 72,000 gallons of water per day is not considered significant, by noting the absence of any accepted standard or threshold of significance in the document against which the cumulative significance can be evaluated. "Absent identification of a threshold of significance, it is unclear how it can be concluded that the cumulative impact of the project does not rise to the level of significance". LAFCo goes on to request inclusion of an appropriate significance threshold and recirculation of the document for review by commenting agencies. (1 AR 246)

The January 14, 2008 Comment Letter From CID

In addition to submitting the above reports, CID commented on this project prior to the Planning Commission meeting by a letter dated January 14, 2008. (1 AR 248-250 and 2 AR 614 - 616.) The letter states that the CID has reviewed the initial study and MND. It goes on to note that the previous month the District has commented on VTTM No. 5440. The letter states that VTTM 5440 "will use all the same facilities and resources necessary to service VTTM No. 5361" but that the projects were

treated as separate and unrelated for the purposes of environmental analysis. (1 AR 248 and 2 AR 614)

CID's specific comments begin with the "regional groundwater impacts in an already overdrafted basin". The District disagreed with the finding of the MND that the hydrology impact would be "less than significant". It cites the IWRMP and the Draft Urban Impacts Study prepared by Summers and other studies discussed above as evidence of the overdrafting issue and the impact of conversion of agricultural land such as this project as causing a net increase in groundwater consumption and impacts on groundwater quality. (2 AR 615)

CID then discusses the potential impacts of the storm drainage from the project and disagrees with the City's finding that such impacts are less than significant. The letter notes that there are numerous existing storm water connections to the CID canals and these have an adverse impact on District operations and maintenance. While the project is proposed to provide onsite and offsite storm water catch basins, the project conditions need to include specific requirements that the basins used for this project not be interconnected with the existing drainage system that ultimately drains into the District canals. (2 AR 615.)

The letter further states:

> The District has worked diligently to bring environmental concerns such as overdraft of the Kings groundwater basin to the forefront. CID has appeared before Selma's City Council and Fresno LAFCo with regard to these issues. The conversion from agricultural to urban land use has an adverse and cumulatively significant effect on the groundwater basin. (2 AR 616)

The letter goes on to discuss the groundwater mitigation program being developed by CID and the five cities in the District through the LAFCo facilitation process. The letter requests that this project

> "...be conditioned on the project's complying with the mitigation measures and any agreements adopted in that process and implementing them before issuance of grading or building permits. Though we believe the facilitation process will be successful, CID requests that we enter into a tolling agreement to preserve the rights of all affected agencies in case the facilitation process does not reach its goal or is terminated." (2 AR 616)

The City Attorney's Response to Comments

The City Attorney for the City of Selma responded to the comments made by CID and LAFCo with a letter to them dated January 11, 2008 (1 AR 253-258 and also at 2 AR 609-613.) The letter is written to respond to the similar comments received on both VTTM 5540 (Casa Bella) and the adjacent 106 lot subdivision VTTM 5361. He notes the error in the MND describing the project site as being within the City of Selma and says that the Planning Commission fully understands the need to annex the property into the City. (2 AR 609-610)

The City Attorney then goes on to discuss the ongoing negotiations between CID and the cities of Fowler, Kingsburg, Parlier, Sanger and Selma. He notes that there is an interim agreement being circulated to address mitigation of impacts while negotiation of a final agreement is completed. The City of Selma has proposed a different version that does not include an extended

tolling agreement. The City also proposes to exempt projects from mitigating groundwater impacts such as those here which are not regionally significant under 14 CCR 15206 (15206 of the State CEQA Guidelines.)[4] With respect to the storm run-off issue, the letter states that the drainage from the project will be conveyed to an unnamed existing drainage basin which is not connected to the CID canals. (2 AR 611.)

The letter then addresses the specific groundwater concerns raised by CID and LAFCo. It states that conclusion of the MND of a less than significant impact on groundwater is "plainly warranted and supported by the MND". The City Attorney cites the study prepared by the California Water Service Company which indicates that groundwater supplies are sufficient to meet demand in Selma through 2030. While conceding that the studies submitted by CID are "new information" prepared after the Cal Water study, he then argues that the studies submitted by CID do not address the precise impacts of this project. Those studies indicate that the problem is a matter of regional or area-wide significance. The State CEQA Guidelines §15206(b)(2)(A) establish a 500 unit threshold for when a subdivision is considered to be of regional or area-wide significance. This project (even considered with the adjacent 106 unit project) is less than 500 units. It does not meet the CEQA threshold and therefore the regional impacts raised by CID and LAFCo "have no relevance to the environmental analysis relating to these residential projects". (2 AR 612)

[4] All references to "Guidelines" refer to Title 14 of the California Code of Regulations, State CEQA Guidelines.

The letter continues by arguing that the water consumption of these projects in any event constitutes but "a very small fraction" of the overdraft problem. The 132.2 acre feet per year consumed by these two projects is "insignificant" when compared to the overall annual overdraft of 24,500 acre feet. The letter concludes by stating that there would appear to be no substantial evidence of any arguable significant impact raised in the comments by LAFCo and CID. Those studies confirm the regional nature of the problem and "the correctness of the conclusions of the Mitigate Negative Declaration". Consequently there is no need to amend, revise, or recirculate the MND in light of those comments and studies. (2 AR 613)

LAFCo's Second Comment Letter

LAFCo's second letter dated February 19, 2008 (1 AR 262 -264) is a response to the City Attorney's January 11, 2008 letter. While included in the Administrative Record by the City, this second LAFCo letter was not included in compendium of comments in the final MND considered by the City Council on April 7, 2008. In this letter LAFCo respectfully disagrees with the City Attorney. LAFCo quotes CEQA Guidelines § 15064 as to the relevant "fair argument" standard for requiring the preparation of an environmental impact report. The letter states LAFCo's position that there is substantial evidence from the IWRMP and CID studies and a "fair argument" that the impacts on groundwater are "cumulatively considerable" and require preparation of an EIR. (1 AR 262)

In response to the City's argument that only projects of statewide or regional significance are of a magnitude to trigger

such scrutiny, LAFCo cites three large residential development projects in the same area as this project that will collectively total more than 500 units. It argues that these "essentially represent a single development and present a potential impact of 'regional or area-wide significance'". (1 AR 263)

The letter further responds to the City Attorney's comments on the ongoing facilitation process and the proposed interim agreement. The letter points out that the City of Selma's proposed interim agreement "essentially nullifies the intent and purpose" of the interim agreement. It points out that of the five cities involved in the process with CID, only Selma has refused to adopt the measures in the proposed interim agreement when approving projects. (1 AR 263.)

The January 28, 2008 Planning Commission Action

The project was heard by the Selma Planning Commission at a meeting held on January 28, 2008. Though the tape recording of the meeting was apparently unavailable or non-existent, the minutes of that meeting (at 1 AR 286-291) reflect that CID appeared, submitted the studies in the supplemental administrative record and addressed the inadequacies of the MND with respect to the groundwater overdraft and storm water issues. The Planning Commission proceeded to vote to recommend approval of the project entitlements.

CID's Appeal and Selma's Response

On February 4, 2008, CID submitted a letter appealing the decision of the Planning Commission to recommend approval of Casa Bella and the companion project VTTM #5613 and the related MND's. The District stated that the City's CEQA analysis was

"flawed and inadequate".(1 AR 259-260)

The City Attorney responded with a letter dated February 6, 2008. In the letter the City Attorney states that there is no need to appeal the Planning Commission's decision as they were merely recommendations to the City Council. (1 AR 261)

The April 7, 2008 Comment Letter by P. Scott Browne for CID

On April 7, 2008, CID submitted an additional comment letter to the Selma City Council prepared by its special counsel P. Scott Browne. (2 AR 624-628.) In that letter, CID addressed multiple concerns with respect to the Casa Bella environmental analysis.

The letter first addressed impacts of the project on agriculture. It noted that the initial study failed to contain any information as to whether the Project property was important or prime agricultural land and whether it met the definition in Government Code §56064 of prime agricultural land. The applicable general plan of the City requires conservation of agricultural land but the MND ignored this issue. There is no analysis whether there is a need for conversion of this land from agriculture and whether there is sufficient undeveloped land already within the city to meet the need. (2 AR 624-625.)

The letter proceeded to address air quality impacts. The MND notes that the area is a non-attainment area for federal and state particulate matter and that this project will contribute to an already impaired air basin. (2 AR 625) Further, the letter raises the complete absence of any analysis of carbon emissions likely to be generated by the construction and future residents as required by AB 32.

The letter asserts that MND relies on too many unsupported conclusions with respect to environmental impacts and totally ignores cumulative impacts. The letter refers to a map and project list of recent project in the City of Selma, which is attached to the letter (2 AR 622-623.) This information demonstrates the level of development around the City of Selma, the cumulative impact of which was never considered or even mentioned in the MND (other than in the traffic study with respect to traffic impacts.) The letter concludes that the MND does not contain enough information to fulfill its purpose under CEQA as an informational document and that a fair argument can be made of significant impacts sufficient to require an EIR. (2 AR 626-629)

The April 7, 2008 Action of the City Council

The project was first presented to the Council at their meeting of March 17, 2008, but was continued at the request of the applicant. (See 1 AR 212.) On April 7, 2008 the City Council considered the Project. The staff report submitted to the City Council is located at 2 AR 319. The transcript of the hearing relevant to this project is located at 3 AR 848.

In his discussion of the environmental document, Mr. Gaston, the City planning director, stated that City staff had calculated the water usage for this project at 80.65 acre feet per year as compared with CID's studies which show an overdrafting of 247,000 acre feet per year in the Kings River Basin. That is why they concluded that the impacts of this project were not significant. Mr. Gaston stated his opinion that it was the farmers who were the cause of a lot of the overdraft. (3 AR 851-852.) Mr. Gaston further referred to the January 15, 2008 letter

from California Water Service as proof that there was adequate water for this project. (3 AR 855)

Scott Bailey from California Water Service spoke and essentially read the content of his January 15th letter. (3 AR 863-865.) He stated that his company anticipated working with CID to develop a master plan and recharge program within the vicinity of Selma. (3 AR 865.)

Doug Jensen, general counsel for CID, then spoke regarding the impacts of the project. He referred to the prior submittals by the District and the letter from P. Scott Browne submitted at the hearing. He repeated CID's request that the project either be denied or a full environmental impact report be prepared. He commented that the ground water overdraft was like the proverbial elephant in the room that everyone knew was there but no one wanted to deal with. CID recharges about as much as its farmers use, but the cities do not. (3 AR 868) Jensen also discussed the storm drainage issue, pointing out that there was no information in the MND to determine whether the basin proposed for the drainage would be adequate. If not, the water would eventually drain into the CID canals that are adjacent to the basin. (3 AR 868-869.) He briefly raised the issues of agricultural conversion and carbon emissions and emphasized the failure of the MND to address the cumulative impacts. (3 AR 869.)

This was followed by an extended discussion between Mr. Jensen, Mr. Costanzo, the City Attorney and Mr. Lujan, the Mayor Pro Tem, regarding the current status of developing an interim agreement. (3 AR 870-874) The City Attorney indicated that while such an interim agreement may be desirable, the developer Mr.

Raven, was not willing to agree to any such agreement. (3 AR 871: lines 16-22.)

Mr. Raven, the owner of the Project, spoke next. He indicated his desire to get his project approved but he further told the Council "to continue on with Mr. Jensen and get this thing negotiated". (3 AR 876:13-21)

Stephanie Sherrell, a staff planner for CID, spoke regarding the history of this project. She noted that this project was submitted several years ago and was included with seven other projects in the proposed Northeast Specific Plan due to the cumulative impacts. Now the City was taking the projects one by one, but it still needed to consider the cumulative impacts of all of the projects. (3 AR 879:14-25, 880: 1-8.)

At the end of the public testimony, Mr. Costanzo gave the staff response to the issues raised by CID. He said that the only real question before the Council whether or not to require an EIR. He argued that the letter from Mr. Browne did not contain any evidentiary support of any impact to agriculture or air quality. As to groundwater impacts, he conceded that the Council did have evidence in the form of the studies of regional impact. He directed the Council to consider the realistic cumulative impacts. (3 AR 885:8-25, 886: 1-22)

The Council proceeded to approve the project entitlements with no additional mitigation measures to mitigate the impacts raised by CID. A notice of determination (NOD) was subsequently filed with the County Clerk the following day, April 8, 2008.

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III. LEGAL ANALYSIS

CEQA is designed to "provide long-term protection to the environment," and should be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) The Court finds that the City's MND fails to comply with CEQA for the following reasons:

(1) The Record shows that a fair argument can be made that the Project may have a significant effect on the environment. Thus, a full EIR is required by CEQA. (Pub. Resources Code § 21151.)

(2) The MND provides no meaningful analysis of the impacts of the project on agriculture and air quality and completely fails to assess impacts on carbon emissions.

(3) The Negative Declaration fails to incorporate appropriate mitigation measures and to adopt an appropriate mitigation monitoring program. (Pub. Resources Code §§ 21157.5(b); 21081.6(a)(1).)

The Mitigated Negative Declaration fails to adequately address the Project's significant environmental impacts, and fails to incorporate appropriate mitigation measures. Accordingly, the City's adoption of the Negative Declaration and approval of the Project constitutes a prejudicial abuse of discretion and must be set aside.

A. The Relevant Law

1. CEQA's Primary Objective

The California Legislature has declared that "[t]he maintenance of a quality environment for the people of this state

now and in the future is a matter of statewide concern." (Pub. Resources Code, § 21000.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such a manner to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Friends of Mammoth v. Board of Supervisors of Mono City* (1972) 8 Cal.3d 247, 259.) This interpretation remains the benchmark for judicial interpretation of CEQA. ("*Laurel Heights Improvement Ass'n. v. Regents of University of California* ("*Laurel Heights I*") (1988) 47 Cal.3d 376, 390, quoting *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274.) As the Laurel Heights I court noted, "[i]t is, of course, too late to argue for a grudging, miserly reading of CEQA." (*Laurel Heights I, supra*, 47 Cal.3d at p. 390.)

One of the primary purposes of CEQA is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects (Guidelines, §15002(a)(1)) and to disclose to the public the reasons for approval of a project that may have significant environmental effects. (Guidelines, § 15002(a)(4).) Informed decision making and public participation are fundamental cornerstones of the CEQA process. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights I, supra*, 47 Cal.3d 376.) With this primary purpose of CEQA in mind, the California Supreme Court has stated that "[t]he environmental impact report ("EIR") is the primary means of achieving the Legislature's considered declaration that it is the policy of this State to take all action necessary to protect, rehabilitate, and

enhance the environmental quality of the State" (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1229 [emphasis added].)

As the California Supreme Court has explained, the EIR is "the heart of CEQA" and an "environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological point of no return." (*Laurel Heights I, supra*, 47 Cal.3d at p. 392.) The EIR is the "primary means" of ensuring that public agencies "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (Ibid., quoting Pub. Resources Code, § 21001(a).) The EIR is also a "document of accountability," intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (Ibid; quoting *No Oil, Inc., v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) Thus, "[t]he EIR process protects not only the environment but also informed self-government." (Ibid.)

A negative declaration may be prepared instead of an EIR only where the lead agency determines that the project "would not have a significant effect on the environment." (Pub. Resources Code § 21080(c).) Such a determination can be made only if "[t]here is no substantial evidence in light of the whole record before the lead agency that such an impact may occur." (Id. and CEQA Guidelines § 15070(a).)

2. <u>The "Fair Argument" Test under CEQA</u>

The standard in reviewing an agency's decision not to prepare an EIR for a project is subject to the "fair argument

test" and is not reviewed under the substantial evidence test that governs review of agency determinations under Pub. Resources Code §§21168 and §21168.5. The "substantial evidence test" that generally applies to review of an agency's compliance with CEQA provides that if any substantial evidence in the record supports the agency's determination, then the determination will remain undisturbed by the court.

In contrast, an agency's decision to omit the preparation of an EIR must be overturned if the reviewing court finds any substantial evidence in the record that would support a fair argument that the Project may have a significant effect on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003.)

A negative declaration "can be made only if there is no substantial evidence in light of the whole record before the lead agency that [a significant] impact may occur. [Citations.] An EIR is required, in contrast, whenever substantial evidence in the record supports a 'fair argument' that significant impacts may occur. *Even if other substantial evidence supports the opposite conclusion, the agency must nevertheless prepare an EIR.* [Citations. Emphasis added] The 'fair argument' standard creates a 'low threshold' for requiring preparation of an EIR. [Citations.] The fair argument standard is founded upon the principle that, because adopting a negative declaration has a terminal effect on the environmental review process, an EIR is necessary to resolve uncertainty created by conflicting assertions and to substitute some degree of factual certainty for tentative opinion and

speculation." (Remy, Thomas, Moose & Manley, GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, 10th Edition, p.206-207 [emphasis added]; see also *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382, 389.) Further, under the fair argument standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. (*Sierra Club v. City of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.)

The mandate of CEQA is clear: "All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment." (Pub. Resources Code §21151(a.)) Thus, if there is any substantial evidence in the record indicating that the PCP may have a significant effect on the environment, preparation of an EIR is required.

> "Section 21151 creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [Citations.] For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR." (*Sierra Club, supra,* 6 Cal.App.4th at 1316-1317 [emphasis added].)

The CEQA Guidelines offer guidance regarding the determination of whether an impact may have a significant impact on the environment. "In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider

direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project." (Guidelines § 15064(d).) If there is substantial evidence of a significant environmental effect regarding even one potential impact of the project, an EIR is required. (Pub. Resources Code § 21151(a).) "A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project." (Guidelines § 15064(d)(1).)

Pub. Resources Code §21151(b), states that "[f]or purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5." §21060.5 defines "environment." It states: "'Environment' means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (See *San Joaquin Raptor/Wildlife Rescue Center v. City of Stanislaus* (1996) 42 Cal.App.4th 608, 616.)

Thus, the agency is required to compare the newly authorized land use with the actually existing conditions; comparison of potential impacts with potential impacts under the existing general plan is insufficient. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1415.) "Certainly a project's impacts may be significant if they are greater than those deemed acceptable in a general plan." (*Gentry v. City of Murrieta, supra,* 36 Cal.App.4th at p. 1416.) On the other hand, we do not agree

"that a project's effects cannot be significant as long as they are not greater than those deemed acceptable in a general plan." (Ibid.)

Substantial evidence that a project may have a significant impact may be established through "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code § 21080(e)(1).)

Here, as set forth in detail below, the Record contains substantial evidence of several potentially significant adverse environmental impacts, and therefore, an EIR is required. (Pub. Resources Code § 21151(a.)) A lead agency may not avoid an EIR by refusing to do any substantive analysis of an issue. All relevant issues must be addressed and analyzed before the Project is approved.

3. Failure to Investigate or Assess Potentially Significant Adverse Project Impacts is a Violation of CEQA

The Record in this case is noteworthy for what it does not contain. With respect to a number of important areas of impact at issue, such as carbon emissions, the MND is either completely silent or, as in the case of agricultural conversion or air quality, contains cursory analysis at best.

As discussed with respect to individual impacts below, an agency may not defer studies to some point in the future, to avoid the preparation of an EIR. (See *Sundstrom v. City of Mendocino* (1988) 202 Cal.App.3d 296, 307) The *Sundstrom* court determined that CEQA places the burden of environmental investigation on government rather than the public, and the agency

cannot hide behind its own failure to gather relevant data. The court added that if the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument be lending a logical plausibility to a wider range of inferences. (Id. at 311.)

4. The Courts Have Applied Strict Standards to Analysis of Water Issues

The courts, led by the California Supreme Court, have issued a series of recent holdings in which they have adopted strict standards for environmental analysis of water issues. The principal case in this area is *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, ("*Vineyard*"). In that case the California Supreme Court reviewed a CEQA challenge to a large residential subdivision in Placer County. The petitioners had challenged the EIR's analysis and determination that there was an adequate long term water supply to serve the project. The California Supreme Court upheld the challenge and invalidated the EIR.

The Supreme Court framed the question as "The principal disputed issue is how firmly future water supplies for a proposed project must be identified or, to put the question in reverse, what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan?" (*Vineyard Area Citizens, supra*, 40 Cal.4th 412, at 428.)

The Court then proceeded to review the relevant appellate cases addressing the level of detail required in a water analysis. The cases cited include *Santiago County Water Dist. v.*

County of Orange (1981) 118 Cal.App.3d 818, *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, (*Stanislaus Natural Heritage*) *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, (*Santa Clarita*) and *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, (*Napa Citizens*).

The Court then set forth four rules for the adequate analysis of water supply issues in an environmental document.

> While these decisions state no definitive standard of certainty for analysis of future water supplies, they do articulate certain principles for analytical adequacy under CEQA, principles with which we agree. First, CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to "evaluate the pros and cons of supplying the amount of water that the [project] will need." [citations]
>
> Second, an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years. While proper tiering of environmental review allows an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval, CEQA's demand for meaningful information "is not satisfied by simply stating information will be provided in the future."…
>
> Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decision-making under CEQA. [citations]…

> Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.[citations] (*Vineyard Area Citizens, supra,* 40 Cal.4th 412 at 430-432)

The Court goes on to address asserted inadequacies in the EIR's long term water supply analysis. The Court found this analysis inadequate because it failed to show how the overall projected water consumption within the region ("Area 40") including the challenged project would be met. The Court stated:

> To be sure, the County's burden in preparing the FEIR for the Sunrise Douglas project was not necessarily to demonstrate with certainty that the County's total water supply in the year 2030 would be sufficient to meet its total demand, though some discussion of total supply and demand is necessary to evaluate "the long-term cumulative impact of development on water supply." (*Santa Clarita, supra,* 106 Cal.App.4th at p. 719, 131 Cal.Rptr.2d 186; see also CEQA Guidelines, Cal.Code Regs., tit. 14, § 15130, subd. (b)(1)(B) [cumulative impact analysis may employ projections in general planning documents].) But CEQA did require that the FEIR show a likelihood water would be available, over the long term, for this project. Without an explanation that shows at least an approximate long-term sufficiency in total supply, the public and decision makers could have no confidence that the identified sources were actually likely to fully serve this extraordinarily large development project. An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an "'environmental "alarm bell" ' " (*Laurel*

Heights I, supra, 47 Cal.3d at p. 392, 253 Cal.Rptr. 426, 764 P.2d 278) before the project has taken on overwhelming "bureaucratic and financial momentum" (id. at p. 395, 253 Cal.Rptr. 426, 764 P.2d 278). *(Vineyard Area Citizens, supra,* 40 Cal.4th 412 at 441)

B. The City Violated CEQA and an EIR Must Be Prepared

1. A Fair Argument Exists that the Project Will Have Significant Impacts on Groundwater

The record contains evidence documenting the overdrafting of the Upper Kings River Groundwater Basin and the contribution of urban development to that overdrafting. (See the 2007 IWRMP, (4 AR 913 - 1361,) the Summers Engineering April 2007 Draft Urban Impacts Report (3 AR 629 - 692,) the Wrime Engineering Groundwater Impact Analysis (5 AR 1339 - 1361,) and the Summers Engineering Urban Impacts White Paper. dated November of 2007 (5 AR 1362-1376.) Even the City Attorney in his concluding remarks to the Council conceded this fact. (3 AR 885:8-25, 886: 1-22) Consequently, the record before the City decision maker's clearly contained information amounting to a "fair argument" of a significant environmental impact.

Notwithstanding the submittal of this recent data documenting the problem, the City did not modify its conclusion of no significant impact on groundwater. (see Resolution 2008-18R at 3 AR 705 - 720). The resolution of the City Council contains no substantive explanation of the decision to ignore this information. The only explanation for this action in the record is the City Attorney's Letter responding to this information dated January 11, 2008 (1 AR 253-258 and also at 2 AR 609-613.)

The City's first argument in the City Attorney letter (2

AR 612) is that the City may rely upon the information supplied by the California Water Service (CWS) in their letter dated January 15, 2008 (Located at 1 AR 251-252 and again at 3 AR 693 -694) as to the adequacy of the groundwater supply to serve the project. That conclusion is in turn is based on a 2006 Urban Water Management Plan prepared by the company which the City did not include as part of the record.

The California Water Service Letter is not sufficient to support a finding of no significant impact on groundwater. First the letter itself is quite ambiguous as to the impacts on groundwater. As quoted in the Summary of the Record above, CWS concedes that ground water levels drop during droughts and that during wet years CID's recharge activities restore levels to "near" those observed prior to the drought. The letter further indicates CWS's intent to work with the District on a program to mitigate impacts on groundwater. (3 AR 693.) This does not indicate an absence of impact.

Second, even if the letter is taken as the opinion of an expert as to lack of significant impact, it is only one opinion, based on a 2006 study. As pointed out by LAFCo in its first letter, the 2007 IWRMP represents "new information" that was not considered in the CWS study, relied upon by CWS. (1 AR 245) Further, where there is conflict between experts as to the significance of an impact, an EIR is required. When qualified experts present conflicting evidence on the nature or extent of a project's impacts, the agency must accept the evidence tending to show that the impact might occur. Evidence to the contrary is usually irrelevant because the agency cannot weigh competing

evidence. (See State CEQA Guidelines § 15064(g) and *City of Carmel by the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting opinions of multiple experts on definition and extent of wetlands made it clear EIR was necessary].)

The City's second argument set forth in the City Attorney's letter is that the impacts on groundwater are a regional problem. Projects that do not meet the State CEQA Guidelines definition of a project of "regional or area-wide significance" therefore cannot be considered to have impacts sufficient to meet the regionally significant impact threshold. Since this project is less than the 500 unit regional project defined in State CEQA Guidelines §15206(b)(2)(A), the impact is not significant. (2 AR 612)

This mischaracterizes the law. The manifest purpose of §15026 as set forth in Subsection (a) is to provide guidance to local agencies as to when they need to submit their environmental documents to the State Clearing House for circulation and review by State Agencies. Only projects that meet the definitions of "regional or area-wide" significance contained in 15206(b) are required to be circulated to the State Clearing House. (*Guardians of Turlock's Integrity v. Turlock City Council* (1983)149 Cal.App.3d 584, 197 Cal.Rptr. 303) The section is not intended to create a general threshold of environmental significance.

Even if it was so intended, as LAFCo pointed out in its February 19, 2008 letter, when this project is considered with other residential subdivision projects in the vicinity, it exceeds the 500 unit "regionally significant" threshold. (1 AR 263) The California Supreme Court has made it clear that agencies must

consider the regional and cumulative impacts of projects. In *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, the Supreme Court stated:

> This is not to say that EIR analysis must proceed with regional blinders. The local agency need not, indeed it may not, ignore regional needs and cumulative impacts. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283, 118 Cal.Rptr. 249, 529 P.2d 1017; Guidelines, §§ 15125, 15206.) (supra, at pg 573)

The City's argument is contrary to this admonition. Essentially the City argues that this project's contribution to the regional overdrafting problem is so small and the problem is so big that the impact of this project is not significant.

This argument has been soundly rejected by the Court of Appeal in the case of *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 270 Cal.Rptr. 650. In that case, the Farm Bureau challenged an EIR prepared for a cogeneration coal fired electrical generation plant in the City of Hanford. The Farm Bureau, among other issues, challenged the determinations of the EIR with respect to air quality. The EIR had determined that with the use of best available technology, the contribution of the plant to ozone and particulate air pollution would be minor and not significant compared with the overall problem in the San Joaquin Valley. The Court of Appeal rejected this logic. It stated:

> The DEIR concludes the project's contributions to ozone levels in the area would be immeasurable and, therefore, insignificant because the plant would emit relatively minor amounts of precursors compared to the total volume of precursors emitted in Kings County. The EIR's analysis uses the magnitude of the

> current ozone problem in the air basin in order to trivialize the project's impact. In simple terms, the EIR reasons the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.
>
> The point is not that, in terms of ozone levels, the proposed Hanford project will result in the ultimate collapse of the environment into which it is to be placed. The significance of an activity depends upon the setting. (Guidelines, ' 15064, subd. (b.)) The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin. (Kings County Farm Bureau, supra, 221 Cal.App.3d 692 at 718)

The Court went on to address the problem as it relates to cumulative impact.

> We must interpret the Guidelines to afford the fullest possible protection to the environment. *(Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 260 [104 Cal.Rptr. 761, 502 P.2d 1049].) One commentator has addressed the purpose of the cumulative impacts analysis: "One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact. Perhaps the best example is air pollution, where thousands of relatively small sources of pollution cause a serious environmental health problem.
>
> "CEQA has responded to this problem of incremental environmental degradation by requiring analysis of cumulative impacts. Because of the critical nature of this concern, courts have been receptive to claims

> that environmental documents paid insufficient attention to cumulative impacts. For example, in San Franciscans for Reasonable Growth, [*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61] the court stated that absent meaningful cumulative analysis, there would never be any awareness or control over the speed and manner of downtown development. Without that control, 'piecemeal development would inevitably cause havoc in virtually every aspect of the urban environment.' [page 721]
>
> "This judicial concern often is reinforced by the results of cumulative environmental analysis; the outcome may appear startling once the nature of the cumulative impact problem has been grasped." (Selmi, The Judicial Development of the California Environmental Quality Act (1984) 18 U.C. Davis L.Rev. 197, 244, fn. omitted.)
>
> We agree with the foregoing assessment of a cumulative impacts analysis. We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the overall problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality. (*Kings County Farm Bureau, supra,* 221 Cal.App.3d 692 at 720-721)

The holding of the Court of Appeal, Fifth Appellate District, in *Kings County Farm Bureau* is dispositive of the issue here. The City of Selma's MND improperly "trivializes" the

groundwater depletion problem by simply comparing the consumption of this project in isolation against the overall groundwater overdraft problem and concluding it is not significant. As the *Kings County Farm Bureau Court* held, the proper analysis is whether *any* additional amount of groundwater consumption should be considered significant in light of the serious nature of the overdrafting problems in this groundwater basin. As documented in the studies submitted by CID to the City, and the evidence of the multiple other projects contributing to the overdrafting, there is substantial evidence in the record that the additional consumption of groundwater by this project is a significant impact on the environment, both individually and cumulatively.

That this is the case is further confirmed by applying the holding of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th 412, at 430-432. The California Supreme Court's first rule is that "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project CEQA requires that water supply." In the present case, there is no EIR, just a MND that essentially ignores the groundwater overdrafting problem.

The second rule set forth in *Vineyard* is that the CEQA document must address the long term or "sustainable" water supply. While the California Water Service maybe correct that it will take time before the overdrafting would actually begin to impact the City's ability to pump sufficient water, once it does, the effect on the entire region is likely to be catastrophic and irreversible as discussed in the IWRMP (5 AR 1229). The MND ignores the long

term impact and lack of sustainability of groundwater pumping without recharge.

In *Vineyard*, the California Supreme Court interpreted CEQA to require an evaluation of the "long-term cumulative impact of development on water supply". (40 Cal.4th 412, at 441) Such an analysis is entirely lacking in this MND and for that reason alone, in the view of the Court, an EIR is required.

2. The Failure to Analyze the Impacts on Storm Drainage, Agriculture, Air Quality and Greenhouse Gases Requires Preparation of an EIR

The MND itself contains virtually no discussion of storm water drainage, (2 AR 379) though the City Attorney's letter (2 AR 609-613) attached to the MND addresses it briefly and summarily after the issue was raised by CID (2 AR 611-612). The MND provides a two paragraph discussion of the impacts of converting the 44.6 acres from agriculture to residential use (2 AR 374,) a one paragraph discussion of air quality (2 AR 374-375) and no discussion whatsoever of carbon emissions. Nor does the MND consider the cumulative impacts of this project when considered with other projects on any of these resources. The failure to provide meaningful information and analysis on these issues violates the very purpose of CEQA to inform the decision makers and the public as to the environmental impacts (Guidelines, § 15002(a)(1)) and raises a reasonable inference that the impacts may be significant and should be analyzed in greater depth in an EIR. (*Sundstrom v. City of Mendocino*, supra, 202 Cal.App.3d 296, 307)

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i. The MND and Project Conditions Do Not Contain Sufficient Information to Determine the Project's Impacts on Drainage and the CID Canals

CID first raised the issue of potential impacts to CID canals from drainage of this project in its January 14, 2008, at 2 AR 614. It pointed out the limited information in the MND regarding drainage. The letter then states that the City of Selma has numerous connections into the CID canal system and those connections have a significant adverse impact on CID's operations and maintenance. It recommended adding a condition of approval that all storm water from the project be retained on site and no hydraulic connection be allowed that would convey storm water from the project directly or indirectly into the CID canals. (2 AR 615).

The City Attorney responded to this letter in his January 11, 2008 letter. He states that the project will have on-site and off-site storm water drainage with an existing retention basis that can accommodate the 100 year storm event. He goes on to state that this retention basin has no connection to the CID Canals (2 AR 611)

The Conditions of approval for the Project contained in Resolution 2008-18R (beginning at 3 AR 704) in Condition 30 and 40 requires preparation of a drainage plan for City review and approval but the only specification is that they include drainage facilities "as deemed necessary by the City Engineer". (3 AR 712 and 714) Under conditions required by CID (at 3 AR 718), there is no mention of the CID request for a condition specifying that there be no hydraulic connection to the CID canals. Nor is there

any mention of such a condition under "City Attorney" conditions at 3 AR 719. The conditions of approval, therefore, do not contain any assurance that there will not be a hydraulic connection to the CID canals.

CEQA specifies that "A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." (Pub. Resources Code § 21081.6(b); see also Guidelines § 15126.4(a)(2).)

Here the statements of the City Attorney were not actually implemented in the conditions of approval as required by CEQA. Therefore whether the project will actually drain into the CID canals is unknown. In the absence of such basic information, CID has made a fair argument of a potentially significant impact, requiring an EIR.

ii. <u>The Cumulative Impact of Loss of Agricultural Land is Significant</u>

The MND notes that the 44.6 acres of the project are 100% agricultural and zoned in the County "AE-20" – Agricultural Exclusive, 20 acre minimum parcel size.[5] The MND further describes the project as converting that land from agriculture to

[5] However the City answered the question in the Initial Study Environmental Checklist: "Conflict with existing zoning for agricultural use or a Williamson Act contract" as "No Impact" (2 AR 359.)

the construction of 160 single family dwellings. (2 AR 374)

The discussion of the impact on agricultural resources contains no discussion of soil types or any evaluation of agricultural productivity. It fails to use the California Agriculture Land Evaluation and Site Assessment Model prepared by the Department of Conservation and recommended in the Checklist for use in evaluating impacts on agriculture (2 AR 374.) With such minimal analysis, the MND nevertheless concludes that the impact of removing this land permanently from active agricultural production is less than significant. The justification given is that the City is surrounded by agricultural land and that the development of the property is consistent with the policies of the City to grow in a logical, well-planned manner.

As pointed out in the April 7, 2008, letter from P. Scott Browne at (2 AR 624), the MND fails to provide any information whether the land is important or prime agricultural land. Nor does the discussion attempt to show that there is insufficient land within the City for this type of development which would create a need to annex and convert the land from agriculture. Attached to the letter is the City's own map and list of all of the projects being developed in or around the conurbation to the City Council in an effort to get the City to consider the cumulative impacts of all these developments on agriculture and other resources. (2 AR 622-623) This listing indicates over 2200 units have been approved around the City of Selma in recent years, involving hundreds of acres of former agricultural land. The City completely failed to address the cumulative impact of this conversion.

The State Legislature has made it clear in a variety of legislative enactments that it considers preservation of agricultural land is a significant goal of the state. See for example: Government Code §51220 (Williamson Act) Civil Code §815 (legislative declaration that preservation of agricultural lands "is among the most important environmental assets of California",) and the legislative declaration in Statutes of 1993 Chapter 812 §1 of Stats. (S.B.850,) which provides:

> "The Legislature hereby finds and declares all of the following:
>
> "(a) Agriculture is the state's leading industry and is important to the state's economy.
>
> "(b) The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.
>
> "(c) The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state's agricultural industry.
>
> "(d) The California Environmental Quality Act plays an important role in the preservation of agricultural lands.
>
> "(e) It is the intent of the Legislature in enacting this act to encourage wise and efficient land use decisions based on the best available information by promoting the adoption and use of land evaluation and site assessment criteria by state and local agencies based on the system developed by the United States Soil Conservation Service to implement the Farmland Protection Policy Act (7 U.S.C. Sec. 4201, et seq..)
>
> "(f) The land evaluation and site assessment model system has proven to be an effective aid to planning in over 200 state and local jurisdictions nationwide, by avoiding duplicative and unnecessary environmental

> review, while enabling decision makers to focus their analyses on significant agricultural land impacts, and providing integrity and consistency to the land use decision process."

The Cortese Knox Hertzberg Act, Government Code §56377 is particularly relevant here since the City is seeking LAFCo approval for annexation. That section directs LAFCo to guide development away from prime agricultural land and encourage development of existing vacant land within the jurisdiction before annexing addition prime agricultural land. Yet the environmental document upon which LAFCo must rely as a responsible agency is completely lacking in any analysis of vacant land within the City and need for this conversion of agricultural land.

The minimal analysis provided in the MND is simply inadequate to justify the finding of no significant impact. Nor is it sufficient to act as an informational document to guide decision makers and inform the public. Given the strong state policies for protection of agricultural land from conversion, and the evidence of multiple projects in the area converting agricultural land to urban use, removing it permanently from agricultural production, a fair argument can be made that this project will contribute to a cumulatively significant impact on agriculture. An EIR should be prepared to properly and adequately address this impact.

iii. <u>The MND Fails To Adequately Address the Impact on Air Quality</u>

The discussion of air quality in the MND (2 AR 373-374) notes that the project is located in a non-attainment zone for

both PM-10 (particulate matter) and ozone. It then proceeds to focus almost entirely on air quality impacts during the construction process and discuss mitigation of those impacts. There is no further discussion of the contribution to ozone pollution from the additional traffic generated by this car-centered single family development. Nor is there any discussion of the cumulative impact of this residential project on ozone generation along with the thousands of other units approved by the City of Selma.

In the *Kings County Farm Bureau* case, the Court faced a similar issue in the EIR's failure to analyze and evaluate the ozone emissions from vehicles going to and from the generating plant—what it referred to as "secondary emissions relating to the project". The Court found the EIR inadequate and misleading for failure to address the secondary emission issues. (*Kings County Farm Bureau, supra,* 221 Cal.App.3d 692, at 718) A similar conclusion is warranted here given the complete lack of any quantification or discussion of the probable secondary ozone emissions.

iv. <u>The MND is Inadequate for Failure to Do Any Analysis of Greenhouse Gas Emissions</u>

The MND does not contain any consideration or discussion of greenhouse gas emissions and impacts to global warming. This issue was raised to the City Council by CID's counsel, noting that the MND fails to address air quality impacts, despite noting that the area is a non-attainment area for federal and state particulate matter and that this project will contribute to an already impaired air basin. (2 AR 625) Further along the letter

raises the complete absence of any analysis of carbon emissions likely to be generated by the construction and future residents as required by AB 32. (2 AR 626-627)

Like all other forms of environmental change, a lead agency is required to consider a proposed project's potential to result in a significant impact by contributing to greenhouse gas emissions. A project may have a significant effect on the environment where the project's environmental effects are "individually limited but cumulatively considerable". (Guidelines § 15065(a)(3).) "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual date". (Guidelines § 15064(b).) "[I]n preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project, irrespective of whether an established threshold of significance has been met with respect to any given effect." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109, emphasis added.) Importantly, CEQA has a substantive mandate to protect the environment, prohibiting public agencies from approving projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen or avoid the project's significant environmental effects. (Pub. Resources Code § 21002; Guidelines § 15021(a).)

The State of California has recognized CEQA's role in addressing impacts from the greenhouse gas emissions resulting

from proposed projects. In August 2007, the State enacted Senate Bill 97, which requires the Governor's Office of Planning and Research ("OPR")[6] to prepare guidelines "for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions *as required by* [CEQA], including, but not limited to, effects associated with transportation or energy consumption." (SB 97 (2007), codified as Pub. Resources. Code § 21083.05 (emphasis added).) Section 21083.50 confirm[s] that GHG emissions are a significant adverse effect under CEQA. The analysis of GHG impacts under laws like CEQA, and its federal counterpart NEPA, is not new, nor did it commence with the passage of the California Global Warming Solutions Act of 2006.

As CEQA mandates consideration of all potential environmental impacts, including those that may not have been foreseen at the time CEQA was enacted, SB 97 merely affirmed the existing obligation to analyze greenhouse gas impacts resulting from new projects. (See *Bakersfield Citizens, supra*, 124 Cal.App.4th at 1196, 1204-1205 (tracing judicial recognition of CEQA application to urban blight impacts and noting that "[w]ater contamination and air pollution, now recognized as very real environmental problems, were once scoffed at as the alarmist ravings of environmental doomsayers.").)

To facilitate the existing requirement for analysis of global warming impacts under CEQA, OPR issued a Technical Advisory calling for lead agencies to first "make a good-faith effort, based on available information, to calculate, model, or estimate

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[6] Through its State Clearinghouse Unit, OPR is charged with providing regulatory guidelines and technical assistance on land use planning and CEQA matters. (*See, e.g.*, Pub. Res. Code §§ 21083 and 21159.9.)

the amount of CO2 and other GHG emissions from a project" and then determine whether these emissions "constitute[] a significant impact." Climate change is ultimately a cumulative impact.[7]

California has set greenhouse gas emission reduction targets in an effort to avoid the catastrophic impacts projected with higher emissions scenarios. AB 32 (codified at Health & Safety Code § 38550) requires California to return to 1990 levels of greenhouse gas emissions by the year 2020. Looking beyond 2020, the Governor's Executive Order S-3-05 sets an emissions reduction target of 80 percent below 1990 levels by 2050. (Exec. Order S-3-05.) The emission reduction targets set by AB 32 and Executive Order S-3-05 reflect the State policy to address and mitigate the impacts of human activities within the State that contribute to the rising atmospheric concentrations of greenhouse gases.

These state enactments and policies required the City to evaluate the Project's potential both individually and cumulatively to contribute to greenhouse gas emissions and global warming. Its failure to do so is a violation of CEQA, and an EIR is required.

3. <u>The Failure to Adopt Feasible Mitigation Measures for the Impacts Requires Preparation of an EIR</u>

The MND contains substantial analysis and mitigation measures for the impacts of concern to City decision-makers. Thus we have a 150 plus page traffic impact analysis that does include analysis of the cumulative impacts of other projects (2 AR 438 -

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[7] Source http://www.opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf "CEQA AND CLIMATE CHANGE: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review" issued June 19, 2008 by the State of California, Governor's Office of Planning and Research.

591) and mitigation measures to mitigate those impacts in the conditions of approval (2 AR 339.) The MND further requires mitigation fee payments to mitigate impact on fire service, city police, schools, city parks, and general city facilities. (2 AR 382-383)

Given the City's proven ability to analyze and mitigate these impacts by imposing fees on development, the failure to address and mitigate the impacts on groundwater is remarkable. CID has provided the City with a fully developed program of impact fees and/or moderate water rate increases to fund recharge improvements to mitigate the groundwater overdraft resulting from urban development. (See the Summers Engineering April 2007 Draft Urban Impacts Report located at 3 AR 629 - 692 and the Gilkey August 9, 2007 Memorandum at 5 AR 1374 - 1379) The proposed recharge program is not discussed in any detail in the MND nor is any reason given as to why the City considered it infeasible.

Furthermore the City also completely failed to consider mitigation of the impact on agriculture such as through the requirement that the developer acquire conservation easements to preserve other threatened farmland as encouraged under the California Farmland Conservancy Program (Public Resources Code Sections 10210-10224).

CEQA requires the City to "identify mitigation measures for each significant environmental effect." (Guidelines § 15126.4(a)(1)(A).) Then the City must actually adopt such mitigation measures, unless it is infeasible to do so. (Pub. Resources Code § 21002.1(b) ["Each public agency shall mitigate or avoid the significant effects on the environment of projects that

it carries out or approves whenever it is feasible to do so."]; and *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 440-41.) The City's failure to identify the significant impact of the Casa Bella project on groundwater and agriculture and adopt the feasible mitigation measures proposed by CID and state law was arbitrary and capricious and in violation of the requirements of CEQA.

IV. RESPONSE TO THE CITY'S PROCEDURAL ARGUMENTS

The Court responds to the significant arguments of the City as reflected in the Respondent's Trial Brief ("RTB") below.

A. The City Misunderstands the Applicable Standard of Review

The City asserts that the substantial evidence test and the fair argument standard are both applicable to this case and that the court must defer to the agency determinations on these issues. (RTB, p. 6:18-21.) The fair argument standard, however, is the only standard of review that should be applied. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.)

This proceeding is not a decision on the merits of the Project. It is not a decision whether any particular impact will or will not occur if the Project is approved. It is only a decision on whether EIR-level review must be performed. That question is answered by the Court determining if "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (Id.)

The Court must require EIR-level review if, there is any substantial evidence in the record which supports a fair argument that the Project *may* have a significant effect upon the

environment. In applying the fair argument standard, the Court's task is not to weigh competing evidence and determine which is more persuasive, but rather to determine whether substantial evidence exists in the record to support the prescribed fair argument. If such evidence is found, it cannot be overcome by evidence to the contrary. (See *Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4th 1095; and *Ocean View Estates Homeowner's Ass'n v. Montecito Water District* (2004) 116 Cal.App.4th 396, 399.)

City asserts the Court's function is "to determine whether substantial evidence supported the agency's conclusion as to whether the required fair argument could be made." (RTB, p. 14: 1-4, citing *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 940.) In other words, the City is asserting that it is the agency that decides whether a fair argument has been made, not the Court. The Court's role is limited to determining whether that determination by the agency is supported by substantial evidence.

The *Wollmer* decision discusses the fair argument standard in some detail, but it does not support this novel application of a "deferential" substantial evidence standard utilized in the City's brief. The *Wollmer* decision reiterates the fundamentals of the fair argument standard as follows:

> A city's decision to rely on an MND under CEQA is reviewed for abuse of discretion under the "fair argument" standard. ""'CEQA requires the preparation of an EIR 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.' [Citations.] Thus, if substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur, an EIR is required and a negative declaration cannot be certified." [Citation.]'

> [Citation.]" (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 899 [69 Cal. Rptr. 3d 1051; see also Guidelines, § 15064, subd. m(I) ["if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect"].) " 'The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.' "(*Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1331 [73 Cal. Rptr. 3d 202] (Grand Terrace), quoting *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928 [21 Cal. Rptr. 3d 791] (Pocket Protectors).) (*Wollmer v. City of Berkeley, supra*, 179 Cal.App.4th at 939-940.) [Emphasis added]

Applying the fair argument standard, the City argues that substantial evidence supports the City's approval of the Project and its determination that the evidence submitted by CID was not substantial. For example, the City argues that evidence presented by California Water Service contradicts the documents and reports submitted by CID, implying that this provides substantial evidence to support the City's determination, and the Court should accept it over the competing evidence from CID. (RTB, p. 45:8-26; p. 47:24-28; and p. 49:5-12.) This, however, is not proper in the context of judicial review of an agency's decision not to prepare an EIR for a project.

The City also argues that the groundwater basin is

large, and so the likelihood of a significant impact is small. (RTB, p. 4:3-28.) These assertions reflect a fundamental misunderstanding of the fair argument standard. The lead agency must prepare an EIR whenever there is a fair argument of possible significant adverse environmental impact. For purposes of CEQA, "[possible] indicates that something is realizable as an end. It can imply either a moderate degree of probability or the barest chance within the limits of circumstances." (*Security Environmental Systems v. South Coast Air Quality Management District* (1991) 229 Cal.App.3d 110, 119.) Therefore, for purposes of finding a "fair argument" under CEQA, the likelihood of the impact is not a factor.

The fair argument standard sets a very low threshold for requiring the preparation of an EIR. (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 84.) The record contains substantial evidence to support a fair argument the Project may cause a significant environmental impacts.

2. CID Has Exhausted Its Administrative Remedies

The City was on notice with respect to each of the issues raised in the Petition and the Opening Brief. Comment letters submitted by CID and by LAFCo identified each issue in detail. (1 AR 244-247; 1 AR 248-250; 2 AR 614-616; 2 AR 624-628; and 2 AR 262-264.) In order for a CEQA issue to be properly raised in court, Public Resources Code § 21 I77(a) requires only that the particular issue be raised "to the public agency orally or in writing by any person . . ." (Emphasis added.) There is no requirement that the petitioner have personally raised each and every argument, so long as the issue was presented to the agency

by some party, even the staff. Each of the issues raised herein were raised to the City during the administrative process.

3. CID has Standing

The City argues that CID does not have standing for three reasons: (1) CID is not "beneficially interested" in the action; (2) CID has an improper "competitive interest"; and (3) CID has no jurisdictional power. (RTB, pp. 16 and 17:1-6.) The City argues that CID has not cited any "environmental injury to its property or itself greater than what the public might suffer." (RTB, p. 16:17-18.)

CID has certainly cited concerns regarding environmental damage to the groundwater supply, and has articulated how this potential damage could impact CID's operations. (See the 2007 Summers Engineering Draft Urban Impacts Report at 3 AR 3 629 - 692.) CID further addressed in its comment letter the "regional groundwater impacts in an already overdrafted basin," citing the IWRMP and the Draft Urban Impacts Study as evidence of the overdrafting issue and the impact of conversion of agricultural land such as this project as causing a net increase in groundwater consumption and impacts on groundwater quality. (2 AR 615.) Further, CID's comments concerned the potential for storm water runoff to impact CID facilities. (Id.)

California courts apply liberal standards for standing in CEQA cases. (See, e.g., *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212,123-125; and *Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831-833.) The California Supreme Court has stated: "Effects of environmental abuse are not contained to political lines;

strict rules of standing that might be appropriate in other contexts have no application where broad and long-term effects are involved." (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263,272; and see *Burrtec Waste Industries v. City of Colton* (2002) 97 Cal.App.4th 1133, 1137.) The relatively low threshold for showing standing has been met.

With respect to the City's claims that CID's interests are solely competitive, this argument fails. The case law surrounding this issue involves petitioners challenging actions based solely upon their commercial interests. (RTB, p. 16, citing *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232; and *Regency Outdoor Advertising, Inc. v. City of West Hollywood* (2007) 153 Cal.App4th 825,829-830.) CID is a public agency carrying out its public purpose, and the cases cited by the City are inapposite.

Finally, the City claims that CID "has no jurisdictional power" and so "derives no benefit or suffers no detriment, from issuance of a writ requiring an EIR to address groundwater (or other environmental concerns it raises)." (RTB, p. 17: 1-6.) The City supports this assertion by citing to Water Code sections governing drainage districts; (Id. and p.2, fn. 2.), ignoring the sections governing irrigation districts contained in Title 11 of the Water Code, commencing at §§ 20500 et.seq.

In fact, CID has broad powers. An irrigation district "may do any act necessary to furnish sufficient water in the district for any beneficial use." (Water Code § 22075.) § 22078 further specifies that:

> A district may control, distribute, store, spread, sink, treat, Purify, recapture and

> salvage any water including but not limited to sewage waters for the beneficial use or uses of the district or its inhabitants or the owners of rights to waters therein. [emphasis added]

With respect to drainage issues, the Water Code provides the following with respect to Irrigation Districts: "22095. A district may provide for any and all drainage made necessary by the irrigation provided for by the district. 22096. All laws respecting irrigation by districts or respecting districts shall also be so construed and enforced as to apply to drainage. 22097. The officers, agents, and employees of districts have the same powers, duties, and liabilities respecting drainage and construction, operation, and control relating to it as they have respecting irrigation".

Accordingly, CID has broad powers to perform acts necessary to furnish sufficient water in the district for any beneficial use. cm is beneficially interested in groundwater supplies, surface water supplies, and drainage in the area of its territory, all of which could be impacted by urban development such as the Project. It also has a beneficial interest in protecting its farmers from urban encroachment, and its water supply from the effects of global warming.

4. CID and LAFCo Properly Commented on the MND

In an argument similar to its standing argument, the City at various points in its brief asserts that CID and LAFCo's comments made in the administrative proceeding were outside their "authority or jurisdiction" and so, under CEQA were improper and should be ignored. The premise appears to be that if the comments

were improper, so too is any argument in Petitioners' brief based on those comments. (RTB, p. 26:5-7, 39:24-28.) On page 26:5-7, the City claims as a factual statement that LAFCo "overstepped the boundaries of its jurisdiction" in violation of 21081(c) (presumably meant to be Public Resources Code § 21081.6(c» in raising CID's concerns about groundwater overdrafting. The City cites various authorities in support of its claim that CID cannot comment on the City's environmental analysis unless it goes to matters "falling within its very limited jurisdiction." (RTB, p. 40: 1-13.)

With respect to the authorities cited, Public Resources Code 21081.6(c) specifies that responsible agencies and public agencies having jurisdiction over natural resources affected by the project shall provide mitigation measures within their statutory authority. The section says nothing as to their authority to comment on other environmental matters of concern to the agency. § 21104(c) only relates to consultation on state projects and is inapplicable. § 21153(c) and Guidelines § 15086(c) relate to lead agency consultation with responsible and trustee agencies during EIR preparation and do limit public agencies in that context to commenting on issues within "an area of expertise of the agency or that are required to be carried out or approved by the agency". Guidelines § 15204(d) is the only section cited that specifically applies to negative declarations. It encourages persons and agencies to "focus on the proposed finding that the project will not have a significant effect on the environment." With respect to "responsible" and "trustee" agencies reviewers, the comments should be limited to information "germane to that

agency's statutory responsibility." However subsection (e) then goes on to specifically state:

> (e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

CID is not a responsible or trustee agency. (See definition of a responsible agency at Public Resources Code § 21069 and of a trustee agency at Public Resources Code § 21070). So under the statutes, CID is not an agency constrained by the requirement that comments be germane to the statutory responsibility of an irrigation district. Even if the requirement does apply, however, conversion of agricultural lands, impacts to drainage and groundwater, as well as air quality and global warming impacts are all clearly germane to the endeavor of providing water supply to its farmers.

With respect to LAFCo, it is a responsible agency for this project since it must approve the annexation to the City. As such, the City further argues that the LAFCo's comments should be ignored as improper because, as a responsible agency, LAFCo has "a clear ministerial obligation to treat the City's MND as being in conformity with CEQA and to approve the annexation." (RTB, p. 17:20-22.) The City then proceeds with a lengthy discussion of the role of a responsible agency (RTB, pp. 17-19) which has little to do with LAFCo's authority to comment on environmental issues before the lead agency.

When the City claims that LAFCo "overstepped its jurisdictional bounds" in commenting on the MND here, it ignores

the broad statutory authority of LAFCo. The Cortese Knox Hertzberg Act, Government Code §§ 56000 et.seq. grants LAFCo authority to consider a broad host of issues including "the effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests" and "Timely availability of water supplies adequate for projected needs." (Govt. Code §§ 56668, particularly (c) and (k).) The LAFCo comments and suggested mitigations on this project were well within its jurisdiction and compliant with Public Resources Code § 21081.6(c) and Guidelines § I5204(c).

The LAFCo's comments are substantial evidence supporting a fair argument that the Project may have a significant impact. (See *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 156 (memorandum from the state Department of Conservation supported a fair argument that project would have significant growth-inducing impacts).)

E. <u>The Record does not Support City's Argument that the MND was Tiered from the General Plan EIR</u>

The City makes the claim that the City properly relied on the 1997 General Plan EIR in its MND. First the City asserts that the 1997 General Plan EIR was "duly and properly incorporated into the MND for the project level environmental analysis (RTB, p. 23:11-20). Then it argues that Public Resources Code section 21166 applies, and that a "new" EIR need not be prepared because an EIR for the Project has already been certified.(presumably the 1997 General Plan EIR) (RTB, p. 43 :26-28 and 44: 1-18.) These arguments essentially attempt to bootstrap general allusions to the prior General Plan EIR in the MND into a full-scale "tiering"

off that EIR.

CEQA provides a specific procedure for tiering environmental documents. § 15385 of the Guidelines defines "tiering" as follows:

> 15385''Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:
>
> (a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site specific EIR.
>
> (b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

In order to employ the tiering procedures under CEQA, the lead agency must follow specific steps, which the City did not follow in preparation of the MND for the Project. For a second-tier project, the agency must do all of the following: (1) inform the public that it is using tiering; (2) identify the earlier EIR on which the agency has relied; and (3) inform the public of where the prior EIR can be found and read. (Public Resources Code § 21094(e); CEQA Guidelines § 15152(g); and *Friends of the Santa Clarita River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1383-1384.) There is no evidence that the City ever formally notified the public that it was using CEQA's tiering procedures

for the Project.

Further, in tiering a CEQA document, the Initial Study is used to determine whether the project may cause any significant impacts that were not "adequately addressed" in the prior tiered EIR. (Public Resources Code § 21094(c); and CEQA Guidelines § 15152(t).) There is no discussion in the Initial Study here regarding the details of the previous environmental review, nor any specifics regarding whether certain areas of potential impact were "adequately addressed" elsewhere. Given that the EIR for the Selma General Plan was more than 10 years old at the time, and could not have considered the IRWMP or other more recent studies and developments, the absence of any effort to review its continuing validity in the MND clearly demonstrates that the City did not and could not use the 1997 General Plan EIR as a base tier to supplement the environmental review in the MND.

In citing Public Resources Code § 21166, the City confuses the tiering provisions with the prohibition against requiring a new EIR for a Project that was already the subject of an EIR, unless certain conditions are met. (*Cf.*, Public Resources Code § 21 094(e) and CEQA Guidelines § 15152(g) with Public Resources Code § 21166.) The City also relies upon case law involving a development project that had already been the subject of an EIR, and while the project had been revised resulting in increased traffic, the issue before the court was whether the revisions to the project triggered the need for a new EIR under the provisions of section 21166. (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1073-1074.)

Significantly, although it is referenced, the City did

not include the 1997 General Plan EIR, in the record. There is no evidence in the record showing that any of the Project's impacts were ever evaluated in any previous EIR. There is certainly no evidence that an EIR for this specific Project was ever prepared or certified. As previously discussed, the City was responsible for preparation and certification of the record, and was obligated at that time to ensure that all of the documents required by Public Resources Code § 21167 .6(e) were included. City may not now attempt to use an EIR as the basis for the MND, which it chose not to include in the administrative record it prepared.

In the present case, the City appears to be arguing that the MND should be considered by the Court to have been tiered from the 1997 General Plan EIR. As set forth in detail above, there is no evidence that the City followed any of CEQA's tiering procedures and there is no evidence that the General Plan EIR reviewed any of the Project's potential impacts. There is no evidence in the record to support any claim that the Project's impacts were evaluated in a prior EIR, whether the argument is made under the tiering provisions or under the conditions relating to the preparation for a new EIR. Therefore, the 1997 EIR does not constitute a rationale for the MND in this case.

F. A Lead Agency must Evaluate Cumulative Impacts for a Mitigated Negative Declaration

The City spends considerable time discussing the issue of whether or not the Project is regionally significant, relating this to the issue of cumulative impacts analysis. Under CEQA, an EIR is required when the possible effects of a project are individually limited but cumulatively considerable. (Public

Resources Code § 21083(b)(2).) '"[C]umulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past project, the effects of other current projects, an the effects of probable future projects." (*Id.*)

CEQA requires that the lead agency disclose and analyze a project's "cumulative impacts." (CEQA Guidelines § 15355.) Impacts may result from a number of separate projects, and occur when "results from the incremental impact of the project [are] added to other closely related past, present and reasonably foreseeable future projects" even if each project contributes only "individually minor" environmental impacts. (CEQA Guidelines § 15355(a) and (b).) An EIR must be prepared if a project's possible impacts, though "individually limited," prove "cumulatively considerable." (Public Resources Code § 21083(b); and CEQA Guidelines § 15064(i).) The importance of a thorough cumulative impacts analysis in the preparation of a mitigated negative declaration is emphasized in *San Bernardino Valley Audubon Society v. Metropolitan Water District* (1999) 71 Cal.App.4th 382,399-400.

The City's focus on the requirements of SB 610 and the "regional significance" determination relating to submissions to the State Clearinghouse is misplaced. The issue is whether there is substantial evidence in the record to support a fair argument that the Project may have a significant impact on groundwater resources. The City was required to review the cumulative impacts, and simply did not, based upon reliance on the assertions by Cal Water that it can provide adequate supply. An EIR must be prepared.

V. CONCLUSION

Through this lawsuit, Petitioner CID is seeking to compel the City of Selma to address significant environmental issues arising from growth and spread of the city into the surrounding farmland. The crucial issue in this case is the impact of this urban growth on groundwater, drainage, prime agricultural land and air quality. These are well documented problems which nevertheless are often not being addressed by local governments. Due largely to the legitimate but parochial interest in promoting local economic growth, consideration of any regional or cumulative issues that might hinder that growth is discouraged.

The arguments on the merits contained in the City of Selma's responding brief challenge the scientific basis of the Petitioner's contentions regarding potential environmental impacts. However, a fair reading of that brief illustrates to the Court the necessity of an EIR to evaluate those claims. They are certainly not resolved or even adequately addressed by the MND in this case.

As an example, the City's apparent position regarding the EIR is set forth at page 44 of the brief, which states:

> "Obviously, there is no changed circumstance or difference between the conversion of agricultural land to residential use as contemplated by the GP EIR in 1997 and the same contemplated conversion evaluated in 2008. There is no difference in any quality impacts between the contemplated use of this property as reflected by the 1997 EIR and that reflected by the 2008 MND."

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This is not "obvious" to any sentient person living in the San Joaquin Valley in the last fifteen years, and shows why a current EIR is required, and assuredly not that one, is not required.

It must be emphasized that the Court is not expressing a final opinion on whether the Casa Bella subdivision is a project which will definitively generate adverse environmental impacts. Indeed, it cannot do so, because there is no comprehensive EIR to review. However, Petitioner has successfully established that there is a fair argument that the project may have a significant effect on the environment, requiring an EIR to be prepared.

For all the foregoing reasons, the Court finds that the City failed to proceed in the manner required by law when it approved the Project. Specifically, the Court finds that: (1) the Mitigated Negative Declaration does not comply with the requirements of CEQA, (2) the Project approval must be invalidated and Project implementation enjoined; and (3) the City is hereby ordered to prepare a full EIR to address the significant cumulative environmental impacts before proceeding to reconsider the Project.

Dated this 13th day of July, 2010.

MARK W. SNAUFFER
JUDGE OF THE SUPERIOR COURT

Consolidated Irrigation District

August 23, 2010 Comments

South County Citizens for Responsible Growth v.
City of Elk Grove

Exhibit 4

AUG 23 2010

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3 of 100 DOCUMENTS

SOUTH COUNTY CITIZENS FOR RESPONSIBLE GROWTH et al., Plaintiffs and Respondents, v. CITY OF ELK GROVE, Defendant and Appellant; M & H PROPERTY MANAGEMENT, INC., et al., Real Parties in Interest and Appellants. THE PEOPLE ex rel. DEPARTMENT OF CONSERVATION et al., Plaintiffs and Respondents, v. CITY OF ELK GROVE, Defendant and Appellant; M & H REALTY PARTNERS III et al., Real Parties in Interest and Appellants.

C042302

COURT OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

2004 Cal. App. Unpub. LEXIS 1208

February 5, 2004, Filed

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 977.

PRIOR HISTORY: Superior Court No. 01CS01090, No. 01CS01123.

DISPOSITION: The judgment is reversed, and the matter is remanded to the trial court with directions to enter a judgment consistent with the holdings of this opinion. The parties shall bear their own costs on appeal. (*Cal. Rules of Court, rule 27(a).*)

JUDGES: SCOTLAND, P.J.; DAVIS, J., concurred. NICHOLSON, J., dissented.

OPINION BY: SCOTLAND

OPINION

Pursuant to the California Environmental Quality Act (CEQA), the City of Elk Grove (the City) prepared an Environmental Impact Report (EIR) for a development project known as the Lent Ranch Marketplace. [1] After certifying a final EIR, the City approved the project. On consolidated petitions for writs of mandate, the trial court found the EIR and the City's project approval to be deficient in four respects: (1) mitigation for the conversion [*2] of farmland to urban use through the payment of mitigation fees; (2) the need for buffer zones to protect existing agricultural uses; (3) the danger posed to the project by a propane facility 3,500 feet from the project site; and (4) the preparation of a separate EIR for a project to reconfigure a nearby freeway interchange. Because it concluded that the EIR process would have to begin anew, the court found it unnecessary to consider whether the EIR and the City gave sufficient consideration to project alternatives.

1 CEQA is contained in the Public Resources Code, commencing with section 21000. (Further section references are to the Public Resources Code unless otherwise specified.) Guidelines for the implementation of CEQA are contained in title 14 of the California Code of Regulations, commencing with section 15000. (Further references to the Guidelines refer to title 14 of the California Code of Regulations.)

On appeal, we agree that mitigation for the loss of farmland requires additional environmental [*3] review, but we otherwise reject the trial court's determinations. We conclude the respondents may raise the question of project alternatives in defense of the judgment, but we consider and reject that contention. We also conclude the

City need not commence the entire EIR process anew. Accordingly, we will reverse the judgment and remand the matter to the trial court for preparation and entry of a judgment consistent with these conclusions.

FACTUAL AND PROCEDURAL BACKGROUND

The project at issue in this proceeding, the Lent Ranch Marketplace, is proposed for property owned and controlled by the Lent family. The project consists of the proposed development of approximately 294.8 acres of real property located in the southern portion of the City. The property is roughly triangular in shape. The southern border of the project is Kammerer Road. The western border runs perpendicularly to Kammerer Road. The project is bordered to the east by West Stockton Boulevard and State Route 99. West Stockton Boulevard and State Route 99 run at an angle along the project edge so that the property is narrowest at its northern limit and widest at its southern limit.

The project property has been [*4] used for agricultural production, with crops that include oats, barley, hay, and wheat. The land to the east, across West Stockton Boulevard and State Route 99, consists of industrial, commercial, residential, and vacant land. The land to the south, across Kammerer Road, is in agricultural production. The land immediately to the west of the project has been in agricultural production, but is under consideration for residential development as the proposed South Pointe project. The northern edge of the project property borders on land that is designated Agricultural-Urban Reserve under the general plan of the County of Sacramento (the County), which is also the City's general plan. [2] That designation applies to land that is identified for urban expansion after the 20-year planning period of the general plan.

2 Elk Grove recently incorporated as a city. When it did so it adopted the County's general plan as its own.

The City and County general plan establishes an urban policy boundary which is intended to enclose [*5] the existing urban area plus lands that could be developed by the 2010 plan horizon date. The general plan also establishes an urban services boundary which delimits the outermost extent of future urban services. The project property is within the urban policy boundary and the urban services boundary. In fact, Kammerer Road is both the southern boundary of the City limits and the urban services boundary.

The project proponents propose to develop the property into six districts. The project would include a district with a regional shopping mall, a community commercial district, a neighborhood commercial district, an office and entertainment district, a visitor commercial district, and a multi-family residential district. At buildout, the project would include 3,091,000 square feet of commercial space and 280 residential units. The proponents do not plan to construct the project all at once; rather, they anticipate that development would occur consistent with market conditions, likely over a 10-year to 15-year period.

The project proponents sought the City's approval for a general plan amendment, a rezoning and zone text amendment, a tentative subdivision map, a transportation system [*6] management plan, and a development agreement. The City prepared an initial study and determined that an EIR should be prepared. Following preparation of a draft EIR, a comment and review period, and administrative hearings, the City certified a final EIR and approved the project.

Two petitions for writs of mandate challenging the City's actions were filed. Pursuant to stipulation of the parties, the actions were consolidated. After a hearing, the trial court found that the EIR was inadequate with respect to four issues: (1) consideration of possible mitigation for the loss of agricultural land; (2) consideration of the mitigation of land use conflicts by the creation of buffer zones; (3) the significance of the hazard posed by the Suburban Propane facility located about 3,500 feet from the project; and (4) the omission of the reconstruction of the Grant Line Road and State Route 99 interchange from the project description. The court found it unnecessary to consider the claim that the analysis of project alternatives in the EIR is deficient. The court rejected the contention that the project is inconsistent with the City's general plan.

DISCUSSION

I. Standard of Review

[*7] "CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com. (1997) 16 Cal.4th 105, 112.*) CEQA applies to discretionary projects to be carried out or approved by a public agency. (ß 21080, subd. (a).) In this respect, a project is any activity that may cause, directly or indirectly, a physical change in the environment. (ß 21065.)

The EIR has been described as the "heart of CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392, 253 Cal. Rptr. 426.*) An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of a project, describes ways to minimize significant environmental effects, and suggests alternatives to the project. (*Mountain Lion Foundation v. Fish & Game Com., supra, 16*

Cal.4th at p. 113.) Unless a project falls within one of the narrow categorical exemptions from CEQA, an EIR must be prepared whenever it appears that a project may have a significant effect on the environment. (*Ibid.*; *Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 390.*) [*8]

Where, as here, the City has prepared and certified an EIR, then in a judicial action to challenge the City's decisions on the ground of noncompliance with CEQA, "the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (ß 21168.5.) It is not a trial court's function to pass on the correctness of the EIR's environmental conclusions, but only on its sufficiency as an informative document. (*City of Fremont v. San Francisco Bay Area Rapid Transit Dist. (1995) 34 Cal.App.4th 1780, 1786.*) In doing so, the court does not look for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Ibid.*)

On appeal from a decision of the trial court, we apply the same standard that was applicable in the trial court and do not defer to that court's conclusions. (*San Joaquin Raptor/Wildlife Rescue Center (1994) 27 Cal.App.4th 713, 722*; *Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 712.*) [*9] With this standard in mind, we will turn to the issues presented.

II. Loss of Agricultural Land

A. Factual Background

In a program begun by the United States Department of Agriculture and continued by the state Department of Conservation, state lands have been mapped to reflect their importance to agriculture. The categories to which lands are assigned, in descending order of importance, are prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, grazing land, urban and built-up land, and other land. About half of the productive farmland in Sacramento County is classified as prime farmland. The Lent Ranch is not prime farmland; rather, all but about 10 acres of the project site is designated as farmland of statewide importance. [3] The 10 acres occupied by the Lent Ranch complex are designated urban and built-up land.

> 3 Pursuant to existing soil rating systems, the soils on the project site are rated poor or very poor, meaning they have severe or very severe limitations that reduce the choice of crop, require conservation practices, or both. The draft EIR states that farming on the land is no longer economically viable due to poor soil quality, high energy and water costs, and decreased commodity prices. Nevertheless, the land has been used for agricultural production and is considered farmland of statewide importance.

[*10] Policy CO-55 of the City and County general plan provides that the conversion of more than 50 acres of farmland of statewide importance is a significant environmental effect under CEQA. [4] The proposed project would convert about 285 acres of farmland of statewide importance, plus about 8 acres for an off-site detention basin. Accordingly, the draft EIR identified the conversion of farmland as a significant environmental effect.

> 4 The general plan does not preclude the conversion of some farmland to urban uses, in fact, it provides for planned conversion of some lands. In the general plan the project site was designated for potential urban development by 2010, the general plan's horizon date. In providing for conversion of some farmland in the general plan, the County considered the effect significant but made findings of overriding considerations.

The draft EIR concluded that there is no feasible mitigation measure available to offset the loss of farmland. It reasoned that (1) where the conditions exist [*11] which are necessary to warrant classification of land as farmland of statewide importance, the land has already been so classified and it would not be possible to create or manufacture more farmland of statewide importance, and (2) while preservation of other existing farmland or the payment of fees for the purchase of conservation easements would help to limit future losses, such measures would not reduce the specific loss of farmland converted to urban use through the project. [5]

> 5 Policy AG-5 of the City and County general plan calls for mitigation of the loss of prime farmlands or lands with intensive agricultural investments through CEQA requirements to provide for protection of nearby farmland. The project site is not prime farmland and does not contain intensive agricultural investments.

During the comment period, the County suggested that the loss of farmland could be mitigated in a manner similar to a mitigation measure the County adopted in approving the East Franklin Specific Plan, a project about [*12] three miles to the west of the Lent Ranch project. Specifically, the County imposed a requirement that for every acre developed in the East Franklin project, the applicant would preserve .63 acres of agricultural land within the area, or would contribute $ 950 into a fund for the purchase of conservation easements or similar instruments. [6] A number of other commentators

agreed that a mitigation measure such as that adopted for the East Franklin project should be imposed for this project.

> 6 The County said the 63 percent ratio for East Franklin was based upon the fact that only a portion of the project involved farmlands of statewide importance. It suggested the mitigation ratio for Lent Ranch should probably be higher because the Lent Ranch property is almost all farmland of statewide importance.

City staff contacted the Department of Conservation, the cities of Davis, Vacaville, Dixon, and Livermore, and the County of Sonoma to obtain information on agricultural conservation programs. The Department of Conservation [*13] recommends that local governments impose a requirement for conservation easements, Williamson Act contracts, or payment of a mitigation fee to preserve farmlands on an acre-for-acre basis. The cities of Davis and Livermore impose such a requirement on project approvals. The cities of Vacaville and Dixon are considering adopting such a program. The County of Sonoma has a program for land preservation through conservation easements but apparently does not impose it in the development process.

City staff continued to recommend against imposition of a conservation mitigation requirement on the Lent Ranch project. Staff noted that to impose a mitigation measure under CEQA, there must be an essential nexus between the mitigation measure and a legitimate governmental interest, and the measure must be roughly proportional to the impacts of the proposed project. (Guidelines, ß 15126.4, subd. (a)(4); see *Dolan v. City of Tigard (1994) 512 U.S. 374 [129 L. Ed. 2d 304]*; *Nollan v. California Coastal Comm'n (1987) 483 U.S. 825 [97 L. Ed. 2d 677]*.) Staff concluded that the proposed mitigation measure would not meet this test because there had been no nexus [*14] study or ordinance by the City or the County to implement such a requirement. Staff also asserted that conversion of the land to urban use would result in permanent loss of the resource that could not be avoided, minimized, or rectified.

During the review process, the project proponents informed the City that they would be willing to pay mitigation fees of $ 950 an acre to be placed by the City into a fund for the purchase of conservation easements or similar instruments. [7] City staff continued to maintain that payment of a mitigation fee would not mitigate the impact of the project. However, they recommended that if such a program were to be adopted, it should be clearly defined, the level of mitigation should be clearly identified, and a process for determining fees should be established.

> 7 The project proponents also agreed to pay any subsequently approved increase in the fee or an adjustment based on the Engineering News Record Index, whichever is less.

In the end, the City adopted a development agreement [*15] requiring the payment of a mitigation fee. But the City found that payment of the fee would not mitigate the impact of the project below a level of significance. The City adopted a statement of overriding considerations for the project.

The trial court concluded that CEQA allows mitigation through compensatory actions, including the payment of fees, which replace, or provide substitute, resources or environments. The court concluded that the EIR's and the City's findings that the impact from conversion of farmland to urban use cannot be mitigated are contrary to CEQA, that the error was not cured by the fact the project proponents agreed to pay a mitigation fee, and that the agreement was made without the analysis and public comment required by CEQA.

B. Analysis

In this respect, we agree with the trial court. The EIR said, and the City found, that the loss of farmland of statewide importance due to the project would be a significant environmental impact that cannot be mitigated below a level of significance. This finding is supported by ample evidence and is therefore unassailable on review. But the City then appeared to proceed on the basis that, if a significant environmental [*16] effect cannot be mitigated to a level below significance, then mitigation is not required and a statement of overriding considerations is sufficient to approve the project.

Mitigation and the requirement of a statement of overriding considerations are not mutually exclusive. The Legislature requires that, when a project will have significant environmental effects which cannot be mitigated below a level of significance, then the responsible agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant environmental effects before approving the project. (ß 21081, subd. (b).) On the other hand, the Legislature has declared a policy that feasible mitigation measures must be adopted whenever they would substantially lessen the significant environmental effects of the project. (ß 21002.) Nothing in CEQA would support the view that a statement of overriding considerations would relieve a public agency of the duty to adopt feasible mitigation measures which would substantially lessen the significant environmental effects of a project simply because those measures would not reduce the impact below a level of significance.

[*17] In our view, under CEQA the requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures, and whether they will substantially lessen the significant environmental effects of the project. (ßß 21002, 21081, subd. (a)(3); *A Local & Regional Monitor v. City of Los Angeles (1993) 12 Cal.App.4th 1773, 1790.*) The requirement is not abated simply because the measures will not lessen the effects to below a level of significance. Accordingly, a statement of overriding considerations does not exempt a project from mitigation if there are feasible measures that would reduce substantially, albeit not eliminate, the significant environmental effects of the project.

The CEQA Guidelines recognize that mitigation may include "compensating for the impact by replacing or providing substitute resources or environments." (Guidelines, *ß 15370, subd. (e).*) Our Legislature has recognized that conservation easements are an appropriate and desirable means of protecting agricultural lands against conversion to urban use. (ßß 10201-10202.) During the administrative proceedings, the City learned the Department of Conservation [*18] recommends that local governments mitigate the loss of farmlands through development by imposing a requirement for conservation easements, Williamson Act contracts, or the payment of a fee to preserve farmlands. Other jurisdictions, including the County, have imposed such a requirement. The EIR recognized that the preservation of existing farmland or the payment of fees for the purchase of conservation easements would help to limit future loss of farmland. And the project proponents by agreeing to pay, and the City by agreeing to accept, mitigation fees tacitly agreed the loss of farmlands can be mitigated through the payment of mitigation fees. Thus, we are not concerned here with a situation in which the City has found, as a factual matter, that the loss of farmlands cannot be mitigated. What the City did find is that mitigation will not reduce the impact below a level of significance. As we have noted, that finding does not relieve the City of the duty to mitigate to the extent feasible, as the City has in fact attempted to do by agreeing to accept mitigation fees.

The project proponents point to *Friends of the Kangaroo Rat v. California Dept. of Corrections (2003) 111 Cal.App.4th 1400* [*19] (hereafter *Friends of the Kangaroo Rat*), a recent decision of the Court of Appeal, Fifth Appellate District, which adopted the view, asserted by the City's staff here, that because a conservation easement would not create new farmland, it is not mitigation for the conversion of existing farmland. (*Id. at p. 1409.*)

Friends of the Kangaroo Rat involved the judicial review of a so-called revised cumulative impacts analysis (RCIA) concerning the proposed conversion of agricultural land for use as a correctional facility. Rejecting the contention that an agricultural easement would constitute mitigation, the Fifth Appellate District stated: "The suggested agricultural easement would presumably not create any new farmland where no farmland presently exists . . . . Thus an agricultural easement would not compensate for a loss of farmland 'by replacing or providing substitute resources or environments' (Guidelines *ß 15370, subd. (e)*) . . . . At best, such an easement might prevent the future conversion of some as yet unidentified parcel of farmland to a nonagricultural use. Although appellant might deem this to be a desirable result, appellant's desire for such a [*20] result does [not] turn appellant's proposed action into mitigation of the cumulative impact (on farmland) of this project and of the past, present, and probable future projects properly considered in the RCIA." (*Friends of the Kangaroo Rat, supra, 111 Cal.App.4th at p. 1409.*)

A request to depublish *Friends of the Kangaroo Rat* is pending in the California Supreme Court. In any event, we disagree with the Fifth Appellate District's holding. In this respect, we find a number of legislative pronouncements to be persuasive.

In the Williamson Act, the Legislature has set forth certain findings including: "(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation. [P] . . . [P] (c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in [*21] that it will discourage discontiguous urban development patterns which unnecessarily increase the costs of community services to community residents. [P] (d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments. . . ." (*Gov. Code, ß 51220.*)

In 1979, the Legislature provided for the enforceability of conservation easements by adding a chapter to the Civil Code. (*Civ. Code, ßß 815-816*; Stats. 1979, ch. 179, pp. 398-400.) In doing so, the Legislature found and declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California." (*Civ. Code, ß 815.*)

The Legislature enacted the Agricultural Land Stewardship Program Act of 1995 in order to, among other things, establish a [*22] state program to promote the establishment of agricultural easements. (ß 10200 et seq.) In doing so, the Legislature found and declared among other things: "(b) The growing population and expanding economy of the state have had a profound impact on the ability of the public and private sectors to conserve land for the production of food and fiber, especially agricultural land around urban areas. [P] (c) Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. These lands contribute to the economic betterment of local areas and the entire state and are an important source of food, fiber, and other agricultural products. Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities. [P] (d) The long-term conservation of agricultural land is necessary to safeguard an adequate supply of agricultural land and to balance the increasing development pressures around urban areas. . . ." (ß 10201.)

The Legislature also declared the intent, among other things, to "(c) Encourage long-term conservation of productive agricultural [*23] lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians. [P] (d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land. [P] (e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation. . . ." (ß 10202.)

In addition, the Legislature has added provisions to CEQA to require that the Resources Agency, in consultation with other state and federal agencies, takes steps to ensure that the environmental effects of agricultural land conversions are quantitatively and consistently considered in the environmental review process. (ßß 21061.1, 21061.2, 21095.) In doing so, the Legislature declared, in an uncodified provision, an intent that CEQA should play an important role in the preservation of agricultural lands. (Stats. 1993, ch. 812, ß 1, subd. (d), p. 4428.)

These legislative acts reflect that conversion of agricultural land to other uses has been a matter of significant concern to the Legislature for nearly four decades. Indeed, the Legislature regards the preservation [*24] of farmland to be one of the most important environmental assets of the state (*Civ. Code, ß 815*; *Gov. Code, ß 51220, subd. (d)*); recognizes that conversion of farmland to other uses, particularly urban use, inevitably creates development pressures that have a profound impact on the ability of the public and private sectors to conserve other land for agricultural use (ß 10201, subds. (b)-(d)); regards conservation easements as an important and necessary means of combating the development pressures created by the conversion of farmland (ßß 10200 et seq.; *Civ. Code, ß 815*); and intends that CEQA should play an important role in the preservation of farmlands. (Stats. 1993, ch. 812, ß 1, subd. (d), p. 4428.)

Under CEQA, mitigation is not limited to measures that would entirely avoid the environmental impacts of a project; rather, mitigation includes measures that would substantially lessen the significant environmental effects of the project. (ß 21002.) Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, [*25] conservation easements can diminish the development pressures created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project. In this respect, conservation easements fall well within the concept of mitigation under CEQA.

Of course, conservation easements are not always required whenever a proposed project would convert farmland to other uses. The Legislature has not so declared and thus leaves the matter for resolution on the facts and circumstances surrounding a particular project. However, we reject the assertion that a requirement that conservation easements be obtained cannot be a feasible mitigation measure when a project will convert farmland to other uses.

Accordingly, we conclude that the issue of conservation fees as a mitigation measure should have been subject to EIR discussion. This would not be necessary if the City had an established program for the assessment and use of conservation fees. However, neither the City nor the County have established such a program. Hence, EIR discussion and public response are necessary to determine [*26] the appropriate amount of the mitigation fees to be assessed. Such fees must be fair, that is, roughly proportional to the environmental impacts of the project and not extortionist or confiscatory. (Guidelines, ß 15126.4, subd. (a)(4); see *Dolan v. City of Tigard, supra, 512 U.S. 374 [129 L. Ed. 2d 304]*; *Nollan v. California Coastal Comm'n, supra, 483 U.S. 825 [97 L. Ed. 2d 677]*.) [8] The determination of the fees solely through the procedure of offer and acceptance will not necessarily establish the appropriate amount of the fees. And EIR discussion and public response are necessary to determine how and when the fees should be paid and spent. For example, should the fees be paid up-front upon project approval or should they be paid on a per-acre basis as the property is developed? Should the fees be spent immediately or should they be held and pooled with fees from other developers? What areas or properties should have priority for acquisition? It seems obvious that preservation of farmland relatively isolated from urban

land uses would be cheaper but less efficacious than preservation of farmland that is pivotal in the effort to prevent urban [*27] sprawl. These are matters that can and should be addressed through an EIR with an opportunity for public response.

> 8 The City need not wait to impose a fee until after it adopts an ordinance to implement a fee program. The City can impose an in-lieu fee on an ad-hoc basis provided the fee satisfies the *Nollan/Dolan* standard. (*Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 876.*)

This conclusion does not mean the City is required to start the EIR process anew. Under CEQA, when an issue arises that requires more environmental discussion than was in the EIR, the matter may be addressed through an addendum to the EIR, through a supplement to the EIR, or through a subsequent EIR, whichever is most appropriate under the circumstances. (Guidelines, ßß 15162-15164.) When the City determined to accept mitigation fees, additional discussion became necessary. While we do not purport to dictate the manner in which the City must proceed, we do agree with the trial court that this matter must [*28] be subject to environmental review in some sufficient manner.

III. Buffer Zones

A. Factual Background

The draft EIR concluded that the project would place urban land use within a primarily agricultural area and could impair agricultural production and result in land use compatibility conflicts. This was found to be a significant environmental impact.

The draft EIR found potential compatibility conflicts in three respects: (1) from the farmer's perspective, production could be adversely affected as a result of restrictions on pesticide, herbicide, and fungicide use, trespassing and pilferage, increased personal injury liability when trespassers hurt themselves, and littering of fields; (2) from the perspective of users of the developed lands, agricultural land uses could result in a number of nuisances and perceived hazards, such as concern over pesticide, herbicide and fungicide use, odors, dust, and slow moving vehicles; (3) from a growth-inducing perspective, urban use of the project site could result in increased pressure on the City or County to modify the urban policy area or the urban service boundary to permit conversion of agricultural land to urban use for the [*29] economic benefit of the landowner.

The draft EIR noted that agricultural properties in proximity to the project would be protected against nuisance complaints by the City's and/or the County's right-to-farm ordinance. Under a right-to-farm ordinance, a farm operation cannot be found to be a nuisance if the farmer adheres to applicable laws and policies. (See also *Civ. Code, ß 3482.5, subd. (a)(1).*) [9]

> 9 "No agricultural activity, operation, or facility, or appurtences thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began." (*Civ. Code, ß 3482.5, subd. (a)(1).*)

The draft EIR noted that, under [*30] state law and county policy, the use of restricted chemicals is regulated pursuant to a permit process that is designed to minimize the effect on adjacent lands. The draft EIR further found the uses contemplated for the southern portion of the project and for most of the western portion of the project are not sensitive land uses and would not be occupied by any person on a 24-hour basis. In addition, the Kammerer Road right of way would separate the project from agricultural uses to the south. The small northern border of the project, and a portion of the north-western border, would be devoted to multi-family residential use which would be adjacent to agricultural use. However, if the proposed South Pointe project obtained approval, the interface along the western border of the project would be eliminated. And the eventual development of the Laguna Ridge Conceptual Study Area would eliminate the interface at the northern border of the project.

The draft EIR concluded that trespassing and pilfering would be easier with the proposed project in place, but that (1) the project would provide for increased law enforcement personnel and an on-site security force, and (2) the types of crops [*31] grown in the area, oats, barley, and wheat, are not the types of crops that entice trespassers and pilferers.

The draft EIR said that the agricultural odors of concern are generally those associated with dairy farms, but that there are no dairy farms in the vicinity of the proposed project and it was not anticipated that odors would be significant.

With respect to the growth-inducing impact, the draft EIR noted that, under the general plan, the urban services boundary was intended to be the ultimate boundary of the urban area in the County. It was intended to be permanent and not subject to modification except under extraordinary circumstances. Modification would require specific extraordinary findings and a su-

permajority vote of the board of supervisors. The draft EIR found the urban services boundary to be a constraint to growth-inducement to the south of the project site.

While the draft EIR found that these factors would minimize land use compatibility impacts, it nevertheless found those impacts to be significant and unavoidable.

During the comment period, several commentators mentioned agricultural buffers. With reference to the land south of Kammerer Road, the Sierra [*32] Club asserted that the Lent Ranch project is just the type of threat to important farmlands which was foreseen in the general plan. Asserting that more is required to protect farmlands than merely drawing a line on a map, it said that Implementation Measures D and E from the agricultural element of the general plan could provide the first step toward formulating a policy of farmland conservation. [10]

> 10 Implementation Measure D provides: "Develop and implement guidelines for design of buffers to be established between areas in a Permanent Agricultural Zone proposed for conversion from agricultural to urban use and adjacent farmlands. Develop and implement procedures for evaluating site-specific buffer proposals and making recommendations to the County Planning Commission. Title to buffer areas may be transferred to the County or other appropriate entity, but shall be credited to the proposed development as open space. Buffer design criteria shall include, but not be limited to, the following: [P] . buffers shall generally consist of a physical separation 300-500 feet wide including roadways; [P] . narrower buffers may be approved depending on the natural features of the buffer, applicable specific plan policies, and on the relative intensities of the proposed urban use and the adjacent agricultural use; and [P] . buffers shall be established on the parcel proposed for development and be fenced along its urban side and posted against trespass."
>
> Implementation Measure E provides: "Develop and implement guidelines for maintenance of buffers including, but not limited to, the following criteria: [P] . the County, a homeowners association, or other appropriate entity shall maintain buffers to control litter, fire hazards, and pests; [P] . compatible agriculture shall be allowed on buffers; and [P] . buffers may be removed once agricultural uses on all adjacent parcels have permanently closed."
>
> Implementation Measures D and E are in a part of the general plan agricultural element that states the specific objective of protecting prime farmlands and lands with intensive agricultural investments, such as orchards, vineyards, dairies, and other concentrated livestock or poultry operations, against urban encroachment. Land in the vicinity of the Lent Ranch project is not prime farmland or land with intensive agricultural investment and thus is not the specific target of Implementation Measures D and E. However, while not controlling, those measures are relevant considerations with respect to the City's decisions regarding urban development of farmland of statewide importance.

[*33] The Environmental Council of Sacramento stated that, if approved, the project "will require mitigation in the form of the protection of permanently protected agricultural buffer lands to the south." However, it saw this solution as problematic because the value of the land south of Kammerer Road was being raised by speculation regarding its development potential and there was no guarantee that the owners of land south of the urban services boundary would be willing to sell while there remained potential value for development.

South County Citizens for Responsible Growth expressed concern that development projects proposed for the area--in particular the Lent Ranch project and a project to alter the State Route 99/Grant Line Road interchange--could result in pressure on the City and the County to modify the urban policy area and the urban services boundary. Citing Implementation Measures D and E, the group said: "The City should view the Lent Ranch proposal, and the challenge it poses for farmland and habitat protection in the South County, as an opportunity to further define and implement these programmatic measures. These programmatic activities should precede or be clearly linked [*34] to any approvals of development to the edge of the [urban services boundary]."

Finally, an individual named Tim Raboy wrote to express concern that the project would create a massive potential for development past the urban services boundary. He suggested there should be a one-half mile buffer between the project and the urban service boundary.

The City found that, while land use conflicts could be minimized by existing standards and policies (such as the City's right-to-farm ordinance) and by mitigation measures adopted for the project (such as landscaping and limitations on lighting and building materials), the conflicts would be significant and unavoidable. The City also found that the 110-foot-wide Kammerer Road and an additional 20 feet of landscaped buffer on the project side of the road would serve as an effective and suffi-

cient buffer to separate the project from agricultural uses to the south.

The trial court concluded that neither the EIR nor the City's findings adequately explained why a buffer between the project and adjacent agricultural land uses would not substantially reduce land use conflicts or would not be feasible. The court said that, although the land [*35] to the west of the project was proposed for development as the South Pointe project, the project has not yet been approved and, if approved, the timing of its implementation is unknown. The court found that conflicts and adverse impacts between the residential use planned for the northern edge of the Lent Ranch property and agricultural uses to the north could be mitigated by a buffer. Finally, the court said that, assuming the traffic on Kammerer Road would be a sufficient buffer for the lands to the south, that buffer would be partially eliminated with the planned realignment of Kammerer Road and the Grant Line Road/State Route 99 interchange. The court found that the EIR failed to consider whether Kammerer Road would be a sufficient buffer after realignment.

B. Analysis

Section 21177, subdivision (a), provides: "No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination. [*36] " This statutory provision embraces the doctrine of the exhaustion of administrative remedies. [11] Among the several reasons for the doctrine is the purpose of allowing the decisionmaking body to learn of the contentions of interested parties before litigation is instituted and to allow it to act to render litigation unnecessary if it chooses to do so. (*Corona-Norco Unified School Dist. v. City of Corona (1993) 17 Cal.App.4th 985, 997.*)

> 11 Subdivision (b) of section 21177 prohibits any person from maintaining a judicial action unless that person objected to the approval of the project orally or in writing during the administrative proceedings. Section 21177 does not require that the person who seeks to raise an issue in court be the same person who raised the issue in the administrative proceedings. It is enough that the person bringing the judicial action or proceeding objected to approval of the project during the administrative proceedings and that some person raised the alleged grounds of noncompliance which are asserted in court.

[*37] Generalized objections to a project are not sufficient to satisfy the requirement of the exhaustion of administrative remedies. (*Corona-Norco Unified School Dist. v. City of Corona, supra, 17 Cal.App.4th at pp. 997-998*; *Coalition for Student Action v. City of Fullerton (1984) 153 Cal. App. 3d 1194, 1197-1198, 200 Cal. Rptr. 855.*) To fulfill the requirement that an issue be first presented to an administrative agency, the issue must be presented with sufficient specificity to satisfy the purpose of the rule, i.e., to enable the decisionmaker to be informed of the nature of the contention and to address it if it chooses. (*Corona-Norco Unified School Dist. v. City of Corona, supra, 17 Cal.App.4th at pp. 997-998*; *Coalition for Student Action v. City of Fullerton, supra, 153 Cal. App. 3d at pp. 1197-1198.*) Thus, while we would not insist an issue be raised with the same formality that might attend a judicial proceeding, it must appear the issue was raised with sufficient specificity to conclude that it was in fact presented to the decisionmaking entity for its consideration.

We agree with the project proponents that [*38] the question of agricultural buffers on the western and northern borders of the property was not presented in the administrative proceedings. The draft EIR identified potential direct land use compatibility conflicts (such as trespassing and pilferage on farmlands, and urban users' fears of nuisances and hazards from farming) and the potential indirect conflict of increased pressure for modification of the urban services boundary to allow conversion of land that is identified as permanent agricultural under the general plan.

The submitted comments that mentioned agricultural buffers have been noted above. Each of the comments that raised the buffer issue was specifically concerned with protecting the urban services boundary against expansion. Each of the comments referred to the need for buffers to minimize the pressure on the City and the County to expand the urban services boundary. None of them suggested that buffers were necessary to protect agricultural uses against direct conflicts, such as trespassing and pilfering, or to protect urban uses from agricultural practices. None of them suggested that buffers should be established along the western or northern borders of the project [*39] property.

The Department of Conservation contends that South County Citizens for Responsible Growth raised the issue of buffers without limitation to any particular compass border of the project and, therefore, the buffer question was presented as a general issue sufficient to include the western and northern boundaries of the property. We disagree. South County Citizens for Responsible Growth addressed buffers under the heading: "The 'Growth Inducement' Section of the DEIR Fails to Analyze the Probable Indirect Long-Term Growth Inducing Effects."

The comment specifically refers to pressure on the City and the County to modify the urban policy area and the urban services boundary, and states the draft EIR hangs these boundaries out to dry. The comment says the City should develop programmatic measures for farmland and habitat preservation that precede, or are linked with, development approvals to the edge of the urban services boundary. This comment did not suggest that buffers are necessary to avoid direct land use conflicts or to separate the project from land within the urban services boundary.

Consequently, the question of the need for agricultural buffers along the western [*40] and northern borders of the project was not presented to the City and cannot properly be raised in the judicial proceedings. We do not reach this conclusion merely because the comments that spoke of buffers referred exclusively to the land south of the project. In addition to this fact, the sole focus of the comments was the need to preserve the urban services boundary against expansion, which is an issue that does not apply to the lands to the west and the north of the project since they are already within the urban services boundary. Nothing in the comments reasonably presented the alleged need for buffers along the western and northern borders of the project. Accordingly, the trial court erred in addressing the question of buffers along the western and northern borders of the project.

The City found that Kammerer Road and an additional 20 feet of landscaping on the project side of the road would be a sufficient buffer between the project and agricultural uses to the south. We must uphold this determination unless it is not supported by substantial evidence. (ß 21168.5.) The substantial evidence rule is well established and understood. We do not substitute our judgment for that [*41] of the City; instead, we must uphold the City's determination unless we are satisfied that, on the basis of the record, no reasonable factfinding decisionmaker could have reached the same conclusion. (See *Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 571, 574.*)

The EIR concluded that direct land use conflicts with farmlands to the south would be minimized by a number of factors, including the City's and the County's right-to-farm ordinances, the fact that the land uses planned for the southern portion of the project are not sensitive land uses, the fact that the project would provide for increased law enforcement and an on-site security force, and the fact that the types of crop grown in the area are not the types of crop that entice trespassers and pilferers. The City found that mitigation measures adopted for the project, such as landscaping requirements and limitations on lighting and building materials, would mitigate direct land use conflicts. While the City did not find that land use conflicts would be eliminated, it did find that, under the circumstances, Kammerer Road and an additional 20 feet of landscaped buffer would be a sufficient [*42] buffer between the project and agricultural lands to the south.

Under the substantial evidence rule, in order to interfere with the City's determination, we would be required to declare that, as a matter of law, the buffer provided is insufficient and additional buffering space is legally mandated. We are unable to do so. The need for, and adequacy of, agricultural buffers are matters that necessarily must be determined on the basis of the particular circumstances involving and surrounding a project. This is a matter of judgment committed to the City. Under the circumstances presented, we cannot conclude that the City's determination was without evidentiary support.

The court believed that the planned realignment of Kammerer Road and the Grant Line Road/State Route 99 interchange would partially eliminate Kammerer Road as a buffer, and concluded that the City failed to consider whether Kammerer Road would remain a sufficient buffer after realignment. Kammerer Road presently runs along the entire southern border of the proposed project. Grant Line Road lies to the east of the project and terminates at State Route 99 at a location somewhat north of Kammerer Road. In the anticipated [*43] realignment, Kammerer Road would bend north from a location in the approximate middle of the southern project boundary and would run though the project site to connect with Grant Line Road at the State Route 99 interchange. However, the portion of Kammerer Road that would cease to be Kammerer Road would not be abandoned. Rather, West Stockton Boulevard would be reconfigured to run through the project property, cross the new Kammerer Road at a signalized intersection, and then connect with, and become the old portion of, Kammerer Road. Accordingly, realignment of Kammerer Road would not eliminate the buffer provided by the roadway.

The EIR concluded that the project would have a growth-inducing impact. Urban use of the project property, and the development of other properties, could result in pressure on the City and the County to modify the urban services boundary to permit development of agricultural property which, under the general plan, is supposed to remain agricultural land. The EIR found that the general plan constituted the greatest constraint to development south of the project. Under the general plan, the urban services boundary was declared the permanent boundary of urban [*44] services. It is not subject to modification except under extraordinary circumstances and by super-majority vote. In response to the comments suggesting that buffers be established, the final EIR states that agricultural buffers would not minimize the growth-inducing impacts of the project except to the extent they would be sufficient to make the project infeasible and thus maintain the status quo for the project site.

It seems inevitable that, as the lands within the urban services boundary are converted to urban use, developers will be induced to look across that boundary for land for prospective projects. It also seems inevitable that, when the prospect of development arises, at least some of the owners of land outside the urban services boundary will be enticed to sell or otherwise seek conversion of the land for their financial benefit. What is not obvious is how requiring Lent Ranch to incorporate additional buffers beyond Kammerer Road and the landscaping buffer would reduce or eliminate those inevitabilities. Under the circumstances, we cannot reject the City's determination that additional buffers would not mitigate the growth-inducing impacts of the project.

For these reasons, [*45] the trial court erred in finding that the EIR and City did not adequately consider the issue of agricultural buffers.

IV. Suburban Propane

A. Factual Background

Suburban Propane maintains a facility approximately 3,500 feet, or two-thirds of a mile, from the proposed project site. The facility consists of four 60,000-gallon pressurized storage tanks and two 12,000,000-gallon refrigerated storage tanks. [12] Suburban Propane receives propone by tank truck delivery, with a typical capacity of 10,000 gallons, and by railcar delivery, with a typical capacity of 33,000 gallons. Propane stored at the facility is used to fill tank trucks and railcars for off-site deliveries. On average, Suburban Propane handles about 120,000 gallons of propane each day. Next to the Suburban Propane facility, Georgia-Pacific maintains a facility with a 40,000-gallon storage tank in which it stores formalin, which is a solution of water and formaldehyde.

12 Propane is stored in liquid form. Storage of propane in liquid form requires the use of pressure, refrigeration, or some combination of both. The pressurized storage tanks at the Suburban Propane facility have a nominal capacity of 60,000 gallons, but in order to maintain pressure cannot be filled to more than 80 percent of capacity, thus they do not hold more than 48,000 gallons at any one time.

[*46] A number of safety studies have been performed with respect to the Suburban Propane and Georgia-Pacific facilities. In 1992, Dames & Moore did a screening-level hazard analysis for the County. A screening-level analysis is not a formal hazards and operability study or hazard evaluation, and it does not attempt to identify the probability that any particular scenario may occur; rather, it simply attempts to identify and describe worst-case release scenarios. [13]

13 The Dames & Moore report said the probability of a release of propane that would impact off-site individuals would be small. While there are formal methods for estimating such probabilities, these were beyond the scope of the study.

Dames & Moore concluded that the potential consequences from a release of propane included a vapor cloud or flame jet fire, a liquid pool fire, an unconfined vapor cloud explosion (UVCE), vessel overpressurization and explosion, and a boiling liquid-expanding vapor cloud explosion (BLEVE). Of these, a UVCE or a BLEVE [*47] presented the greatest potential danger to persons off-site. [14] The potential dangers were thermal radiation exposure from a fire and exposure to overpressure (shock waves) from an explosion.

14 A liquid boils, begins to vaporize, when, in normal atmospheric conditions, it is warmed to its boiling point. When a liquid is stored under pressure at a temperature in excess of its boiling point, then upon rapid release, such as through total vessel failure, the liquid can rapidly vaporize and expand. The virtually instantaneous vaporization and expansion of the liquid can produce an explosion with an associated pressure or blast wave. This type of event is a BLEVE. In contrast, a UVCE will occur if propane is released in a manner that causes a slower or more gradual vaporization with creation of an unconfined vapor cloud of the right density and a subsequent ignition event occurs.

The Dames & Moore report analyzed four hypothetical worst-case incidents that might give rise to danger. The analysis was used to generate [*48] hazard footprints, which consist of maps of the vicinity showing areas in which some measure of injury could occur. The footprints for two of the scenarios, a moderate refrigerated propane spill and a large refrigerated propane spill which generate a UVCE, indicate that some injuries could occur within a portion of the area of the Lent Ranch.

In 1998, Dames & Moore was hired to perform a risk analysis for a UVCE with respect to the actual conditions at the Suburban Propane facility and to define the probabilities of occurrence of such an event. On this occasion, Dames & Moore concluded that Suburban Propane would not pose a significant risk to persons at the proposed project site. The report explained that only one of the release scenarios would have any potential of having effects at the site and that scenario would require a chain of events with a probability of less than one in a billion. The scenario would require a triggering event, simultaneous failure of multiple safety control mecha-

nisms, adverse and unusual meteorological conditions, and a separate detonation point somewhere within the resulting vapor plume. The report stated that the maximum impact zone for the hypothetical [*49] UVCE scenario would be 1,700 to 2,300 feet.

Suburban Propane hired an expert, John Jacobus, Ph.D., of EFI Corporation, to conduct a study. Jacobus approached the matter from a worst-case scenario standpoint. In doing so, he did not take into account any fixed safety systems in place at the facility, including water deluge systems, jacketed tank cars, and head shields on rail cars. He discussed a number of seemingly plausible worst-case scenarios, but said that most of them were shown to be scientifically unviable. "For example, the simultaneous failure of two 12,000,000 gallon vessels of refrigerated propane, followed by rapid vaporization of the propane, dilution of the propane vapor to the flammable range, and detonative ignition of the resulting vapor cloud is, at best, fantasy." Jacobus also noted that explosive equivalents are generally expressed in equivalent units of TNT and he utilized TNT equivalents in his study. However, he cautioned that the near field overpressure of a point charge, such as TNT, is markedly different from that of a diffuse charge, such as a flammable vapor cloud, and that the use of TNT equivalents could significantly overestimate pressure-distance relationships.

[*50] Jacobus considered six worst-case scenarios. The first two, the rupture, vaporization, dilution, and detonative ignition of the contents of one or both of the refrigerated storage vessels, would be the most likely scenarios to affect persons at the Lent Ranch site, but Jacobus considered those scenarios to be scientifically unviable.

The third scenario was rupture of all four pressurized storage tanks with vaporization, dilution, dispersal of the vapor to its flammable limits, and detonative ignition. This would require simultaneous failure of all four storage tanks and the failure of the built-in safety features such as the water deluge system and the pressure control valves. In that event, fatalities could be expected to a range of one-half mile if a person were in a direct line of sight for the duration of the resulting fireball. Jacobus regarded this scenario as highly unlikely. All four pressurized tanks could only fail simultaneously, if ever, if all four were engulfed in a pool fire that raised their temperatures to or above their superheat temperature limit or they were compromised through an intentional act.

Scenario four involved the rupture of one pressurized storage [*51] tank, followed by either a vapor cloud explosion or a BLEVE. Scenario five involved the rupture of a 33,000 gallon railcar followed by either a vapor cloud explosion or a BLEVE. In each case, Jacobus found that the threshold for blistering of bare skin would extend to one-half mile if the individual were in a direct line of sight for the duration of the fireball. The sixth scenario was the rupture of a 10,000 gallon tank truck followed by a vapor cloud explosion or a BLEVE. In that case, the threshold for blistering skin would extend out to .3 miles for an individual in a direct line of sight for the duration of the fireball. Finally, although not as a scenario, Jacobus evaluated the effect of a pool fire involving the refrigerated storage tanks. He concluded that the lower limit or threshold for pain would extend to 1,600 feet for a pool fire involving one vessel and to 2,250 feet if the fire involved both vessels.

A study that is referred to as the Jukes and Dunbar study was commissioned jointly by the County Sheriff's Department and City Fire Department. This study analyzed four worst-case scenarios. The first was a railcar failure with a BLEVE. Such an event could produce a shock [*52] wave sufficient to cause limited minor structural damage to a distance of 2,380 feet. It could produce radiant heat sufficient to cause first degree burns at a distance of 2,776 feet. It could produce shrapnel projections. While shrapnel projections are generally more limited in distance, the study suggested that a safety perimeter with a radius of 3,200 feet would be prudent and realistic. The study regarded the probability of such an event to be credible, although highly remote.

The second scenario was the total failure of one of the refrigerated storage tanks with the instantaneous release of liquid refrigerated propane, the formation of a vapor cloud, and subsequent ignition of the vapor cloud. Such an event could create a shock wave sufficient to cause limited minor structural damages to a distance of 4,484 feet. It could produce radiant heat sufficient to cause first degree burns to a distance of 2,531 feet. Shrapnel projection was not applicable to this scenario.

The third scenario was the total failure and release of liquid propane from both refrigerated storage tanks with formation of a vapor cloud and subsequent ignition. That event could produce a shock wave sufficient [*53] to cause limited minor structural damage to a distance of 5,605 feet. It could produce a shock wave sufficient to shatter windows and perhaps cause additional structural damage, with danger to persons from things such as flying glass, to a distance of 3,757 feet. It could produce radiant heat sufficient to cause first degree burns to a distance of 3,163 feet. Shrapnel projection was not applicable to this scenario.

The fourth scenario involved the total failure and complete release of formalin from the Georgia Pacific tank. Formalin, when released into the atmosphere, can create a formaldehyde cloud. Although it was not ex-

pected that such a failure would occur on its own, the study assumed, without modeling the mechanics of such an event, that a disaster at Suburban Propane would be sufficient to cause a total failure of the Georgia Pacific tank. In that event, and if the failure were not involved with a fire, there could be mild health effects to a distance of 1 to 1.4 miles and potentially lethal effects could extend to .3 miles. Such an event was considered relatively remote due to the thermal energy that would be associated with an event sufficient to destroy the tank and the [*54] abundance of other ignition sources in the area. A release of formalin with a fire would create a substantially lower health risk to downwind populations.

Quest Consultants, Inc. (Quest) was retained to provide a quantitative risk analysis for purposes of the EIR. It proceeded by (1) determining the potential releases that could result in significant hazardous conditions outside of the facilities (for this purpose Quest utilized information derived from the prior studies of the matter, as well as other information); (2) determining an annual probability of each potential release (for this purpose Quest utilized industrial failure rate data bases, except for failures caused by earthquakes, which were assigned a frequency of once in 10,000 years [15]); (3) calculating the potentially lethal hazard zones for each potential release event (these calculations were repeated for numerous combinations of wind speed, atmospheric stability, and wind directions in order to account for local weather conditions); and (4) combining (2) and (3) to derive an annual risk of fatality to the public from the facilities.

15 The earthquake frequency was based upon the knowledge that refrigerated storage tanks, such as those at Suburban Propane, are commonly built to withstand the effects of an earthquake with a magnitude that is expected to occur once in 10,000 years.

[*55] Quest produced a hazard footprint depicting the annual risk of fatality from the Suburban Propane and Georgia-Pacific facilities. Quest concluded that almost all of the Lent Ranch site was between the boundaries of the 1-in-10,000,000 to 1-in-100,000,000 risk range. A small portion of the site along the northeast border, which is currently occupied by West Stockton Boulevard, was within the border of the 1-in-10,000,000 risk range. While there are no United States standards to define acceptable risk, standards have been developed in Western Australia, Hong Kong, the United Kingdom, and the Netherlands. The most common international standard for acceptability of risk is a 1-in-1,000,000 chance of fatality. For comparison purposes, the Quest report also set forth a table containing the individual risk of fatality from various day-to-day causes, all of which were substantially greater than the risk posed by Suburban Propane and Georgia-Pacific.

The Quest report noted that there is no single measure which completely describes the risk a project presents to the public. The report also noted that the consistent use of conservative assumptions in its methodology would overstate the actual [*56] risk. Finally, the report stated that the consequences associated with the deliberate efforts of a third party to cause the release of propane were addressed and would be separately provided to appropriate authorities, but that the consequences would not exceed the worst-case releases which had been considered.

The draft EIR utilized the Quest report. In doing so, it noted that Quest had utilized the other reports. The other reports were summarized and detailed comparisons of the results of all the reports were set forth. The draft EIR concluded that the potential impacts from the Suburban Propane and Georgia-Pacific facilities are less than significant. Consistent with the Quest report and the EIR, the City found that impacts from the location of the Suburban Propane and Georgia-Pacific facilities are less than significant.

The trial court found the approach of the Quest report, and the City's findings, to be fundamentally flawed. The court said that CEQA does not include the probability of an effect as a factor in the determination whether the effect is significant, and that the concept of acceptable risk is foreign to CEQA significance determinations. Finding it inappropriate [*57] to discount the possibility of criminal sabotage, the court concluded that "regardless of whether the probability of the worst-case scenarios occurring is very low or whether the probability of the criminal attempt succeeding could be reliably estimated, the worst-case scenarios of a substantial public hazard occurring at the project are realistic possibilities that preclude the EIR's finding of insignificance."

B. Analysis

There are three aspects to the trial court's ruling. First, the court concluded that the EIR and the City erred in performing and considering a probability of risk analysis. Second, the court concluded that the record precludes a finding that the risk posed by Suburban Propane is insignificant. Third, the court concluded that the City failed to adequately consider the possibility of criminal sabotage. We will address each in turn.

(1) Probability of an Occurrence

The concept of risk inherently embraces both the nature and magnitude of the harm that may occur and the likelihood of an occurrence that will cause the harm. For example, the basic test of negligent conduct requires

consideration of whether harm was sufficiently likely to occur that it would [*58] have been foreseen by a reasonable person. (See, e.g., *Weirum v. RKO General, Inc. (1975) 15 Cal.3d 40, 46, 123 Cal. Rptr. 468*; *Beresford v. Pacific Gas & Elec. Co. (1955) 45 Cal.2d 738, 746.*) In a product liability action, a product may be found to be defectively designed if it embodies excessive preventable danger, which requires consideration of, among other things, the gravity of the danger posed by the challenged design and the likelihood that the danger would occur. (*Soule v. General Motors Corp. (1994) 8 Cal.4th 548, 562*; *Barker v. Lull Engineering Co. (1978) 20 Cal.3d 413, 431, 143 Cal. Rptr. 225.*) In deciding whether a manufacturer has a duty to warn consumers of product dangers, the considerations include the nature and magnitude of the danger and the likelihood of its occurrence. (*Cavers v. Cushman Motor Sales, Inc. (1979) 95 Cal. App. 3d 338, 347-348, 157 Cal. Rptr. 142.*) It is in fact difficult to contemplate the concept of risk without consideration of both the nature and magnitude of the danger in the abstract and the likelihood of its occurrence.

We find nothing in CEQA that precludes [*59] an EIR from addressing the probability that an abstract danger might occur in determining whether a risk is significant. Section 21083, subdivision (b)(3), provides that the Guidelines prepared by the Office of Planning and Research shall require a finding of a significant effect on the environment if "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." This provision does not require a finding of a significant effect simply because some abstract danger can be hypothesized without regard to its likelihood of occurrence. In turn, the Guidelines ask an agency to determine whether a project would "create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?" (Guidelines, Appendix G, part VII, (b).) This provision contemplates consideration of the likelihood of an event in determining whether a risk is significant.

The Quest report did not purport to provide the only means of assessing the risk posed to the project; rather, it noted there is no single measure that would completely describe [*60] the risk. The EIR set forth the analysis of the Quest report, but it did not attempt to hide the ball by ignoring the other reports. Instead, it summarized the other reports and set forth detailed comparisons of the results of all of the reports.

Accordingly, the EIR served its purpose as an informational document. As we have noted, the draft EIR summarized and set forth the findings of all of the experts. After circulation of the draft EIR, the issue was thoroughly discussed and debated. Written and oral comments were submitted, and workshops and public hearings were held.

"The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185, 189, 139 Cal. Rptr. 396*; see *Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 392.*) Thus, we must conclude the Lent Ranch EIR was sufficient as an informative document and that it was not rendered fundamentally flawed by the inclusion of the Quest report's probability of risk analysis.

(2) Sufficiency of the Evidence [*61]

The conclusion of the trial court that the worst-case possibilities of harm preclude a finding of insignificance is a finding that the City's decision is not supported by substantial evidence. We disagree. We do not base our conclusion on the Quest report alone; we give due consideration to all of the reports that were considered.

The experts were not in agreement on all matters concerning Suburban Propane. However, we are concerned here solely with the Lent Ranch project. Differences of opinion as to matters which, according to the experts, would not affect Lent Ranch cannot controvert the City's findings with respect to Lent Ranch. The City found that Suburban Propane would not pose a significant risk to the Lent Ranch project and, in determining whether that finding is supported by substantial evidence, we consider only those scenarios which, according to the experts, could have a potential impact on Lent Ranch. When we focus on Lent Ranch, we find a rather strong measure of consistency in the reports.

The initial Dames & Moore report was a screening-level analysis which emphasized it did not attempt to consider the likelihood a particular event could actually occur. In that [*62] report, the only event identified which could cause injuries at the Lent Ranch property would be failure of one or both of the refrigerated storage tanks followed by formation of an unconfined vapor cloud with subsequent ignition. When Dames & Moore was subsequently asked to consider probabilities of occurrence, it concluded Suburban Propane would not pose a significant risk to Lent Ranch because that scenario would require a chain of events with a probability of less than one in a billion of occurring.

The Jacobus report considered six worst-case scenarios. Like the Dames & Moore report, the only scenarios in which he identified possible harm to persons at Lent Ranch were the failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition. Jacobus explained that some scenarios which may seem plausible in the abstract can

be shown to be scientifically unviable when the requisites for the event are considered. He considered the scenarios involving failure of the refrigerated storage tanks to be scientifically unviable. He termed the scenario involving simultaneous failure of both tanks to be "at best, fantasy."

In the Jukes and [*63] Dunbar report, as in the other reports, the only scenario at Suburban Propane that would have the potential for causing injury at Lent Ranch would be the failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition. The report did not attempt to determine the probability such an event could happen, but said that, although remote, the possibility is it could.

The Quest report quantified the risk posed by Suburban Propane in terms of an annual risk of fatality. It concluded that the risk of fatality to persons at Lent Ranch from Suburban Propane is 1-in-10,000,000 to 1-in-100,000,000.

According to the reports, the only Suburban Propane scenario with potential to affect Lent Ranch would be total failure of one or both refrigerated storage tanks, formation of an unconfined vapor cloud, and subsequent ignition causing a UVCE. Dames & Moore regarded the possibility of such an event as virtually impossible. Jacobus regarded it as scientifically unviable. Quest regarded the risk from such an event as negligible. Jukes and Dunbar characterized the possibility as remote, but said it was credible. In considering the danger posed to Lent [*64] Ranch by Suburban Propane, the City was entitled to focus on Lent Ranch and to consider the reports of the experts in their entirety, including both the abstract danger of an event and the expert's views on whether such an event could occur. In order to reject the City's finding that the risk is insignificant, we would be required to reject the Dames & Moore, Jacobus and Quest reports, reject the concurrence of Jukes and Dunbar that the UVCE scenario is remote, and place sole reliance on the Jukes and Dunbar assertion that the scenario is credible. This we may not do. The City's finding is amply supported by the evidence. [16]

> 16 Respondents South County Citizens for Responsible Growth and Environmental Council of Sacramento claim there was disagreement among the experts and that, when there is disagreement among experts, a public agency is required to find an effect to be significant. (See Guidelines, ß 15064, subd. (g), *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1607.*) That standard, however, applies in determining whether an EIR is necessary. Since an EIR is required when substantial evidence indicates a project may have a significant impact on the environment, an agency is not permitted to resolve conflicts in the expert opinions at that point. (ß 21082.2, subd. (d).) On the other hand, when an EIR has been prepared, then the agency is not only permitted, but is required to make factual determinations, and judicial review of those decisions is limited to substantial evidence review. (ß 21168.5.) In any event, when we focus upon potential impacts to Lent Ranch and disregard the experts' disputes about other matters, we do not find sharp disagreement among the experts.

[*65] (3) Criminal Sabotage

We cannot agree with the trial court that the City failed to adequately consider the possibility of criminal acts. The reports of Dames & Moore, Jacobus, and Jukes and Dunbar all accepted the possibility that criminal behavior could be the initiating cause of the worst-case scenarios which were considered. The Quest report said that the possibility of criminal acts was considered and that the analysis was separately provided to appropriate authorities.

The possibility of criminal sabotage at Suburban Propane was thoroughly discussed during the administrative proceedings, and the consensus of the experts was that a criminal could not intentionally accomplish anything more than was otherwise addressed in the various worst-case scenarios. As we have noted, in the various reports the only scenario identified that could have potential effects at Lent Ranch would be total failure of one or both refrigerated storage tanks with formation of an unconfined vapor cloud and subsequent ignition. Dames & Moore found such an event to be virtually impossible for reasons that would be beyond the control of a criminal. Jacobus found such an event to be scientifically unviable [*66] for reasons that would be beyond the control of a criminal.

In addition to the factors that would preclude an accidental UVCE event, a criminal would be faced with the fact that he or she would be required to cause total failure of a refrigerated storage tank without utilizing explosives or any other device that would provide a source of ignition. A vapor cloud cannot form unless pooled propane is allowed to vaporize without ignition of the vapor. Thus, for example, Jacobus was asked what would happen if a terrorist flew an airplane into one of the tanks. He responded that a pool fire, and nothing worse, would result. Jacobus did not believe that a pool fire involving one or both of the refrigerated storage tanks would have impacts at Lent Ranch.

It was for these reasons that the EIR stated, and the City found, the potential of criminal sabotage at Suburban Propane would not create a significant risk to per-

sons at the Lent Ranch project. Substantial evidence supports that finding.

V. The Interchange Reconstruction

A. Factual Background

The City contemplates that the State Route 99/Grant Line Road interchange will be reconfigured. It will be changed from its current hook-ramp [*67] type configuration to a modified diamond type with diagonal off-ramps and loop on-ramps in the northwest and southeast quadrants. The improvement of the interchange is a designated project in the City's general plan. It is included in the 1999 Metropolitan Transportation Plan prepared by the Sacramento Area Council of Governments (SACOG). And it is included in SACOG's Metropolitan Transportation Improvement Plan, which identifies projects to be completed in the near future. In fact, SACOG contemplated that the improvements to the interchange would be completed by the year 2001.

The City believes that improvement of the interchange is necessary regardless of whether the Lent Ranch project is approved. It was built in 1958 and was intended serve low-volume, largely rural areas. It does not meet current design standards for interchanges in urban areas and has several potentially dangerous geometric features. It already is subject to congestion and operates at unacceptable levels of service at peak periods. There are a number of existing, approved, and proposed developments within the region, including the Laguna Ridge Specific Plan, the East Franklin Specific Plan, the East Elk Grove [*68] Specific Plan, the Laguna Ridge Conceptual Study Area, the South Pointe Project, and the Lent Ranch project, which will exacerbate the insufficiency of the existing interchange.

The City regards improvement of the interchange as a public project proposed by the City that, if approved, will be constructed by the City. It has been the subject of a project study by the Department of Transportation (CalTrans) and is the subject of a separate EIR. The City will require the approval of CalTrans to construct the project.

The project description section of the Lent Ranch EIR states that the project will be served by a reconstructed interchange at State Route 99 and Grant Line Road. The interchange improvement project was included in the Lent Ranch EIR with respect to the analysis of cumulative project impacts. [17]

> 17 The Lent Ranch EIR included a number of mitigation measures aimed at reducing the effect of the traffic impacts that would be caused by the project. The reconfiguration of the Grant Line Road/State Route 99 interchange was not one of them. However, the Department of Conservation asserts that, taken together, some of the mitigation measures essentially describe the reconfiguration of the interchange. The project proponents ask us to take judicial notice of portions of the interchange draft EIR to rebut this assertion. We find it unnecessary to take judicial notice of the interchange draft EIR. The Lent Ranch EIR describes improvements to some of the surface roads and intersections at or around the interchange as mitigation measures, but it does not identify the interchange project as a specific project mitigation measure. Accordingly, we disregard the assertion that the interchange project is an identified mitigation measure and deny the request for judicial notice.

[*69] The City has an ordinance that requires the payment of development impact fees by developments in the Laguna South area. The Laguna South area contains about 4,000 acres and includes the East Franklin, Laguna Ridge, Lent Ranch, South Pointe, and Elk Grove AutoMall planning areas. The purpose of the ordinance is to allocate the cost of public infrastructure improvements to the land uses that will benefit from them. Although the ordinance is intended to require developments to contribute a fair share of the cost of improvements, in this instance the ordinance and a condition of project approval will require the Lent Ranch developers to fund much, if not all, of the cost of the interchange project and then await reimbursement as other developments pay their fair shares. The Lent Ranch contributions may be supplemented from other sources, but the City has not made a funding commitment and there is a risk that the Lent Ranch developers will not receive reimbursement if other projects do not go forward.

The trial court held that the interchange reconfiguration is a part of the Lent Ranch project. The court concluded that the City erred in preparing a separate EIR for the interchange project [*70] and should have included the interchange project in the Lent Ranch project description.

B. Analysis

Under CEQA, the concept of a project is defined broadly to include "the whole of an action, which has a potential for resulting in . . . a . . . physical change in the environment . . . ." (Guidelines, ß 15378, subd. (a); *Native Sun/Lyon Communities v. City of Escondido (1993) 15 Cal.App.4th 892, 909.*) This broad definition of a project is intended to preclude a public agency from segmenting or "chopping up" a project into several smaller projects, each with a minimal effect on the environment but which cumulatively may have significant effects.

(*San Joaquin Raptor/ Wildlife Rescue Center, supra, 27 Cal.App.4th at p. 730*; *Sacramento Old City Assn. v. City Council (1991) 229 Cal. App. 3d 1011, 1023, 280 Cal. Rptr. 478.*)

To prevent project segmentation and to ensure that an EIR is informative and legally sufficient, the first and essential step is to provide an accurate, stable, and finite project description. (*Sacramento Old City Assn. v. City Council, supra, 229 Cal. App. 3d at p. 1023*; *County of Inyo v. City of Los Angeles, supra, 71 Cal. App. 3d at pp. 192-193.*) [*71] While this can be an easy task in some cases, decisional authorities amply demonstrate that the determination of what must be included in a project description can be a difficult matter requiring the exercise of judgment. (See, e.g., *San Joaquin Raptor/Wildlife Rescue Center, supra, 27 Cal.App.4th at p. 731*; *Native Sun/Lyon Communities v. City of Escondido, supra, 15 Cal.App.4th at p. 909*; *Christward Ministry v. County of San Diego (1993) 13 Cal.App.4th 31, 45*; *Sacramento Old City Assn. v. City Council, supra, 229 Cal. App. 3d at pp. 1025-1026.*)

On judicial review of an agency's determination that an EIR adequately describes the project, we apply the same standard which is applicable to other aspects of the agency's action. We defer to the agency's factual determinations to the extent they are supported by substantial evidence, and we defer to the agency's discretionary judgments to the extent they are reasonable and not an abuse of discretion. (ß 21168.5.) We must resolve reasonable doubts in favor of the agency's findings and decision. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 393*; [*72] *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at p. 722.*) And, in considering an EIR, we do not look for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Towards Responsibility in Planning v. City Council (1988) 200 Cal. App. 3d 671, 679, 246 Cal. Rptr. 317.*) We will not interfere with an agency's certification of an EIR for alleged error unless it appears that the failure to include relevant information was such as to preclude informed decisionmaking and informed public participation. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at p. 722.*)

In considering this contention, we are guided by the decision in *Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d 376.* There, the university acquired a building and proposed to move its school of pharmacy biomedical research units into a portion of the building. (*Id. at p. 389.*) Most of the building was under lease to other tenants and thus was unavailable to the university. (*Id. at p. 393.*) [*73] The university intended to retake possession upon expiration of the leases, but had not formally decided the uses to which the additional space would be put. (*Id. at p. 394.*) The EIR that was prepared for the relocation of the biomedical research units did not address anticipated future uses of the facility. (*Ibid.*) The Supreme Court found this to be error, holding that an EIR must address future expansion or other action if it is a reasonably foreseeable consequence of the initial project and will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. (*Id. at p. 396.*)

The Court of Appeal had held the EIR's project description was legally inadequate. The Supreme Court said: "Although we agree with the result reached by the Court of Appeal on this issue, we believe the issue should not be rigidly defined as whether the project description was adequate. As we understand the parties' arguments, the fundamental dispute is whether the EIR adequately discussed future uses of the Laurel Heights facility and their environmental effects. Thus, the challenge is not just to the project description [*74] but to the EIR's discussion of future environmental effects." (*Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 394, fn. 6.*)

A number of appellate decisions have found error in the failure of an EIR to discuss reasonably foreseeable consequences of a project, often concluding that the error was in the project description. But in such cases the real error is in the failure of the EIR to address reasonably foreseeable consequences at all. For example, in *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at pages 731* and 733, it appeared that a development project would require expansion of the local sewage treatment facility, yet the EIR was wholly silent on the scope and the environmental consequences of the expansion. In *Santiago County Water Dist. v. County of Orange (1981) 118 Cal. App. 3d 818, at page 829, 173 Cal. Rptr. 602*, a proposed mining operation would require the construction of water facilities and the continuous delivery of substantial amounts of water to the project. While that was undoubtedly one of the significant environmental effects [*75] of the project, the EIR was wholly silent with respect to the facilities to be constructed and the pros and cons of delivering the amount of water the mine would require.

On the other hand, when an EIR adequately discusses reasonably foreseeable or reasonably related projects, then generally it is not critical that the project description include such projects. (See, e.g., *Native Sun/Lyon Communities v. City of Escondido, supra, 15 Cal.App.4th at pp. 909-910*; *Christward Ministry v. County of San Diego, supra, 13 Cal.App.4th at pp. 44-45*; *Towards Responsibility in Planning v. City Council, supra, 200 Cal. App. 3d at p. 681.*) This is consistent with the Supreme Court's indication that the real question must be whether

an EIR adequately discusses future or related projects, rather than a rigid insistence on a particular project description. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 394, fn. 6.*) It is consistent with the rule that we must look for adequacy, completeness, and a good faith effort at full disclosure, rather than perfection in an EIR. (*Towards Responsibility* [*76] *in Planning v. City Council, supra, 200 Cal. App. 3d at p. 679.*) And it is consistent with the rule that we must defer to an agency's judgment and discretion unless it is clear that the facts and circumstances compel a contrary result. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra, 47 Cal.3d at p. 393*; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra, 27 Cal.App.4th at p. 722.*)

In this case, the City found, on ample evidence, that the interchange project is necessary regardless whether the Lent Ranch project is approved. The reconstructed interchange will serve a number of existing, approved, and proposed projects in the region, as well as Lent Ranch. The City regards it as a public project proposed by the City which, if approved, will be constructed by the City. Under the circumstances, the City's decision to prepare a separate EIR for the interchange project was reasonable and is supported by substantial evidence.

After deciding to prepare a separate EIR for the interchange project, the City did not ignore the interchange project in the Lent Ranch EIR. The Lent Ranch project [*77] description states that the project would be served by a reconstructed interchange that was in the City and CalTrans approval process. The interchange project is identified as a project with potential cumulative impacts. And it is included in the Lent Ranch EIR with respect to the analysis of cumulative impacts. Under the circumstances, we conclude that the Lent Ranch EIR provided sufficient information about the interchange project and its effects as to serve its purpose as an informative document. In fact, we perceive little that would be gained by compelling the City to include the interchange project in the Lent Ranch project description and to prepare a joint EIR for both projects.

VI. Project Alternatives

Respondents South County Citizens for Responsible Growth and Environmental Council of Sacramento assert that the EIR failed to adequately analyze project alternatives. The trial court found it unnecessary to consider this contention because its rulings on other contentions would require the City to begin the EIR process anew and would likely require a new alternatives analysis.

The City and the project proponents contend that respondents cannot raise this question on [*78] appeal because they did not file a cross-appeal. As a general rule, a respondent may not challenge a judgment, finding, or intermediate ruling of a trial court without filing a cross-appeal. However, since a correct judgment should be affirmed regardless of the trial court's reasoning, a respondent is permitted to raise issues in defense of the judgment, i.e., issues that would support affirmance of the judgment regardless of whether we agree with the contentions raised by the appellant. (*Code Civ. Proc., ß 906*; *Adoption of Lenn E. (1986) 182 Cal. App. 3d 210, 218, 227 Cal. Rptr. 63.*)

In this case, the trial court found four separate defects in the City's EIR process and ruled that the City would be required to begin the EIR process anew. In our discussion above, we have agreed with the trial court on only one of the asserted defects, and have concluded that the City can correct the defect without beginning anew the entire EIR process. If respondents are correct that the alternatives analysis in the EIR is deficient, the City would be required to begin the EIR process anew, and we would be obliged to affirm the judgment to that extent. [*79] Hence, this is an issue the respondents can raise in defense of the judgment even though they did not cross-appeal. Consequently, we proceed to consider that issue.

A. Factual Background

The draft EIR addressed a number of project alternatives including: (1) the no-project alternative (this included two subparts, no project with no development and no project with division of the property into four agricultural-residential parcels consistent with existing zoning); (2) a modified mixed-use alternative (under this alternative, the project site would be primarily used for residential development with a small portion for a park and commercial use); (3) a second modified mixed-use alternative (under this alternative, the proposed commercial use of the property would be reduced by about 50 percent and a large single family residential use would be added); (4) a reduced density alternative (this alternative would reduce the size of the proposed commercial development by about 30 percent); and (5) an off-site alternative (with respect to this alternative, the draft EIR considered several alternative locations and decided that the site located at the intersection of West Stockton Boulevard [*80] and Poppy Ridge Road was the most viable alternative site for consideration as a project alternative).

The draft EIR indicates there were a number of alternatives considered but rejected for full discussion. One alternative would have been reduction of the development to approximately 23 percent of its proposed size. This was rejected as too small to be feasible economically or to accomplish project objectives. Another rejected alternative would have called for scattering the project

components onto a number of noncontiguous parcels in the Laguna area. This was considered not to be feasible for a number of reasons. And the City considered and rejected alternative sites near Elk Grove Boulevard and near the Elk Grove AutoMall.

After the final EIR was published, South County Citizens for Responsible Growth asked the City to consider an alternative for a reduced-size development in the Poppy Ridge area that would be called the Park Center. The City addressed that alternative in its response to comments.

In approving the project, the City rejected each of the alternatives. Alternative 1, the no project alternative, was rejected because it would not satisfy any of the project objectives [*81] and would not provide any of the benefits derived from the project, including jobs, economic benefits, housing, and the commercial center. Alternatives 2 and 3 were rejected because they are not environmentally superior to the project and would not attain many of the project objectives. The City found that alternative 4, the reduced-size alternative, would reduce many of the environmental impacts of the project, but rejected it because it would not attain many of the project objectives, including the creation of a high-quality comprehensive and fully integrated commercial, office, retail and entertainment development on one site rather than fragmented land uses spread out over several sites, and the promotion of development in an orderly and cohesive manner for the entire project rather than piecemeal development with a potential of incompatible land uses. The City found that alternative 5, the off-site alternative, would not eliminate environmental impacts; it would simply move them to a different location. The alternative was rejected because of the lack of adequate infrastructure, because the site is not owned by the project proponent, and because it would not mitigate the environmental [*82] impacts of the project. The suggested Park Center alternative was rejected because it would not meet the City's need for a major mall, would not attain many project objectives, and is not a site owned by the project proponents.

B. Analysis

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." (Guidelines, ß 15126.6, subd. (a).) "The discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, ß 15126.6, subd. (b).)

"The range of alternatives [*83] required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." (Guidelines, ß 15126.6, subd. (f).) "Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives." (Guidelines, ß 15126.6, subd. (f)(1).)

In applying these standards to the Lent Ranch EIR, we conclude that the EIR provided a sufficient range of project alternatives with sufficient variation to allow for public participation and informed decisionmaking. (*Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 573, 276 Cal. Rptr. 410*; *Mann v. Community Redevelopment Agency (1991) 233 Cal. App. 3d 1143, 1151, 285 Cal. Rptr. 9.*) [*84] The EIR identified a number of alternatives, discussed the environmental advantages and disadvantages of the alternatives, and addressed feasibility of the alternatives, including whether the alternatives would achieve the goals of the project. This was sufficient within the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at p. 573*; *Mann v. Community Redevelopment Agency, supra, 233 Cal. App. 3d at p. 1151.*)

Respondents particularly object to the City's rejection of alternative 4, the reduced size alternative. They argue that since this alternative would be environmentally superior to the proposed project in many respects, the City was required to adopt it. We agree that the City should not "slavishly adhere" to the project goals identified by the project proponents but rather must make an independent, reasoned judgment. (See *Kings County Farm Bureau v. City of Hanford (1990) 221 Cal. App. 3d 692, 736-737, 270 Cal. Rptr. 650.*) That being said, however, the decision whether the proponents' goals coincide with those of the City is particularly committed to the City through its elected representatives. [*85] It was competent for the City to determine that a comprehensive and fully integrated urban development on one site would serve the City better than would a reduced project

with the resultant shift of some of the proposed urban uses to other sites.

Respondents contend the EIR was particularly deficient in addressing alternative locations. The EIR examined one alternative site, and a second alternative site was examined upon the request of South County Citizens for Responsible Growth. A number of other sites were considered but rejected during the scoping process. The EIR identified the sites and gave reasons for their rejection. An EIR need not consider every conceivable project alternative and when an alternative is rejected during the scoping process only a brief explanation of the reasons must be given. (Guidelines, ß 15126.6, subd. (c); *Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at p. 569.*) The EIR was sufficient in this respect.

Respondents assert that some alternative sites were rejected for the "flimsiest of reasons," including the fact that many of the sites were outside the City's boundaries and that the alternative sites were [*86] not owned or controlled by the project proponents. These are not flimsy reasons; they are in fact very substantial reasons for finding alternative sites to be infeasible. (*Citizens of Goleta Valley v. Board of Supervisors, supra, 52 Cal.3d at pp. 574-575.*)

Respondents argue that either the location considered as alternative 5 or the Park Center alternative would have been better than the Lent Ranch site because either would have been further away from Suburban Propane. This argument is premised on the claim that the City is required to find that Suburban Propane poses a significant risk to the Lent Ranch site. Since we have rejected that claim, we reject this argument as well.

For these reasons, we reject the contention that the Lent Ranch EIR failed to adequately consider project alternatives or that the City erred in failing to adopt an alternative.

CONCLUSION

We agree with the trial court that the City's decision to accept mitigation fees in order to mitigate the loss of farmland of statewide importance requires additional environmental analysis and discussion. We reject the court's conclusions that the City erred with respect to agricultural buffers, the [*87] danger posed by Suburban Propane, and in preparing a separate EIR for the Grant Line Road/State Route 99 freeway interchange. We also reject the contention that the EIR analysis and the City's consideration of project alternatives was deficient.

The error we have found will not require the City to start the EIR process anew. In the City's discretion, it may proceed with an addendum to the EIR, a supplemental EIR, or a subsequent EIR.

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with directions to enter a judgment consistent with the holdings of this opinion. The parties shall bear their own costs on appeal. (*Cal. Rules of Court, rule 27(a).*)

SCOTLAND, P.J.

I concur:

DAVIS, J.

DISSENT BY: NICHOLSON

DISSENT

Nicholson, J.

I concur in the opinion except as to section II of the Discussion, Loss of Agricultural Land, to which I dissent. The reasoning of *Friends of the Kangaroo Rat v. California Dept. of Corrections (2003) 111 Cal.App.4th 1400, 1408-1410* (*Friends*), is persuasive and, I am convinced, compels reversal of the trial court's ruling on this issue -- the only portion of its [*88] decision we do not unanimously reverse.

The majority does not distinguish *Friends* from this case. It correctly argues mitigation includes measures that would substantially lessen the project's significant environmental impacts, but a conservation easement does not lessen the loss of agricultural land caused by this or other past and probable future projects. Agricultural land is unique, and once it is developed with urban uses, it is lost permanently. The only means of mitigating or lessening this impact is by not approving the project.

Requiring the developer to pay for an easement does not lessen the impact. Compensation is used to mitigate an environmental impact by replacing the lost resource or providing a substitute resource. (*Cal. Code Regs., tit. 14, ß 15370, subd. (e).*) A conservation easement performs neither of these functions. It merely "pays someone to continue farming land that was already being farmed, and which was not the site of any probable future project." (*Friends, supra, 111 Cal.App.4th at p. 1410.*) Probable development will continue apace.

As the majority notes, the Legislature has clearly expressed the state's interest [*89] in maintaining a sufficient supply of agricultural land for economic and environmental reasons. The Legislature has also intended local agencies to consider the loss of agricultural land when they engage in CEQA review. However, no matter what obligations CEQA imposes on an agency, the agency has no power to mitigate the loss of agricultural land by imposing compensation for which it cannot demonstrate a sufficient nexus to the impact it is designed to

correct and a rough proportionality to the impact's scope. (*Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 876.*)

An agricultural land easement at best "might prevent the future conversion of some as yet unidentified parcel of farmland to a nonagricultural use." (*Friends, supra, 111 Cal.App.4th at p. 1409.*) Here, where the City has no program regulating how, when, or where the proceeds to purchase an easement will be used, and where the easement will not mitigate or lessen the impact to be caused by this or other probable projects, I am not convinced the possible prevention of future conversion of unidentified farmland sufficiently overcomes the constitutional limitation.

At a minimum, the Legislature, [*90] and not this court, should first address the conflict between its desire to preserve agricultural land under the CEQA process and the fact the loss of such land cannot be substantially lessened or mitigated when approving a project under CEQA. Meanwhile, regarding this case, the EIR discussed, by means of public comments and responses thereto, the option of an agricultural easement. The City considered the option and, in its discretion, correctly rejected it as not substantially mitigating or lessening the direct or cumulative loss of agricultural land. Under these circumstances, I conclude the City complied with CEQA's requirements, and substantial evidence supports its decision. I would thus reverse the trial court's ruling on this issue.

NICHOLSON, J.

Consolidated Irrigation District

August 23, 2010 Comments

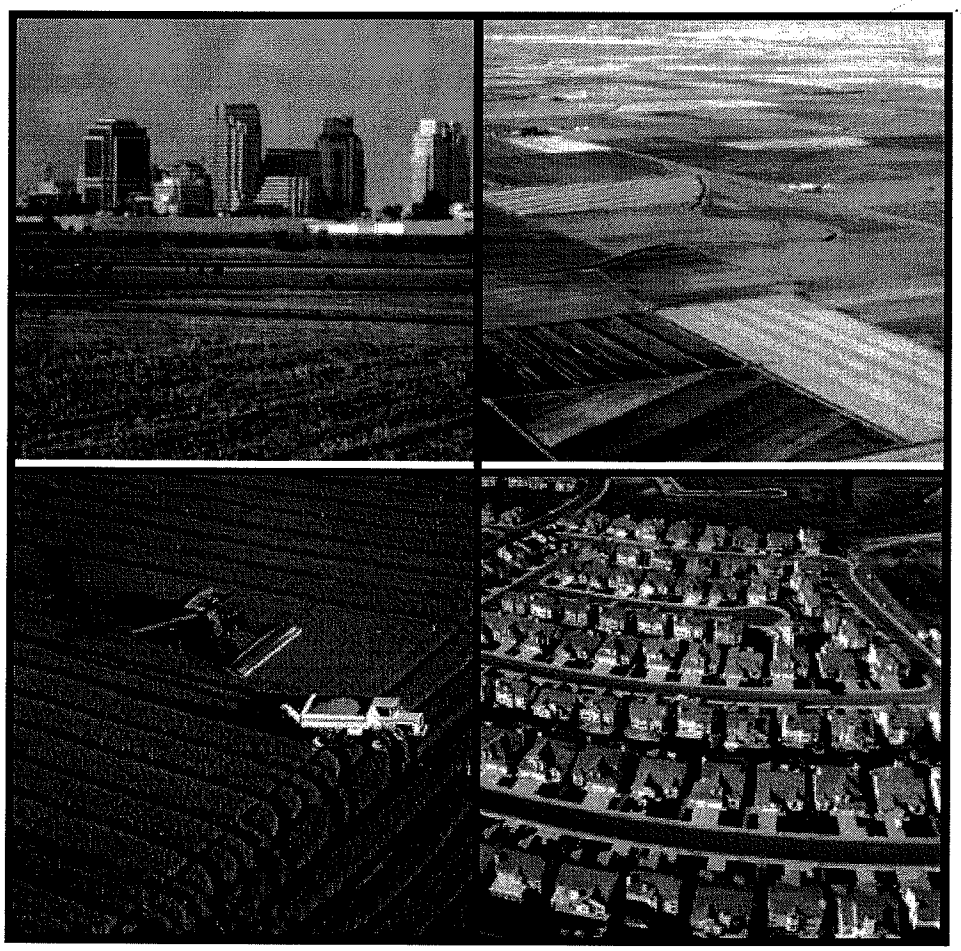
Department of Conservation Farmland Protection Action Guide

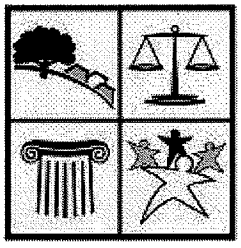
Exhibit 6

AUG 23 2010

FARMLAND PROTECTION ACTION GUIDE

24 Strategies for California





INSTITUTE *for* LOCAL
SELF GOVERNMENT

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The Institute for Local Self Government is the nonprofit research arm of the League of California Cities. The Institute was founded in 1955 as an educational organization to promote and strengthen the processes of local self-government. The Institute's mission is to serve as a source of independent research and information that supports and improves the development of public policy on behalf of California's communities and cities. The Institute's work is concentrated in three areas: land use, fiscal issues and public confidence in local government.

The Community Land Use Project is the program within the Institute that focuses on land use issues. The Project's charge is to assist local agencies with land use and resource issues, particularly those that involve a balancing of public interests with private property rights. The Project focuses on land use issues, such as farmland protection, that pose significant opportunities and challenges for local agencies.

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FARMLAND PROTECTION ACTION GUIDE: 24 Strategies for California

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- **Public officials** should always consult with agency counsel when confronted with specific situations related to land use laws;
- **Agency counsel** using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
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Spring 2002

Dear Reader,

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We have provided a feedback form at the end of this publication and would greatly appreciate it if you could take a moment to provide some constructive comments.

Sincerely,

JoAnne Speers
Executive Director

Jerry Patterson
President, Board of Directors

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Part I

HERE COMES THE NEIGHBORHOOD



Many in California are expressing concern about the rapid loss of the state's farmland. Not long ago, driving from one city to another meant driving through farmland and perhaps stopping at a roadside fruit-and-vegetable stand. Today, that same drive is more likely to involve a busy expressway lined with sound walls and industrial centers. The disappearance of agricultural territory raises the question: How much farmland must be lost before California's agricultural economy suffers due to farmland shortages?

Agriculture and farming make important contributions to the economy in every region of the state. However, population and economic growth are driving the conversion of productive farmland to housing, industry and commercial development. Obviously, growth and development will have an impact on California's major agricultural regions. But *how* those regions develop and *which* land is urbanized will determine whether agriculture will remain the powerhouse it is today in the state's economy.

There is a growing recognition among farmers, conservationists and business leaders that a new pattern of growth is necessary to protect the agricultural economy. Local government will be a key player in implementing programs to manage and redirect growth and protect the state's most productive agricultural areas. This guide has been written to help local officials tailor such a program to fit their community's needs.

LAY OF THE LAND

Percentage of an American's disposable personal income spent on food in 1952: 21% [1]

Percentage of an American's disposable personal income spent of food in 1998: 11% [1]

Percentage of Californians who believe that the loss of farmland is a "very serious" problem: 57% [2]

Percentage of Californians who agree or strongly agree that agricultural land is an essential part of California's identity and we must fight to preserve it: 90% [2]

Total cash receipts generated by California agriculture in 2000: $24.8 billion [1]

Total cash receipts generated by Texas, the second leading agricultural state: $13.2 billion [3]

Number of California counties where the value of agricultural produce exceeded $1 billion: 10 [3]

Number of the nation's top 10 agricultural counties that are located in California: 8 [3]

Total agricultural acres converted to urban uses in California from 1988 to 1998: 497,000 acres [5]

Amount of the state's agricultural land rated as prime: 18% [5]

Proportion of farmland converted to urban use that was rated as prime: 30% [5]

Ratio of new residents to acres of farmland converted: 10-to-1 [5]

Typical value of farmland on urban edge subject to development pressures: $12,000 per acre

Typical value of land for high-end agricultural crops, such as fruits and nuts: $5,500 per acre [5]

Typical value of rangeland: $1,050 per acre [5]

SOURCES: **(1)** Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • **(2)** Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) • **(3)** California Farm Bureau Federation (www.cfbf.org) • **(4)** Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • **(5)** Kuminoff *et al, Issues Brief: Farmland Conversion: Perceptions and Realities,* Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • **(6)** American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

STRATEGY 1

10 STEPS FOR CONSERVING FARMLAND

Will Rogers once observed that there was only so much land in California, and "... they wasn't making any more." His point succinctly underlines the importance of conserving farmland. California, the state that leads the nation in agricultural production and population growth, has a finite amount of farmland.

This guide has been written for elected officials, planning commissioners, planners, attorneys and community members who are interested in protecting California's farmland. The guide's focus is how to conserve farmland. What strategies are available to local government? What are their potential benefits and pitfalls? How are such programs funded?

This guide is specific to California. It makes no attempt to describe programs that are not authorized by California law. Moreover, the guide should not be considered an exhaustive resource. Instead, each section briefly highlights the issues and policy consideration of a particular strategy. Where practicable, additional resources for local government are identified.

A total of 24 strategies are presented here. Each can be used to protect farmland and improve the economic viability of agriculture. The strategies are grouped into five parts:

- Ten Steps for Conserving Farmland (Part I);
- Managing the Conversion of Farmland (Part II);
- Planning for Agriculture (Part III);
- Ag-Urban Boundaries (Part IV); and
- General Implementation Issues (Part V).

The following text explains how these 24 individual strategies can be used to form a comprehensive farmland conservation program.

Start with Urban Planning 3
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Engage the Community 4
Manage the Conversion of Farmland 5
Consider Incentives for Agriculture 5
Address the "Urban Edge" Issues 6
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STEP 1: START WITH URBAN PLANNING

In the context of farmland protection, there is no substitute for sound urban planning. Low-density urban sprawl is a significant factor in the loss of farmland and one for which local agencies — as land use decision-makers

— have primary responsibility. This is not to say that cities and counties should not grow or that farmland should never be converted to urban use. Instead, by increasing population densities, encouraging infill and setting urban boundaries, communities can significantly reduce the amount of land necessary to accommodate new growth. Indeed, local agencies that strive to use land efficiently and manage growth effectively are already ahead in the effort to protect farmland.

A comprehensive growth management plan may even increase agricultural productivity. Farms in fast-growing urban regions often suffer from the "impermanence syndrome" — when farmers perceive that it's only a matter of time before their farm is converted to urban use, they stop making long-term investments in the operation. As a result, the farm becomes less efficient and marginalized, which in turn increases the farmer's willingness to sell the property for development. One way to offset the impermanence syndrome is by shaping urban growth in a compact and predictable manner, so that farmers are less likely to think of their land as slated for development "sooner or later."

STEP 2: GET THE FACTS

Amassing data about local agriculture is helpful for any farmland protection program. California has the most varied and productive agricultural industry in the world. The state produces more than 250 crops and generates $24.8 billion in cash receipts annually.[1] Knowing how local agriculture fits into statewide and international markets will help decision-makers to shape policy. Other local factors, such as soil quality, microclimates and water availability, are also important considerations. Strategy 22 offers tips for collecting information to use in developing a comprehensive local program.

STEP 3: ENGAGE THE COMMUNITY

Public support is important when developing any new policy. However, it's particularly important when developing farmland protection programs. Polls consistently show that voters see the loss of farmland as one of the state's most serious environmental problems.[2]

Moreover, discussions of how to conserve farmland often evoke visions about how the community should grow, because any proposed program will affect different people in different ways. For example, a zoning designation that encourages compact, higher-density development may

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[1] Agricultural Issues Center, *The Measure of Agriculture 2000*, p. 4.

[2] Fairbank, Maslin, Maullin & Associates, *Results of Recent Polling Relating to Agriculture in California*, July 13, 1999; www.ilsg.org/farmland.

meet resistance from neighborhood groups unless their concerns are addressed in advance. Finally, productive community engagement increases the public's confidence in both the growth program ultimately adopted and the local agency. Ideas for involving the public and developing community consensus are included in Strategy 22, and, to some extent, Strategy 18.

STEP 4: MANAGE THE CONVERSION OF FARMLAND

Local agencies have a variety of regulatory options available to help them begin managing the conversion of agricultural land. These tools can be used to protect broad swaths of agricultural land and decrease the impact of "leapfrog" development. Although sometimes such measures initially meet resistance, they usually gain more support after they are adopted, particularly when they are part of an overarching plan to protect and enhance local agriculture. This guide addresses these options in eight strategies:

- Incorporating policies into the general plan or developing a specific plan (Strategies 2 and 3);
- Zoning for agriculture (Strategy 4);
- Managing the subdivision of farmland (Strategy 5);
- Conservation easement purchase programs (Strategy 6);
- Mitigation fees and development credit transfers (Strategy 7);
- Local agency formation commission policies (Strategy 8); and
- Regional or interagency cooperation (Strategy 9).

Some land use choices, such as mitigation and transfer of development credit programs, can reduce community objections even further by distributing regulatory burdens among landowners. Moreover, conservation easement programs are developing statewide that actually purchase the right to develop farmland directly from the farmer.

STEP 5: CONSIDER INCENTIVES FOR AGRICULTURE

Voluntary approaches to ensuring the viability of local agriculture are just as important as regulatory options. Even the most effective regulation would fall short if it merely preserved land that could not be profitably farmed. Admittedly, many factors that affect agriculture, such as

international trade and technology, are beyond the scope of most local agency actions. Nevertheless, local agencies can take a wide variety of actions to help farm operators be more productive and profitable, including:

- Providing property tax incentives (Strategy 10);
- Developing adequate water supplies (Strategy 11);
- Simplifying farm permit processes (Strategy 12);
- Encouraging new farmers (Strategy 13);
- Assisting farmers with environmental compliance (Strategy 14);
- Building quality farmworker housing (Strategy 15);
- Promoting the economic development of agriculture (Strategy 16); and
- Encouraging farm marketing (Strategy 17).

Incorporating these elements into a plan will help ensure that agriculture remains a vital part of the community.

STEP 6: ADDRESS "URBAN EDGE" ISSUES

No agricultural protection program is complete without addressing the ag-urban border issue. This area is contentious because farming and residential living are fundamentally incompatible land uses. New residents who moved into an area because of its scenic views are often frustrated by the "nuisance" activities associated with agriculture, such as dust, odors, slow-moving tractors on public roads and use of pesticides. Likewise, farmers have genuine concerns about increased vandalism and trespassing. Local agencies have developed a number of tools to address these issues, including:

- Facilitating informal dispute resolution processes (Strategy 18);
- Adopting "right-to-farm" ordinances (Strategy 19); and
- Creating agricultural buffer zones (Strategy 20).

POLICY CONSIDERATIONS SUPPORTING FARMLAND CONSERVATION[3]

Food Independence. Farmland conversion threatens the state's long-term ability to produce sufficient amounts of food. Increasing reliance on foreign sources causes vulnerability, because potential future global conflict compromises free trade.

Economic Prosperity. Agriculture plays a significant role in both the California and national economies. This abundant harvest means that Americans spend less of their income on food than almost any other nation, enabling them to spend more discretionary income on durable goods.

Promotes Fiscal Efficiency. Because farmland conservation promotes efficient growth, it reduces the cost of providing urban services. It generally costs less per unit to extend public services, such as water and sewer, to homes in compact developments than to those in low-density residential developments. Furthermore, fire and police protection response times are faster in compact developments.

Prime Land Is Most Often at Risk. Many of California's fastest-growing cities started as farm service centers and therefore are located on prime land. As these communities grow, more and more of the best farmland is taken out of production. Moreover, economic incentives also contribute to this problem. It's usually more cost-effective (and meets with less community opposition) to build new housing on existing farmland than it is to build new homes within existing neighborhoods.

Environmental Conservation. Open farmland provides important environmental benefits, such as groundwater recharge, flood control and wildlife habitat.

Preserving Scenic Views. Farmland provides open space and scenic views. Open space near urban areas provides aesthetic relief from the intense development that generally surrounds residential areas.

STEP 7: TAILOR A PLAN

Having reviewed the wide variety of choices for protecting farmland available to local agencies, the next step is to examine the community's characteristics and policy options, and then design a program that best fits community needs. In most cases, the plan will include elements to control urban growth, manage the conversion of farmland, provide economic incentives and address concerns about the ag-urban boundary. In finalizing the plan, decision-makers should be prepared to make tough calls. Eventually, most plans involve drawing a line separating developable land from agricultural land. Those who are near the line will often want it adjusted one way or another. Decision-makers will have to balance legitimate political considerations with the need to draw the line or create a zone in a way that is most supportive of the entire program.

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[3] Summarized from Mark Cordes, *Takings, Fairness and Farmland Preservation*, 60 Ohio St. L.J. 1033 (1999).

STEP 8: SECURE FUNDING

The costs farmland protection programs vary for local agencies, depending on their scope and complexity. One of the most encouraging aspects of farmland protection programs is that there is a great deal of funding — both private and public — to help local agencies and other organizations protect and conserve farmland. For example, the state will have more than $75 million in the coming years for preserving land (Strategy 6). When combined with other resources, this means that communities need only raise 5 to 25 percent of an easement's value in order to leverage additional funding. Moreover, traditional revenue-raising tools, such as assessments and bonds, can also be used when there is there is sufficient community support. Several funding sources are summarized in Strategy 24.

STEP 9: OVERCOME OBSTACLES

Despite the best-laid plans, setbacks are likely to occur during implementation. A grant will not come through, or a key element of the program will get off to a slow start, or the local media may run a negative story. Indeed, it's unlikely that even the most inclusive process will generate unanimous community support for farmland conservation. Some landowners are likely to be skeptical, and may even raise the issue that the plan amounts to a taking of property (Strategy 23). Proponents of a good plan will usually persevere — particularly when the plan has been created with significant public input. Actively involving community members in developing and then implementing the program is one way to maintain public support (see Strategy 22).

STEP 10: SEE IT THROUGH

Planning and adopting an effective farmland protection program is only 49 percent of the battle. The other 51 percent is seeing it through. If there is a "Murphy's Law" of farmland protection, it is: Soon after adopting a program, a project will materialize that seems "too good to pass up" but that will compromise the plan.

How a community responds to such proposals says a lot about its commitment to the plan. Public trust is an important factor in such a situation. Local officials must strike a balance between the community's overall economic health and the public expectation that the program will be fully implemented. Ultimately, the deciding factor is the community's level of commitment to preserving its agricultural heritage and assets.

Part II

MANAGING THE CONVERSION OF FARMLAND



Farmland protection begins with sound urban planning. Each year, urban sprawl consumes 15,000 acres of farmland in the Central Valley alone. Given current growth rates and development patterns, the valley's $16.5 billion in annual agricultural production could be slashed by as much $2.1 billion by 2040 — a reduction equivalent to the current agricultural production of New York, Virginia, Oregon or Mississippi. And that is just in the Central Valley. Other key agricultural regions in Imperial and San Diego counties and in the coastal valleys are facing a similar threat.

Finding ways to manage urban growth has the potential to protect more farmland than all of the conservation easements, mitigation fees and Williamson Act contracts combined. This is not to say that farmland protection tools do not play a significant role ? they do. But a sound growth management plan is the cornerstone of any comprehensive farmland protection program. Consequently, most farmland protection tools supplement a growth management plan. Part II addresses these tools, such as conservation easements and agricultural zoning, which complement the other elements of a local agency's general plan. In addition, regional cooperation between adjoining districts and agencies can help to ensure that farmland is protected on a broad basis.

LAY OF THE LAND

Percentage of Californians who agree that development poses a serious threat to farmland: 77% [2]

Percentage of Californians who agree that development is out of control in California: 55% [2]

Percentage of Californians who prefer to live in a single, detached family home: 84% [4]

Percentage of Californians who are willing to endure significantly longer commutes in order to live in a single-family detached home: 50% [4]

Chance that a Californian believes that the problems associated with new growth can be solved by sound land use planning: 2 in 3 [4]

Percentage of Californians who believe that local governments are well qualified to address local land use problems: 74% [4]

Percentage of Californians who believe that land use initiatives are a good way to address planning issues: 63% [4]

Chance that a Californian is not familiar with the terms "sprawl" or "smart growth:" 2 in 3 [4]

Chance that a Californian believes that cities and counties should work cooperatively to solve local land use problems: 3 in 5 [4]

Percentage of farmers nationwide who believe that agricultural zoning regulations do not impact the value of their land: 86% [4]

Percentage of farmers nationwide who support regulations to protect farmland: 58% [6]

Chance that a landowner recognizes that government action and investments may actually increase land values: 5 in 6 [6]

SOURCES: **(1)** Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • **(2)** Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) • **(3)** California Farm Bureau Federation (www.cfbf.org) • **(4)** Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • **(5)** Kuminoff *et al, Issues Brief: Farmland Conversion: Perceptions and Realities,* Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • **(6)** American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

DEVELOP A GROWTH MANAGEMENT STRATEGY

STRATEGY 2

Growth management doesn't mean "no growth." Indeed, achieving zero growth is undesirable — and probably impossible — for most California cities. Not only is the state's population projected to increase by nearly 50 percent (or 18 million) in the next 25 years, but state housing laws require each city and county to plan for its fair share of new housing. The question for local officials is how to accommodate an appropriate share of growth in a way that satisfactorily addresses the competing issues of housing, economic development and resource (including farmland) protection.

GROWTH AND FARMLAND PROTECTION

Thoughtful growth management can have a significant impact on limiting farmland conversion. A study by the American Farmland Trust demonstrates this point.[1] The study compared two growth scenarios for the Central Valley. In the first, development continued at an average density of three dwellings per acre. In the second, the density was doubled to six dwellings per acre. The study found that the lower-density model would consume more than 1 million acres of farmland by 2040, 60 percent of which would be prime farmland and farmland of statewide importance. An additional 2.5 million acres would be located sufficiently close to urban areas to put agricultural operations at risk. By contrast, more compact, efficient growth would reduce farmland conversion to 474,000 acres, or less than half the amount projected in the first scenario.

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Moreover, the study demonstrated that more compact growth was also good for local agencies' bottom line. The cost of providing public services to the lower-density development would exceed city revenues by more than $1 billion per year. In contrast, the more compact development pattern yielded a $200 million surplus, a difference of $1.2 billion per year.

Members of the public and local agencies are taking notice. In one case, an extraordinary coalition has formed to curb sprawl in Fresno. This effort,

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[1] American Farmland Trust, *Alternatives for Future Urban Growth in California's Central Valley* (1995).

called the Growth Alternatives Alliance, exemplifies a community-based approach to balancing agricultural protection with economic development. Its members include the County Farm Bureau, Fresno Chamber of Commerce, Fresno Business Council, the American Farmland Trust and the Building Industry Association of the San Joaquin Valley. The alliance's commitment to managed growth is based on the common recognition that Fresno's agriculture is threatened by the same forces that transformed the historically agricultural economies of Los Angeles, Santa Clara and other California counties into large metropolitan areas.

The coalition set out to frame a common vision for managing land use in Fresno County.[2] Its efforts resulted in the April 1998 publication, *A Landscape of Choice: Strategies for Changing the Patterns of Community Growth*, whose centerpiece is a 10-point policy statement (see "Policy Recommendations of the Growth Alternatives Alliance," below). Fresno County and its 15 cities have adopted resolutions supporting these principles. The county and the City of Fresno are also incorporating these strategies into their general plan updates, and several other cities are adopting specific development plans based on growth envisioned in the report.[3]

POLICY RECOMMENDATIONS OF THE GROWTH ALTERNATIVES ALLIANCE

- Revise zoning to allow increased density and diversity of housing types in the same zone district.
- Evaluate parking standards to economize land devoted to parking, and encourage shared use.
- Develop transit- and pedestrian-oriented design guidelines for community plans.
- Revise local street standards to make streets narrower and more pedestrian-friendly.
- Prepare revitalization plans and encourage permit streamlining, public participation and public-private partnerships to implement the plans.
- Create mixed-use zones to encourage residential, commercial and office use on the same site.
- Promote downtown or village centers that offer a full range of urban services.
- Work with school districts to use school sites as activity centers that serve multiple purposes.
- Initiate a process to adopt reasonable urban growth boundaries.
- Create a forum where multi-jurisdictional planning between cities and counties can occur.

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[2] Fresno Growth Alternatives Alliance, *A Landscape of Choice: Strategies for Changing the Patterns of Community Growth* (1998).

[3] Greg Kirkpatrick, *Building a Constituency for Change: The Growth Alternatives Alliance* (visited Mar. 8, 2002) http://wsare.usu.edu/sare2000/136.htm.

THE GROWTH MANAGEMENT TOOLBOX

Exactly what constitutes a sound growth management policy varies with each jurisdiction. A thorough discussion of growth management is beyond the scope of this guide. The issue is briefly addressed here to underscore the need for farmland protection measures to work in tandem with growth management. Programs adopted without such support are likely to be ineffective or, at best, implemented in a piecemeal fashion. In California, growth management strategies are incorporated within the local agency's general plan and various implementing ordinances.

INFILL INCENTIVES

Encouraging infill in existing urban areas decreases the pressure to turn farmland into single-family subdivisions.[4] For example, the City of Salinas recently revised its general plan to encourage infill at higher densities, in part to protect the rich land at the city's outskirts (known as "the world's salad bowl" for its produce). Infill development can also save money for local agencies because it relies more heavily on existing infrastructure.[5]

Local agencies adopting infill policies face two challenges: developer preference for "greenfield" development and neighborhood opposition to increased density. These challenges can be addressed by providing incentives for infill construction, such as fee reduction and permit streamlining, to help make projects "pencil out." Involving the public in developing design guidelines helps to address neighborhood opposition. Neither solution is a cure-all, but such efforts and other creative strategies are often enough to help projects move forward.

ZONING

Zoning directs growth and ensures that neighboring uses are compatible. Large-lot zoning (such as one residence for every 40 to 160 acres) is often used to help keep farmland viable. Zoning is an attractive strategy that appeals to many people because it is familiar and relatively easy to adopt. The major flaw attributed to zoning, however, is that it cannot guarantee permanent protection. It is always subject to future amendment by the

AFFORDABLE HOUSING

Managing growth is one of many factors that lead to higher housing costs, making it more difficult for low-income families to buy homes. To offset this, many agencies include an affordable housing policy as part of their growth management strategy. For example, the City of Napa (often noted as a leader in protecting farmland) adopted an inclusionary zoning ordinance requiring that 10 percent of all new homes built be affordable for specific income ranges. The city allows developers to pay an in-lieu fee that the city uses to subsidize affordable units.

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[4] A great resource for infill housing issues is published by the Local Government Commission entitled *Building Livable Communities: A Policy Makers Guide to Infill Development.* See www.lgc.org(land use publications).

[5] Rolf Pendall, *Myths and Facts About Affordable and High Density Housing* (1993) (available through the Association of Bay Area Governments Web site at www.abag.ca.gov/services/finance/fan/housingmyths2.htm).

legislative body. In addition, zoning does not necessarily lead to coordinated regional growth. If area jurisdictions don't coordinate efforts when developing their zoning ordinances, the land use pattern across a region is likely to be inconsistent.

UTILITY SERVICE CONTROLS

Limiting the geographical extension of utility services is one of the most effective techniques for controlling urban growth. New subdivisions are dependent on such infrastructure. Consequently, plans that control or phase the extension of water and sewer services place a physical limitation on growth.[6] These restrictions also help control costs. For example, the City of Woodland has phased its development geographically by controlling when and where utility services can be extended. An alternative is to develop a fee program that encourages compact development. For example, the City of Lancaster charges a variable traffic impact fee, depending on the development's distance from the urban core; greater distances incur higher fees. (Such fees should be crafted carefully and in consultation with the agency's attorney).

THE IMPERMANENCE SYNDROME

Sound growth management practices can actually increase local agricultural production by offsetting the "Impermanence Syndrome." Farmers who know that their land is unavailable for development are more likely to make new investments in their operations.

URBAN GROWTH BOUNDARIES

Urban growth boundaries (UGBs) are a popular tool in many areas. Growth boundaries specifically delineate where growth can — and cannot — occur.[7] They are usually enforced by two underlying mechanisms: zoning controls and urban service-area limitations. This combination prevents development beyond the boundary line. An interesting variation on the growth boundary concept has been adopted by the City of Visalia, which has developed interim growth boundaries that expand automatically when development within the existing boundary reaches specific build-out criteria.

Several organizations have sponsored initiatives to adopt urban growth boundaries. In these cases, the boundary is reviewed automatically after some period of time, usually 20 years.[8] In the meantime, the only way to change the boundary is through another vote. Most (if not all) of the cities in Sonoma, Napa and Ventura counties have adopted growth boundaries in this way.

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[6] Such actions to limit water and sewer hookups have generally been upheld as a valid exercise of the police power. *See Dateline Builders, Inc. v. City of Santa Rosa*, 146 Cal. App. 3d 520 (1983).

[7] *See Dateline Builders, Inc. v. City of Santa Rosa*, 146 Cal. App. 3d 520, 531 (1983). The UGB often corresponds with a city's sphere of influence boundary.

[8] To the extent that urban growth boundaries affect the ability to meet fair share housing requirements, it may have to be amended every five years. *See DeVita v. County of Napa*, 9 Cal. 4th 763, 790 (1995).

LEAGUE OF CALIFORNIA CITIES' SMART GROWTH PRINCIPLES

- ***Well-Planned New Growth:*** Recognize and preserve open space, watersheds, environmental habitats and agricultural lands, while accommodating new growth in compact forms, in a manner that de-emphasizes automobile dependency; integrates the new growth into existing communities; creates a diversity of affordable housing near employment centers; and provides job opportunities for people of all ages and income levels.
- ***Maximize Existing Infrastructure:*** Focus on the use and reuse of existing urbanized lands already supplied with infrastructure, with an emphasis on reinvesting in the maintenance and rehabilitation of existing infrastructure.
- ***Support Vibrant City Centers:*** Give preference to the redevelopment of city centers and existing transportation corridors by supporting and encouraging mixed use development; housing for all income levels; and safe, reliable and efficient multi-modal transportation; and by retaining existing businesses and promoting new business opportunities that produce quality local jobs.
- ***Coordinated Planning for Regional Impacts:*** Coordinate planning with neighboring cities, counties and other governmental entities to establish agreed-upon regional strategies and policies for dealing with the regional impacts of growth on transportation, housing, schools, air water, wastewater, solid waste, natural resources, agricultural lands and open space.
- ***Encourage Full Community Participation:*** Foster an open and inclusive community dialogue, and promote alliances and partnerships to meet community needs.
- ***Support High-Quality Schools:*** Develop and maintain high-quality public education and neighborhood-accessible school facilities as a critical determinant in making communities attractive to families, maintaining a desirable and livable community, promoting life-long learning opportunities, enhancing economic development and providing a workforce qualified to meet the full range of job skills required in the future economy.
- ***Build Strong Communities:*** Support and embrace the development of strong families and socially and ethnically diverse communities, by working to provide a balance of jobs and housing within the community; avoiding the displacement of existing residents; reducing commute times; promoting community involvement; enhancing public safety; and providing and supporting educational, mentoring and recreational opportunities.
- ***Joint Use of Facilities:*** Emphasize the joint use of existing compatible public facilities operated by cities, schools, counties and state agencies, and take advantage of opportunities to form partnerships with private businesses and nonprofit agencies to maximize the community benefit of existing public and private facilities.
- ***Support Entrepreneurial/Creative Efforts:*** Support local economic development efforts and endeavors to create new products, services and businesses that will expand the wealth and job opportunities for all social and economic levels.
- ***Establish a Secure Local Revenue Base:*** Develop a secure, balanced and discretionary local revenue base to provide the full range of needed services and quality land-use decisions.

INTERIM MORATORIA

Interim moratoria are used to temporarily halt development so that a local agency can develop a comprehensive plan to address related issues.[9] In the farmland protection context, moratoria might be imposed when a local agency experiences an unexpected rush of applications to develop large tracts of farmland. Sometimes, moratoria are criticized for being misused to stall controversial projects. But the Legislature has built in several protections against such use, such as requiring a super-majority (four-fifths) vote by the governing body for adoption and limiting their duration to no more than two years.

SPECIFIC PLANS

Specific plans are flexible tools that implement the general plan in specific areas.[10] A specific plan can set forth broad policies or provide direction to every facet of development. They are optional, and range in size from a single parcel to large areas within a city or county. Specific plans can be used to develop detailed infrastructure plans and financing strategies, enabling local agencies to phase growth in a deliberate way. For example, the City of Reedley adopted a specific plan for limiting the city's urban footprint that included the following elements:

- ***Increase Densities.*** Increase urban densities to limit development of surrounding farmland. Use design standards like large front porches and recessed garages to offset the negative image of increased density.
- ***Avoid Leapfrog Development.*** New subdivisions must be within one-eighth of a mile (660 feet) of existing development.
- ***Limit Annexations.*** Forward annexation requests only after 80 percent of land available for residences has been developed.
- ***Revise Street Standards.*** Encourage narrower streets to reduce the amount of land used for urban development.
- ***Infill.*** Implement a policy that encourages infill development for vacant or underdeveloped parcels within the existing urban area.

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[9] It may only be extended for a period of two years. *See* Cal. Gov't Code § 65858. Moratoria have long been held a proper exercise of the police power. Tahoe Sierra Preservation Council v. Tahoe Regional Planning Agency, __ U.S. __ (2002).; *Miller v. Board of Public Works*, 195 Cal. 477, 486-487 (1925). Under SB 1098 (stats. 2001 c. 939) these requirements now apply to charter cities.

[10] Cal. Gov't Code §§ 65450 – 65457; Governor's Office of Planning and Research, *The Planners' Guide to Specific Plans* (1998) (http://ceres.ca.gov/planning/specific).

This is only one example of how a specific plan can be used to manage growth (for another, see "The South Livermore Valley Plan," below).

BUILDING CAPS

Building caps manage growth by limiting the number of residential building permits that a local agency may issue annually.[11] The restriction is usually based on a resource or infrastructure limitation. Many local agencies have developed criteria (sometimes called "beauty contests") to reward projects that include affordable housing, farmland protection, innovative design or other desirable factors.[12]

Building caps are popular because they are easy to understand and give the public a sense of control. Moreover, many systems have been in place since the 1970s, so they are also familiar. But building caps have been criticized for effectively exporting growth to neighboring communities. In addition, they do not necessarily influence the *type* of growth that occurs. In other words, sprawling growth may continue under a building cap, but at a slower pace.

THE SOUTH LIVERMORE VALLEY PLAN

The City of Livermore's South Livermore Valley Specific Plan balances new housing with enhancing the area's wine industry.[13] Not long ago, the valley was a bucolic place where cattle and vineyards outnumbered people. But things have changed. Spillover from nearby Silicon Valley and San Francisco has converted much of the farmland into high-priced houses and business parks.

Livermore's specific plan complements an area plan adopted by Alameda County. It applies to seven areas, totaling nearly 1,900 acres, on the city's southern boundary. The plan calls for developing 481 acres to accommodate 1,200 housing units. The remaining acreage will be placed in agricultural conservation easements (see Strategy 6) to provide a permanent growth boundary along the city's southern edge.

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[11] Most are modeled on the Petaluma plan, which limited growth to 500 new houses each year in the early 1970s. *See Construction Industry Assn. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975), cert. denied, 424 U.S. 934 (1976) (finding that the concept of public welfare is sufficiently broad to uphold the city's desire to preserve its small-town character and grow at an orderly pace).

[12] Other decision criteria may include equitable considerations, such as how long a development has been in the pipeline. *See Pacifica Corp. v. City of Camarillo*, 149 Cal. App. 3d 168, 182 (1983).

[13] The plan was adopted in November of 1997 and amended in February 2001. Selective portions of the plan are available on the Institute's Web site.

The plan's lynchpin is its mitigation program. Developers are required to pay for planting one acre of new vineyards for each acre converted to housing *and* for each new house. Other crops, such as olives, also be planted. The new vineyard must also be protected by a conservation easement and the developer must arrange for its maintenance for at least eight years — either by placing additional covenants on the property or by entering into a long-term maintenance contract with an experienced farm operator. The South Livermore Valley Agricultural Land Trust was formed to negotiate and purchase these easements, which it holds jointly with the City of Livermore.

One result of this policy has been the creation of several agriculturally viable 10-acre ranchettes in the county planning area. A typical parcel may have one acre of living space on nine acres of income-producing vineyards that, when mature, can generate more than $100,000 annually in revenue for the owner. Other elements of the plan include:

- ***Nuisances***. Viticulture is very noisy at times. Large fans, typically powered by loud V-8 engines, operate during cold weather to reduce frost damage. Before harvest, blank cartridges are often fired to scare away birds. A proactive education program warns new residents of the potential consequences of living near vineyards.

- ***Scenic Corridors***. Because the wine area attracts tourists, design standards help to maintain the city's scenic edge. New subdivisions must include a visual buffer (consisting of a vineyard) between residential lots and the main roadways.

The plan is a comprehensive approach to growth management and farmland conservation. However, it may be difficult for some agencies to duplicate the results. Several unique regional factors, such as a well-developed wine and tourism industry and extremely high land values (ranging from $78,000 to $150,000 per acre of developable land), contribute to the plan's success. Livermore has chosen to embrace its wine industry. In other parts of the state, new vineyards are seen as a threat to more traditional forms of agriculture.

Moreover, the very profitable nature of the region's vineyards ensures that requiring landowners to actually engage in grape production is not as burdensome as it might be for a less valuable crop. The Livermore experience underscores the importance of tailoring a growth management and agricultural protection program to the community's unique characteristics.

MAKE FARMLAND PROTECTION A PRIORITY IN THE GENERAL PLAN

STRATEGY 3

A city or county general plan is the foundation for all local land-use planning in California. At its best, the general plan encapsulates a vision for the community and translates it into a set of policies for physical development. All other ordinances and policies that control zoning and subdivisions flow from the general plan.,[1] which includes goals and objectives for long-range planning, and specific policies to support them.

General plans must be both horizontally and vertically consistent. Horizontal consistency means that the separate elements do not conflict with one another.[2] In other words, if a local agency designates an area as farmland within a land use element, it cannot adopt a policy within its housing element that would require the designated farmland to be developed. Vertical consistency means that other policies do not conflict with the general plan. To use the same example, land designated as farmland in the general plan cannot be rezoned as industrial without amending the general plan.[3]

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MANDATORY PLAN ELEMENTS

General plans are required to address seven elements: land use, circulation, housing, conservation, opens space, noise and safety.[4] Most local agencies address farmland conservation within one or more of these elements in the following ways:

- ***Land Use Element.*** The land use element describes the location and extent of uses such as housing, business, agriculture and other

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[1] *See Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531 (1990); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990).

[2] *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698 (1981).

[3] Zoning ordinances in charter cities are not required to be consistent, though most charter cities follow the practice. Cal. Gov't Code § 65803.

[4] Cal. Gov't Code § 65302.

activities. It must specify population density and building intensity standards for each land use category. [5]

- ***Conservation Element.*** The conservation element addresses the development of natural resources, including agricultural soils.[6]
- ***Open Space Element.*** The open space element addresses the preservation and management of natural resources. Agricultural lands are listed as one of the resources to be managed. [7]
- ***Housing Element.*** The housing element, while not directly related to agriculture, often describes how new areas will be developed. The more it emphasizes infill and higher-density development, the less impact it will have on farmland conversion. Housing elements can also plan for farmworker housing.

SPECIFIC PLANS

Specific plans (addressed in Strategy 1) can also be used to implement general plan policies. A specific plan works like a general plan for a specific area, and therefore often allows the policies and goals to be much more specific. Specific plans must be consistent with the general plan.

Local agencies enjoy a great deal of flexibility in tailoring general plans to fit community needs. There is no single "right" way to develop a farmland protection program. For example, the City of Stockton's land use element includes a goal to "promote and maintain environmental quality and the preservation of agricultural land while promoting logical and efficient urban growth." A policy under this goal states that "wasteful and inefficient sprawl of urban uses into agricultural lands ... should be avoided." Butte County's land use element uses a somewhat different approach: It designates different agricultural areas within the county and provides that zoning and other regulations be adopted accordingly.[8] The county's open space element also encourages farmers to enter into open space agreements, such as those offered under the Williamson Act.

THE OPTIONAL AGRICULTURAL ELEMENT

Local agencies may also incorporate optional elements into their general plan to address agricultural issues.[9] An agricultural element allows

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[5] The land use element must make designations for housing, industry, business, open space, natural resources, public facilities, waste disposal sites and other categories. Cal. Gov't Code § 65302(a).

[6] The conservation element of the general plan must address the identification, conservation, development and use of natural resources. "Natural resources" include water, forests, soils, waterways, wildlife and mineral deposits. Cal. Gov't Code § 65302(d).

[7] Cal. Gov't Code §§ 65560 and following. The open space element should details long-range measures for preserving open space for natural resources, managing the production of resources, for outdoor recreation, and for public health and safety. Cal. Gov't Code §§ 65302(e), 65560 - 65568.

[8] County of Butte, Cal., GENERAL PLAN LAND USE ELEMENT (2000) (available online at www.buttecounty.net/dds/land.htm.

[9] Cal. Gov't Code § 65303.

farmland designation, farmworker housing and economic support issues to be addressed more directly (see "Sample Agricultural Element Policies," page 22). It also has the same force and effect as the general plan's mandatory elements. All other elements, ordinances and policies must remain consistent with the agricultural element's goals and purposes.

Sonoma County's general plan includes an agricultural element that outlines the county's intentions of stabilizing agriculture at the urban fringe. Its policies also limit the intrusion of new residential uses into agricultural areas and mitigate conflicts between agricultural and nonagricultural uses in designated production areas. To provide another example, the City of Arroyo Grande's agricultural element promotes agricultural tourism in connection with its downtown area's historic character.

There are several good reasons to develop a separate agricultural element. First, the seven mandatory elements are not always the best vehicles for focusing on agricultural production requirements. For example, addressing farmland protection wholly within the open space element risks de-emphasizing the business needs of agriculture. Second, it is difficult to achieve a comprehensive strategy for agriculture when the most relevant policies are spread over three or more general plan elements.

Finally, a local agency is more likely to seek and obtain more accurate information on the status of local resources and production if it is planning for agriculture as a whole. Thus, the agricultural element becomes more than just a delineation of agricultural zones. It becomes a platform on which a local agency can endorse strategies to ensure the local agricultural economy's long-term vitality.

FOLLOWING THROUGH

A general plan provides the starting point for protecting farmland. However, some critics have observed that it's relatively easy to amend a general plan.[10] Thus, simply adopting general plan policies to protect farmland is not enough to limit the conversion of agricultural land — the policies must actually be implemented. Indeed, a number of communities throughout the state have adopted model policies, only to amend them as soon as a large development is proposed. In other words, there is no guarantee that a general plan will be implemented as adopted.

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[10] With some exceptions, mandatory elements can be amended up to four times during any calendar year. Cal. Gov't Code §§ 65358. No similar restriction applies to specific plans.

SAMPLE AGRICULTURAL ELEMENT POLICIES

The following policies are excerpted from general plans throughout California:

- ***Support Farming Outside Boundaries.*** Limit annexations of prime land and promote compatible adjacent uses when projects within the city abut farmland.
- ***Cooperation.*** Work with other local agencies to discourage non-agricultural land uses in agricultural areas within or adjacent to jurisdiction (for cities).
- ***Farm Marketing.*** Organize promotional marketing programs for local agriculture.
- ***Soil Quality.*** Preserve high-quality soils and maintain essential agricultural lands.
- ***Small Rural Businesses.*** Support farming by permitting limited small-scale farm services and "visitor-serving uses" (small retail) in farm areas.
- ***Direct Urban Development to Cities.*** Limit rural residential development to parcels outside nonprime agricultural areas (for counties).
- ***Limit Rural Development.*** Direct rural development to communities with economic potential. Severely limit rural residential development elsewhere (except for farm families and employees).
- ***Protect Current Operations.*** Protect the right of farm operators in designated agricultural areas to continue their farming practices.
- ***Cluster Zoning.*** Use cluster housing and easements to maintain large farm parcels.
- ***Farm Worker Housing.*** Allow and encourage the development of farmworker housing.
- ***Farmers Markets.*** Encourage a weekly farmers' market and support other direct marketing activities.
- ***Regional Collaboration.*** Coordinate with other agencies, nonprofit organizations and landowners to ensure the coordinated designation and preservation of agricultural lands in unincorporated lands.
- ***Minimum Parcel Size.*** Promote a minimum lot size that is large enough to sustain farm enterprises. Discourage development of 20- to 40-acre home sites, unless it can be demonstrated that smaller farm units will remain in production.
- ***Community Separators.*** Define community buffers using productive agricultural open space so cities can maintain their community identities.
- ***Compact Growth.*** Concentrate growth within city limits by using increased densities and narrower streets.
- ***Appropriate Infrastructure.*** Promote an agricultural support system, including physical components such as farmworker housing.
- ***Recognize Economic Contributions.*** Enact and enforce regulations to retain agriculture as a major source of income and employment.
- ***Develop an Inventory.*** Develop an inventory of the quantity and quality of agricultural resources on which to base sound decisions.
- ***Protect Grazing Land.*** Protect lands used for grazing, even if they are not considered prime soils.
- ***Farm Infrastructure.*** Support finance for farm infrastructure, such as drainage.
- ***Viable Industry.*** Enhance agriculture as a major viable production industry.

Local agencies risk losing the public's confidence when they approve amendments that are clearly contrary to the plan's original intent. Frequent amendments can also lead to citizen frustration, particularly in cases where the community was very active in developing the plan. Sometimes this frustration manifests itself in a ballot initiative that prohibits local agencies from making any amendments to the parts of the general plan that protect farmland and open space.[12] One way to "see a plan through" is for local agencies to find voluntary ways that make it more difficult to amend the general plan, including the following:

- ***Include Specific Goals in the General Plan.*** General plans that include specific provisions to protect farmland are more difficult to change than those that merely include vague goals. This is because general plan revisions are subject to the California Environmental Quality Act (CEQA). Thus, when an agency goes to change a plan that specifically protects farmland, the action is more likely to trigger the mitigation provisions required by CEQA. Vague goals, however, are easier to explain away in a negative declaration.

- ***Add Public Input Opportunities.*** Increased opportunities for public input (beyond those required by statute)[13] can also help protect farmland in communities where the public has made it a priority. A policy that requires a community town hall meeting near the location or requires the input of a stakeholder advisory committee will increase public input. Having such policies in place before an amendment is proposed will give proponents of plan amendments a clearer indication of the agency's commitment to its plan.

- ***Consider Supermajorities for Charter Cities.*** Charter cities have greater control over their own voting processes because such procedures are not matters of "statewide concern."[14] Thus, charter cities could impose supermajority requirements for certain kinds of general plan amendments in their charters. But this option would probably be ineffective for general law cities and counties, which are governed by contrary language in the state Planning and Zoning Law.[15]

GOT INITIATIVES?

Frequent amendments to the general plan can lead to public frustration, particularly if they hasten development of prime farmlands. Such dissatisfaction can result in "slow growth" initiatives. If such an initiative passes, not only will it change the way the community grows, but it also makes amending the general plan more difficult. As a general rule, provisions adopted by initiative can be amended only by initiative unless the initiative states otherwise.[11]

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[11] *DeVita v. County of Napa*, 9 Cal. 4th 763 (1995). Cal. Elec. Code §§ 9125, 9217.

[12] In most cases, such initiatives merely adopt existing agriculture and open space conditions. In another common form, they designate urban growth boundaries. In either event, the legislative body is prohibited from amending the provisions adopted by initiative. The only way to amend it is be subsequent initiative. Cal. Elec. Code §§ 9125, 9217.

[13] Cal. Gov't Code § 65353.

[14] Cal. Const. art. XI, § 5(b).

[15] An amendment to the general plan shall be initiated in the manner specified by the legislative body. Cal. Gov't Code § 65358.

- ***Establish Finding Thresholds.*** A general plan amendment does not require the legislative body to make findings. However, the agency may adopt its own rules stating that such amendments will not be approved unless certain findings can be made.[16] This solution is perhaps a bit cosmetic, because the legislative body could adopt an amendment exempting such projects from review at any given time. However, it does make amending the general plan more difficult, because it provides proponents of farmland protection with a political tool they can use to ask why any given project should receive "special treatment" under the local agency's policies.

Finally, there is one other way that a local agency can raise the bar of difficulty on amending general plans: It can place the plan on the ballot for approval by local citizens. If approved, the plan can be amended only by subsequent initiative, which gives the general plan the greatest protection against arbitrary amendment. The City of Napa employed this strategy in 1990 when it asked voters to reaffirm certain portions of the general plan designating land for agriculture, watershed and open space uses for a period of 30 years. Of course, such action also limits the extent to which "good" amendments may be adopted. Local agencies using this option should draft the initiative carefully in order to maintain a fair degree of flexibility and avoid liability.[17]

BEWARE THE "PLAN BUSTER"

This scenario occurs just often enough to make it worth noting. Typically, it involves a community that has just adopted a new comprehensive general plan balancing new growth and resource protection. Soon after its adoption, however, a "plan buster" is proposed.

A plan buster is a project that seems too good to pass up but that compromises the original plan. It's a tactic sometimes employed by those who want to develop outside the urban service boundaries. Rather than seek an amendment to the general plan on the basis of the development alone, they offer to donate a portion of the land for a school, hospital or some other special amenity needed in the community. If accepted, the next step for the local agency will be to amend the general plan itself and begin extending water, sewage and road improvements to the site. These actions, of course, making the surrounding land ripe for further development. The original plan is effectively "busted."

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[16] A legislative body may establish for its planning agency any rules, procedures or standards that do not conflict with state or federal law. Cal. Gov't Code § 65102.

[17] Tips for drafting initiatives are included in another Institute publication: *Ballot Box Planning: Understanding Land Use Initiatives in California*, 37-49 (2001).

ZONE FOR AGRICULTURE

STRATEGY 4

Zoning is perhaps the most widely used land use tool, and often one of the first lines of defense in farmland protection programs. When used effectively, agricultural zoning has several benefits. It is also an efficient way to protect agricultural land. By simply passing an ordinance, local agencies can channel residential development away from broad swaths of farmland.[1]

But zoning is not without critics. Poorly implemented zoning can actually speed farmland conversion. Extensive reliance on low-density rural residential zoning, for example, causes urban areas to expand at very low densities and often leads to "leapfrog" development patterns. In addition, zoning is often criticized for how easily it can be changed. Land can be redesignated from agricultural to auto mall by a simple majority vote at any given meeting of the legislative body when general plans are drafted for that kind of flexibility.

Nevertheless, zoning remains one of the most essential tools to use in protecting farmland. It is generally most effective when used with other planning tools in this guide, such as conservation easements, subdivision controls or urban growth boundaries.

Elements of Agricultural Zoning 25

Design Issues: Cluster Development 28

ELEMENTS OF AGRICULTURAL ZONING

There are at least four key elements to consider when drafting or reviewing an agricultural zoning ordinance: the size of the parcel; extent of permitted or conditional uses; design; and implementation enforcement. In addition, a variety of local factors, such as the characteristics of local agriculture, soil quality and pre-existing regional growth and infrastructure patterns, will influence how the local agency ultimately designs and implements its zoning ordinances.

PARCEL SIZE

Large lot zoning is a common farmland protection tool. Minimum lot sizes, such as 80 or 160 acres, ensure that parcel sizes remain large enough to be farmed profitably. Large lot zoning also discourages land purchases for

[1] See Cal. Gov't Code § 65850(a); 65910 (authorizing open space zoning).

residential use.[2] Setting an appropriate minimum parcel size is crucial to the effectiveness of agricultural zoning. If it's too low, the farmland may be divided into parcels that are too small to farm. If it's too high, the policy may not gain popular support.

An effective density standard can also preserve the production capability of typical farming or ranching operations. For instance, a five-acre vegetable farm (also known as a "truck farm") may be viable in some coastal zone areas. On the other hand, a cattle ranch in the Sierra foothills may need more than 1,000 acres to maintain a viable operation.

Many agencies "feather" smaller minimum lot designations, such as five or 10 acres, in transition areas to create "rural residential" units between large agricultural operations and urban residences. The idea is to create progressively smaller lots, going from agricultural to urban areas, to reduce some of the conflicts that arise with largely incompatible agriculture and residential uses. This approach has lost favor in some planning circles for two reasons. First, many of the primary conflicts, such as pesticide drift, remain. Second, such designations sometimes impede more efficient higher-density developments as cities expand. Nevertheless, it can be an effective tool in some circumstances (see Strategy 20, page 119).

DOWN ZONING: POLITICS AND PROPERTY

One of the toughest issues for local decision-makers is the extent to which they will "down zone" land to protect the agricultural character of an area. Such decisions often raise political considerations.

But contrary to what is often argued, most zoning changes will not amount to a taking of property because zoning ordinances do not confer a right to develop; they are always subject to change. Thus, no property right has been taken (see Strategy 23).

MANAGING USE

The scope of permitted uses within the zone will determine whether non-agricultural or quasi-agricultural uses will be allowed. Overly broad definitions of agricultural uses may permit golf courses and other nonagricultural activities that may be incompatible with farming. On the other hand, a very narrow definition may limit economic opportunities to expand farming operations into processing and service activities. Most agricultural zoning can be classified in one of the following two ways:

1. ***Exclusive Zoning.*** Only agricultural uses are permitted. Limiting the scope of allowable uses is particularly significant in farm security zones and other Williamson Act areas (see Strategy 10). The permitted uses for lands enrolled under the act are defined by state statute.

2. ***Non-Exclusive Zoning.*** Non-agricultural compatible uses, such as recreation or storage, are permitted. Non-exclusive areas tend to urbanize over time, meaning that this designation should probably not be used in areas slated for long-term farming.

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[2] *See Barancik v. County of Marin,* 872 F.2d 834 (9th Cir. 1988) (upholding zoning of one residence per 60 acres).

Both typically require a large minimum parcel size, although exclusive agricultural zoning will usually require lot sizes significantly larger than non-exclusive zones.

In addition, agencies may turn to two other zoning techniques ? conditional use permits and overlay districts ? to address specific uses within agricultural zones. Conditional permitting allows the local agency to address the impacts on a project on a case-by-case basis. Special conditions are attached to the permit to address and mitigate for the aspects of the operation that pose the greatest concern. While it might be impractical to use this tool on more typical cropping operations, it may have applications for dairies or other types of agriculture that are likely to generate some

DEFINING AGRICULTURE: WHAT'S IN A NAME?

Many local zoning ordinances do not define the term "agriculture." Simple as it is, this term can mean different things to different people. Consider the following examples, drawn from actual events:

- A family farm begins a contract harvesting business and builds a tractor and truck maintenance facility on their farm, which is located in a scenic corridor.
- A biotech company maintains a herd of goats near a residential area. It injects the goats with proteins to research a cure for cancer. Neighbors, who are uncomfortable with the biotech goats, claim that the use is medical, not agricultural.
- A tomato farmer decides to grow hothouse tomatoes and builds greenhouses on 100 acres of land zoned exclusively for agriculture. Neighbors claim that he is no longer farming.
- A large corporation plans a "factory" hog operation. Fearing odors, city residents suggest that confinement operations do not fit within the traditional definition of farming.

Determining what exactly constitutes an agricultural use can be highly subjective. Defining the term in a way that effectively addresses such uses may be an exercise in futility. Even statewide definitions, such as the one used in the Williamson Act, may not resolve the issues described here.[3]

However, the approach employed by agencies such as the City of Turlock provides a good alternative.[4] Instead of defining agriculture, the city identifies common agricultural practices as authorized and conditional uses within agricultural zones. Then, in the few instances where a new use affects neighboring properties differently, it can be addressed on a case-by-case basis.

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[3] Agricultural use means the "use of land for the purpose of producing an agricultural commodity for commercial purposes. ... Agricultural commodity means any and all plant and animal products produced for commercial purposes." Cal. Gov't Code §§ 51202(a) and (b).

[4] City of Turlock, Cal., Code § 9-3-101 (2001).

concerns. Once the permit is granted, it is passed to subsequent owners and cannot be revoked without a hearing. However, it can be revoked if the conditions are not met.

Finally, overlay zones can be used to either encourage or limit a specific activity within a smaller sub-zone or across zoning area boundaries. For example, a local agency seeking to encourage farm tourism within an agriculture zone can design an overlay district that would permit a limited amount of construction for small buildings, bed-and-breakfast inns, roadside food stands and other uses consistent with farm tourism.

VARIANCES AND ENFORCEMENT CONSIDERATIONS

How the zoning ordinance will be implemented and enforced is also an important consideration. An issue that arises with many ordinances is whether the agency should grant a variance (or exception) to a landowner who claims to be unfairly affected by the ordinance. Generally, variances can be granted only when special circumstances applicable to the property (such as size, shape, topography, location or surroundings) deprive the landowner of privileges enjoyed by other local landowners under the same ordinance.[5]

Finding cost-effective ways to enforce ordinances is a significant challenge for local government. Typically, code enforcement officers ensure compliance with local zoning ordinances. Fortunately, most agricultural zoning ordinances are aimed at limiting the extent to which farmland is converted to nonfarm uses. Thus, the building permit process will check most nonconforming projects. Additional monitoring may be as easy as driving through flat open country in the area. In more hilly and wooded sections, periodic aerial photographs can also be used to monitor compliance.

DESIGN ISSUES: CLUSTER DEVELOPMENT

Cluster zoning is a technique that can be used to protect farmland while still accommodating some level of development. Homes are generally "clustered" in one area of a parcel to be developed.[6] The remaining land is saved for farming or serves as a buffer.[7] Cluster zoning has worked in areas

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[5] Cal. Gov't Code § 65906. This standard may be supplemented with additional local guidelines. *See Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 511 n.6 (1974).

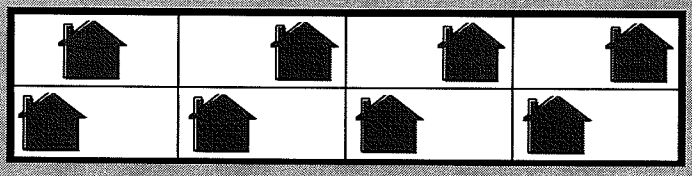
[6] Randall Arendt, *Rural by Design* (1994).

[7] Many local agencies in California employ variations of this kind of zoning, sometimes referred to as area-based or sliding scale zoning. Area-based zoning establishes a ratio of residences per specified number of acres. For example, a ratio of one residence per 40 acres would allow five residences to be

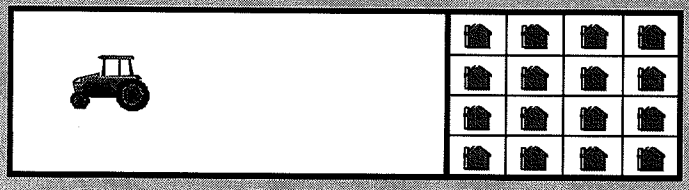
east of the Mississippi River where geography provides a variety of undulations, ridges and valleys. It is perhaps less effective in the broader plains and valleys of the West.

HOW CLUSTERING WORKS

A landowner seeks to build on a 240-acre parcel in an agricultural zone designated A-30 (a maximum density of one house per 30 acres). Present zoning permits up to eight homes on the property.



Under a cluster ordinance, however, the owner would be able to build more houses if they are clustered in one part of the property. For example, assume that a cluster ordinance allowed the owner to double the number of homes that could be built if most of the land is protected for agriculture. In this case, 16 homes on three-acre plots could be built on 48 acres, preserving nearly 192 acres for agriculture.



built on a 200-acre parcel. A fixed area-based ratio does not change. A sliding scale ratio decreases the number of residences as the parcel size increases. For example, a five-acre parcel may be allowed one residence, a 15-acre parcel two residences, and a 30-acre parcel three residences.

In California, the clustering technique is most practical in coastal and mountainous areas, where a small cluster of homes is less likely to affect large-scale farming. For example, San Luis Obispo County has an "agricultural cluster" designation that concentrates development in agricultural areas.[8] Clustering can also be practical in and near rural residential subdivisions as a means of transitioning from urban to agricultural areas. But it is less effective in California's large fertile valley floors because it creates disconnected "islands" of farmland and residential units — in effect, sponsoring a form of "leapfrog" development.

Some developers express concern that placing homes close to one another will destroy the "country feel" that makes the property marketable. But a well-designed development can preserve much of that ambiance by taking advantage of its proximity to the newly protected farmland. In addition, local agencies can provide an incentive by increasing the total number of units that can be built in a cluster, making the project more profitable. Cluster zoning can also reduce the cost of servicing the new development because it requires fewer roadways, sewers and water lines than the same number of homes spread over a larger area.

Clustering typically requires the developer to provide a management plan for the undeveloped portion of the property. If the new development is designed as a planned unit development, then the remaining land could be deeded with restrictions to the homeowners association, which in turn could lease it to local farmers. But the local agency would need to be able to enforce the original terms if the homeowners association sought to put the land to alternative uses. One way to provide this security is to identify the local agency as a third-party beneficiary to the agreement that deeds the land to the homeowners association.

Selling or donating a conservation easement may be another option, providing that there is a land trust (see Strategy 6) willing to monitor the easement. A third option may be to allow the land to be sold to another farmer with a deeded restriction prohibiting further development. Finally, the local agency may elect to own and maintain the property if it will become part of a buffer or trail system.

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[8] County of San Luis Obispo, Cal., Code § 22.04.037 (2000).

MANAGE THE SUBDIVISION OF AGRICULTURAL LAND

STRATEGY 5

Subdividing agricultural parcels into minimum parcel sizes is often the first tangible step toward development and consequent loss of farmland. Managing how rural land is subdivided can help protect farmland from unchecked residential development. The Subdivision Map Act (Map Act) authorizes local agencies to regulate the design and improvement of subdivisions within their boundaries.[1]

BASICS OF SUBDIVISION LAW

The Map Act authorizes each city and county to adopt an ordinance that designates a local process for subdivision approval.[2] When a subdivision includes five or more parcels, the landowner files a tentative map.[3] The tentative map establishes the proposed design of the subdivision as well as the location of public streets, sidewalks, parks and public utilities. When a proposed subdivision consists of four or fewer parcels, the landowner files a parcel map and oversight is more abbreviated.

Basics of Subdivision Law 31

Conditional Approvals 33

Antiquated Subdivisions 34

The Map Act designates the extent to which a local agency may approve, conditionally approve or reject the proposed tentative or parcel map. In most circumstances, the local agency may require the landowner to meet certain conditions before the map can become final. The owner then has a period of time — usually two years — to meet these standards, though the owner can seek a series of extensions. Upon completion of the conditions, a final map is recorded and the land is subdivided.

GROUNDS FOR APPROVAL AND DENIAL

When a local agency considers an application to subdivide, it can apply only those ordinances and policies that are in effect at the time that the

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[1] Cal. Gov't Code §§ 66410 and following. The Map Act applies when land is subdivided for sale, lease, or financing, but an exception has been created for agricultural purposes such as when a portion of land is subleased to another producer. Cal. Gov't Code § 66412(k).

[2] Cal. Gov't Code § 66411.

[3] See Cal. Gov't Code § 66426(f).

application is deemed complete.[4] The Map Act limits the scope of local discretion to approve or reject specific applications. To approve an application, the local agency must find that the proposed subdivision is consistent with the general plan and any applicable specific plan.[5] The degree to which a local agency can reject a tentative map application is also limited to specified grounds. The limitations most relevant to farmland protection are:[6]

- ***General Plan Inconsistency.*** The proposed map, design or improvement is inconsistent with the general plan or applicable specific plan.
- ***Williamson Act.*** The land is subject to a Williamson Act contract and the resulting subdivision would create parcels too small to sustain agricultural use.
- ***Water Supply.*** Sufficient water supplies are not available to serve the project when the project consists of more than 500 dwelling units (or in projects that would cause a 10 percent increase in service connections for public water systems of fewer than 5,000 units).[7]

Thus, the general plan (or applicable specific plan) provides an important check against unplanned development. If, for example, the general plan designates an area as agricultural, then it should be relatively easy for the agency to deny an application on the grounds that the proposal is inconsistent with the general plan.

Agricultural lands bound by Williamson Act contracts (see Strategy 10) also receive special consideration. Subdivision of contracted land is permitted only when the resulting parcels remain large enough to sustain agriculture. Parcel sizes of 10 acres of prime agricultural land and 40 acres of nonprime land are presumed large enough to sustain agriculture.[8] However, local agencies are permitted to establish larger sizes. They can

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[4] The agency may also apply an ordinance that it is in the process of amending or updating. See Cal. Gov't Code § 66474.2. The agency may also apply any subsequent change in the law in response to a subdivider request. Cal. Gov't Code § 66413(b). By designating the map as a "vesting tentative map," the subdivider gains the vested right to proceed under the law in effect when the application is considered complete. Cal. Gov't Code §§ 66498.1 - 66498.9.

[5] Cal. Gov't Code § 66473.5.

[6] *See* Cal. Gov't Code §§ 66474(e) and (f). A proposed subdivision may also be rejected if the design or proposed improvements are likely to cause substantial environmental damage, injure fish, wildlife, or their habitats, or cause serious public health problems.

[7] Cal. Gov't Code § 66473.7 (requiring local agencies to make specified findings of sufficient water supply before approving a tentative map).

[8] Cal. Gov't Code § 66474.4(a).

DO LARGE-LOT SUBDIVISIONS MAKE "CENTS"?

Large lot zoning (designating a minimum parcel size of one to 20 acres) is often used to maintain the rural character. A study by the American Farmland Trust focused on the economic impact of large lot parcels in the 18 counties of the Central Valley.[9] The report presents the following data about 1.5- to 20-acre "ranchette" subdivisions:

- ***Total Area.*** There are 444,000 acres in ranchette-type subdivisions in the Central Valley.
- ***Greater Impact on Local Agency Budgets.*** Local agencies spend $331 more per unit annually to provide services (such as roads, schools and other services) for ranchette subdivisions than for typical urban development.[10]
- ***Value of Lost Agriculture.*** The Central Valley lost an estimated $802 million in gross agricultural sales between 1986 and 1994 due to the break up of 456,000 acres of farmland into unproductive parcels. Loss of agricultural production resulted in an estimated loss of 35,200 permanent agricultural and related jobs during this period.
- ***Overall Economic Loss.*** Total direct and indirect sales losses due to reduced agricultural production exceed $2 billion each year. This includes $729 million in lost annual personal income.

also establish smaller lot sizes, but only by issuing findings that the land could sustain agricultural uses permitted under the contract.[11]

CONDITIONAL APPROVALS

The Map Act authorizes local agencies to impose several conditions on the approval of subdivisions, including the dedication of land or payment of fees for parks, schools, street and bicycle paths, local transit facilities and drainage and sewer facilities.[12] The purpose of these conditions is to offset

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[9] Tim Dunbar, *Ranchettes: The Subtle Sprawl. A Study of Rural Residential Development in California's Central Valley* (2000).

[10] These figures reflect a net loss, and therefore take into account the gain in revenue that the local agency would realize from increased property taxes. It does not account, however, for the expected gains the county could expect from sales tax revenues.

[11] Cal. Gov't Code § 66474.4.

[12] Cal. Gov't Code § 66477. Further conditions may be required as mitigation measures under the California Environmental Quality Act.

the long-term impacts (which may include the loss of agricultural land) that the subdivision will have on public resources.

Local agencies may impose additional requirements when the condition reasonably offsets the impact of development and furthers the purposes of the general plan.[13] A common practice is to conduct a nexus study to justify the fee by quantifying the impacts of development and showing how a fee or other requirement would offset such impacts.[14] If the general plan requires the mitigation of loss of farmland, then the local agency may impose that condition on development. For example, based on a nexus study, the City of Davis imposes a fee on new subdivisions that is then used to purchase conservation easements on neighboring farmland.[15]

Such fees are sometimes challenged as a "taking" of property. However, fees that are adopted by ordinance and are applicable to a broad class of landowners generally survive judicial scrutiny. The cases often cited in support of such claims — the *Nollan* and *Dolan* cases[16] — hold that such fees are more likely to become a taking only if they are imposed in an ad hoc or individual fashion on a single landowner. While such claims should not be ignored, local agencies working closely with legal counsel should be able to craft a program that does not amount to a taking.

WHAT TO DO WHEN ALL THE CONTROLS ARE NOT IN PLACE

Update the General Plan. All subdivision applications filed after the update will be subject to those revisions as adopted.

Use a Development Agreement. Developers will often trade additional public improvements for certainty. Under a development agreement, the agency can encourage the subdivider to cluster the development in a portion of the land to be subdivided and keep the remainder of the land in agriculture. The Institute has published the *Development Agreement Manual*, available for purchase online at www.ilsg.org (keyword search "development agreement").

ANTIQUATED SUBDIVISIONS

The term "antiquated subdivisions" describes lots that have been created under early versions of the Map Act. The date that the subdivision was legally created is important. Antiquated lots can be developed under the version of the Map Act that was in effect on the day the lot was legally created.[17] For example, if a lot was created in 1910, it would not necessarily have to be consistent with today's general plan because there was no general plan conformity requirement in 1910.

Thus, landowners have a valuable incentive to determine the extent to which their land may already have been subdivided. Assuming their

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[13] Cal. Gov't Code §§ 66418, 66419. *Soderling v. City of Santa Monica*, 142 Cal. App. 3d 501 (1983).

[14] Sometimes this analysis is done as part of an environmental impact report (EIR).

[15] Such fee programs must be imposed and managed in accordance with the Mitigation Fee Act. See Cal. Gov't Code §§ 66000 and following.

[16] *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

[17] The Map Act recognizes the legality of parcels created by deed and federal patent. See Cal. Gov't Code § 66451.10. See also *John Taft Corp. v. Advisory Agency*, 161 Cal. App. 3d 749 (1984) (holding that a United States Government Survey Map is insufficient to create legal parcels); *Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal. App. 4th 593 (1994) (finding three parcels, two created by federal patent and one by deed, on ranch covering thousands of acres).

A SHORT HISTORY OF ANTIQUATED SUBDIVISIONS

In the late 1880s, land speculators recorded several hundred thousand tiny lots on maps throughout California, creating "ghost" townships that existed only on paper. In some cases, large tracts of land were subdivided into substandard lots with no regard for slope, drainage or topography. Such lots were even used as a promotional sales gimmick; *Sunset* magazine gave away small parcels in a campaign to increase subscriptions. One estimate placed the number of antiquated subdivisions between 133,000 and 424,000 lots.[18]

research yields positive results, the next step is to seek a certificate of compliance, which provides formal recognition of the parcel by the local agency. Local agencies do not have any discretion in such matters. If there is a legally created parcel, they must issue the certificate.

The problem that still exists for the landowner, however, is that many of these lots are in less-than-ideal locations, such as steep hillsides, flood plains or away from access to good roads. In such cases, the owner may not be able to develop the parcel as originally drawn and will generally request a lot line adjustment. The Map Act allows owners to reconfigure existing, contiguous parcels on their properties. Until recently, landowners did not have to seek local agency approval for lot line adjustments, which made antiquated subdivisions a contentious issue. Landowners were free to reconfigure their lots into a more marketable configuration regardless of location. Recent state law, however, requires that local agencies determine whether the reconfiguration is consistent with the general plan.[19]

The new consistency requirement for a lot line adjustment, however, does not address the underlying problem — the presence of developable, substandard lots in the middle of prime agricultural zones. Some local agencies have drafted ordinances that attempt to deal directly with this issue. For example, Stanislaus County recognizes the legal parcel created by the antiquated subdivision, but limits the extent to which residential homes can be built on such lots, thereby preserving the parcel's agricultural character. Owners of such lots must go through a special process to build a new residence; a permit for the new residence is granted only when specific findings are made.[20]

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[18] *See Circle K Ranch v. Board of Supervisors* (ordered not published), 94 Cal. Rptr. 2d 97 (2000).

[19] Cal. Gov't Code § 66412.

[20] County of Stanilaus, Cal.., Ordinance C.S. 741 (2000).

A NOTE ABOUT ASSESSOR'S PARCELS

Assessor's parcels are sometimes mistakenly assumed to be separate legal parcels when they are not. The purpose of assessor's parcels is identify property for tax purposes. In some cases, a landowner may own a single piece of land that is identified in the assessor's roll as several different parcels. In such cases, it is worth examining whether each of these parcels has a certificate or legal description designating it as a separate legal lot. An assessor's lot designation alone is usually insufficient to create a legal lot. Consequently, owners may not divide land along the lines of the assessor's parcel without first complying with the terms of the Map Act.

INVEST IN A CONSERVATION EASEMENT PROGRAM

STRATEGY 6

Agricultural conservation easements have emerged during the past 20 years as a potentially effective way both to permanently protect farmland and channel urban growth. New efforts are encouraging the use of this tool. The state Department of Conservation's Farmland Conservancy Program was created to fund easement transaction statewide. In 2000, voters passed Proposition 12, a parks bond, which included $25 million for agricultural easements. The approval of Prop. 40 in March 2002 increased this amount significantly.

Conservation easements are established by legal agreements between landowners and conservation organizations, in which the landowner voluntarily places a permanent deed restriction on a property to ensure that the land remains in agriculture.[1] In exchange, the landowner receives something of value — cash, tax advantages or simply the satisfaction of knowing the land is protected. Once the opportunity to develop has been sold, the land is permanently restricted to agricultural use, even if ownership of the land changes. But the landowner retains title to the property and can still restrict public access or use the land as collateral for a loan. The primary advantage of a conservation easement is its certainty — even the best general plan can be amended, but a permanent deed restriction is binding forever.

Although most easements are permanent, this is not mandatory. An easement can also be purchased for a specific term, such as 20, 30 or 50 years.[2] Term easements may be good solutions in circumstances where there is an open question of whether the land should be permanently preserved for agriculture.

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Monitoring and Enforcement 43

[1] More officially, and easement is defined as "any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land." Cal. Civ. Code § 815.1.

[2] Local agencies are authorized to hold open space easements either in perpetuity or for a term of not less than ten years, renewable annually. Cal. Gov't Code § 51070. This provision can be extended to agricultural lands. *See* Cal. Gov't Code §§ 51075(a), 65560(b)(2).

CITY LEADERSHIP KEY TO CONSERVATION EASEMENT[3]

The City of Arroyo Grande played a key role in acquiring a agricultural conservation easement within its city limits. The Dixson Family Trust sold the easement on its 40-acre ranch on the city's east side for $550,000. The easement is a collaborative effort between the Coastal San Luis Resources Conservation District and the American Farmland Trust. The California Farmland Conservancy Program and the U.S. Department of Agriculture Farmland Protection Program contributed funding for the easement.

"The beauty of a conservation easement is that it compensates landowners based upon market values for giving up the development potential of their land," said Jim Dickens, grandson of Wilma Dixson. "We were able to convert some of our land equity into cash and diversify the holdings of the trust while honoring my grandmother's dream of protecting the farm for future generations." The farm will continue to earn lease income from its current tenant.

The American Farmland Trust seldom brokers projects within city boundaries. But Arroyo Grande's 30-year commitment to farmland conservation made it the exception. The city developed long-range plans to protect most of its 340 acres by designating the land for agriculture in its general plan, participating in the Williamson Act and adopting a right-to-farm ordinance.

Protection of the Dixson Ranch draws a line on the eastward expansion of urban development into the upper Arroyo Grande Valley. From the ranch, the valley opens up to a landscape of small vegetable farms. About 2,500 acres of prime farmland in the Arroyo Grande Valley produce more than $26 million a year in farm revenue.

"It is our hope that other farmers in the valley will follow our lead and consider selling agricultural conservation easements," said Sarah Dickens, Wilma Dixson's daughter.

CONSIDERATIONS FOR LOCAL AGENCIES

Because of their nonregulatory nature, agricultural conservation easements are increasingly gaining acceptance in communities throughout California. Before designing a program or entering into a transaction, the easement purchaser has a number of considerations to study.

FINANCIAL CONSIDERATIONS

From a regulatory standpoint, easements are too expensive to use on a large scale. Typically, the value of an agricultural easement will be the land's fair market value less its agricultural value (see "Value of Agricultural Conservation Easements," page 39). Although there are an

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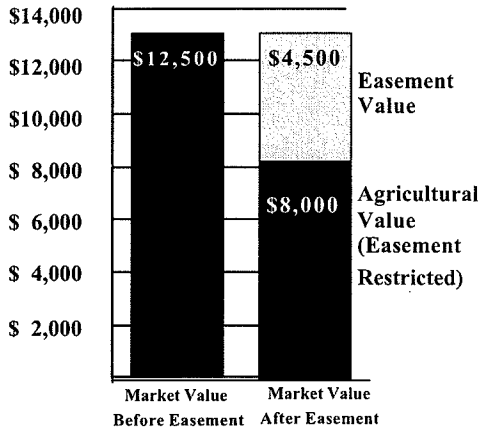
[3] American Farmland Trust, *Family Fulfills Dream of Protecting Farm for Future Generations* (October 21, 2001). Available at www.farmland.org/news_2001/102201_ca.htm.

exceptional variety of funding mechanisms available to assist with these purchases (see Strategy 24), most funding sources favor projects where at least 5 to 25 percent of the cost of the easement is raised locally or contributed by landowner donation (which has certain tax advantages) .

Moreover, easement transactions require a great deal of time and expertise. Anecdotal evidence suggests that land trusts budget as much as $15,000 in staff time for each transaction. Work that must be completed before making the purchase includes title research, appraisals and securing funding (which may include grant proposal writing).

Each conservation easement should be individually negotiated to reflect the needs of the landowner and the purchaser. After the purchase, the easements must still be monitored and enforced. Thus, another important consideration is what role the local agency will play in the easement's long-term holding and enforcement.

VALUE OF AGRICULTURAL CONSERVATION EASEMENTS



Courtesy: American Farmland Trust

PARCEL-SPECIFIC CONSIDERATIONS

Parcel-specific considerations, such as soil quality, productivity and proximity to development, should also be taken into account. Answering the following questions can provide some guidance:[4]

- ***Will acquisition further policy goals?*** Will acquisition complement the general plan or enhance the viability of local agriculture?
- ***Does the land's location have special significance in light of the general plan?*** To what extent has the area been affected by checkerboard or leapfrog development?
- ***Will the general plan be enforced?*** Farmers are more likely to sell easements when they realize that the general plan will not be frequently amended to favor new development.
- ***Is the purpose to protect the environment or farmland?*** Although farm operations can provide environmental benefits, they are sometimes incompatible with natural resources or environmental priorities.
- ***Is there an imminent threat of conversion?*** Land should be given priority if it is vulnerable to development and in need of protection.

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[4] Adopted from Great Valley Center, *Agricultural Land Conservation in the Great Central Valley* (1998).

STRATEGIC CONSIDERATIONS

The next task after securing funding is determining where the easements will be purchased. The purchaser often needs to balance opportunity with strategy. Most easements are purchased opportunistically — or as they become available.[5] Given the cost and staff time necessary for just one transaction, this trend is not surprising. Transaction costs often decrease when the landowner is motivated to sell. Ultimately, however, this approach usually results in widely dispersed holdings that do little to conserve surrounding properties.

As a result, some local agencies and land trusts have taken a more strategic approach, such as attempting to purchase easements over several contiguous parcels to form a large block of protected farmland. Alternatively, easements may be purchased at a strategic location in order to create a de facto urban growth boundary (see "Using Strategic Easements in the City of Madera," page 44). Indeed, such strategies are consistent with the California Farmland Conservancy Program's goal of targeting farmland sites for easements that can shield a much larger area from development.[6]

BUILDING CREDIBILITY WITH FARMERS

Not all land trusts are alike. Some are formed for environmental purposes rather than agricultural preservation. Most farmers are more willing to work with trusts that have farmers on its board and thus inherently understand the special needs of agricultural operations.

COOPERATING WITH LAND TRUSTS

Because it is an interest in real property, the easement must be owned by an entity, such as a public agency or a nonprofit organization. Local agencies often find it difficult to dedicate the staff and resources necessary to maintain an effective program. Indeed, one survey of public and private community leaders in the Central Valley favored land trusts over other public agency options (such as open space districts) by a 4-to-1 margin.[7]

Most easements are held by a land trust or conservancy. There are about 10 regional land trusts that focus on agricultural easements statewide. Another 15 trusts also work with farmers as part of a larger environmental and open space focus, usually on transactions involving rangeland. Three other organizations, the American Farmland Trust, the Nature Conservancy and the California Rangeland Trust, manage a statewide program. Most local land trusts are concentrated in the central and northern coastal counties, and a few are located in the Central Valley and Sierra Nevada. But large

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[5] Alvin D. Sokolow, Robin Meadows, Ellen Rilla and Cathy Lemp, Agricultural Easements: New Tool for Farmland Protection, *California Agriculture*, Jan.-Feb. 2002, at 15.

[6] Id at 7.

[7] Id at 15.

portions of the state, including most of Southern California, do not have a local land trust operating to protect agriculture.[8]

This absence is significant, given the initial success these organizations have had in obtaining funding. Independent land trusts, particularly those with an agricultural focus, can be useful sources of information. Their expertise can guide agencies through a complex process fraught with pitfalls. They also provide other advantages, including:

- ***Funding and Grant Proposal Writing.*** As 501(c)(3) charitable organizations, trusts can often secure independent sources of funding, are well-versed in grant proposal writing and have contacts with funding sources.
- ***Credibility Among Landowners.*** Independent land trusts, particularly those with farmers on their board, are usually well-connected to the farming community and less threatening to landowners uneasy about giving up rights to their land.
- ***A Primary Focus.*** Land trusts can dedicate full attention to land protection and have volunteers that provide vital professional services.
- ***Long-Term Monitoring.*** Land trusts are well suited to manage and monitor easements.

An effective partnership between a local agency and a land trust requires a great deal of forethought, particularly when designing a program that connects easement purchases to larger land use goals. In some cases, it may be appropriate to enter into an agreement, such as a memorandum of understanding, to clarify each party's responsibilities.

Some local agencies have addressed this issue by forming their own land trust. The City of Livermore worked closely with Alameda County and the City of Pleasanton to form the South Livermore Valley Agricultural Land Trust, which helps implement its South Livermore Valley Plan (see page 17). Easements are acquired under two ordinances. One requires developers to purchase easements, which are passed on to the trust. The second imposes a fee that is deposited with the trust for purchasing additional easements.

The City of Livermore is the third-party beneficiary for the easements and will take over the easement program if something unforeseen happens to the trust. The drawback to a trust formed by a local agency is that it is more likely to be viewed skeptically by some members of the farming community. The City of Brentwood, which also created a new land trust,

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Davis, CA 95616
(530) 753-1073
www.farmland.org

California Farmland Conservancy Program
801 K Street, MS 13-71
Sacramento, CA 95814
(916) 324-0850
www.consrv.ca.gov/dlrp

Great Valley Center Agricultural Program
911 13th Street
Modesto, CA 95354
(209) 522-5103
www.greatvalley.org

Land Trust Alliance
2001 P Street, Suite 110
Sacramento, CA 95814
(916) 441-4766
www.lta.org

[8] Id at 9-11.

addressed this issue by including a significant number of local farmers on its board of directors.

Open space districts are an alternative to land trusts.[9] At least four counties (Marin, Sonoma, Santa Clara and San Mateo) have chosen this alternative. In Sonoma County, the board of supervisors included agricultural protection among the purposes of the Sonoma County Agricultural Preservation and Open Space District. Sonoma County voters then approved formation of the district and funded it with a quarter-cent sales tax. The district now holds 67 easements protecting more than 17,000 acres of farmland and rangeland.[10] Despite this success, the district continues to struggle with one of its primary mandates — forming buffer zones between communities — because that land is also the most developable and landowners are often unwilling to sell.

THINGS TO CONSIDER WHEN BUYING OR SELLING AN EASEMENT

- Does it include the entire farm?;
- Additional housing;
- Farm tourism uses;
- Water rights;
- Indemnification for farm activities;
- Williamson Act contracts (see Strategy 10);
- Price;
- Payment of assessments;
- Monitoring;
- Dispute mediation;
- Public access (if any);
- Permissible buildings; and
- Alternative uses, if any.

WORKING WITH LANDOWNERS

Finding landowners interested in selling is a big challenge. One barrier that frequently must be overcome is the general lack of understanding and knowledge about conservation easements. Many farmers fear that once the easement documents are signed, the easement holder will start telling the farmer how to farm.[11] Thus, it often requires a number of informal discussions — sometimes over a period of years — before a landowner will consider selling an easement. Even then, additional negotiations, appraisals and paperwork must usually be completed before a formal offer can be extended. The landowner should be encouraged to seek legal and financial advice prior to drafting the easement language.

One successful strategy is to have a land trust representative initiate contact and develop a relationship. Not only are they more likely to have the specific knowledgeable necessary to make the deal, they are generally treated with less initial skepticism by farmers. Most farmers sell agricultural conservation easements for specific reasons, such as cash to invest in additional agricultural operations, cash for nonfarm use, estate considerations and the preservation of farmland.[12] In addition, landowners may realize certain tax benefits from donating all or a portion of an easement (often called a "bargain sale").

The American Farmland Trust recently published *Winning the Development Lottery* (April 2002), a report that can be very helpful to

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[9] Cal. Pub. Res. Code §§ 5500 and following; Cal. Gov't Code §§ 56000 and following.

[10] Sokolow, *supra.* at 17.

[11] Id. at 7 (quoting John Gamper, California Farm Bureau Federation).

[12] Id at 24.

landowners considering whether or not to sell a conservation easement.[13] Its content also provides good background for local officials and planners who are considering using the easement tool in connection with other land use planning objectives.

MONITORING AND ENFORCEMENT

Another critical issue is how the easement will be monitored and enforced. A long-term plan can help ensure compliance with the terms of the easement. Monitoring programs may include the following elements:

- ***Endowment.*** An amount of money that is set aside and draws interest to provide permanent funding to monitor and enforce the easement.
- ***Baseline Inventory.*** A document that describes the baseline conditions at the beginning of an easement acquisition.
- ***Management Plan.*** A document that outlines how the land will be managed. It may also include minimum level of best management practices.
- ***Transition Plan.*** A plan that ensures a smooth transition when a new landowner purchases the land burdened with the easement.
- ***Periodic Site Visits.*** A schedule of periodic site visits, usually one or two per year, where a representative of the easement holder may enter to survey the condition of the property.
- ***Maintenance Costs***. A plan or budget for monitoring the easement.
- ***Violations***. A plan for handling easement violations.[14]

Land trusts train volunteers to monitor easements as a way of keeping expenses down, involving the community and maintaining an air of informality that is reassuring to landowners unaccustomed to supervision. Infractions of conservation easement contracts rarely occur while the landowner who signed the agreement holds the property. If they do occur, the cause is usually a misunderstanding that can be resolved without litigation. Greater vigilance must be exercised when the property changes hands. But in most circumstances, a good monitoring program and ongoing communication with the property owner will prevent most problems.

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[13] The report is available online at www.farmland.org/regions/ca/central_valley_ag_easement.pdf.

[14] Local agencies may seek injunctive relief or seek monetary damages. Cal. Civ. Code § 815.7; Cal. Gov't Code § 51086(a) (applying to open space easements).

STRATEGIC EASEMENTS ON THE OUTSKIRTS OF MADERA

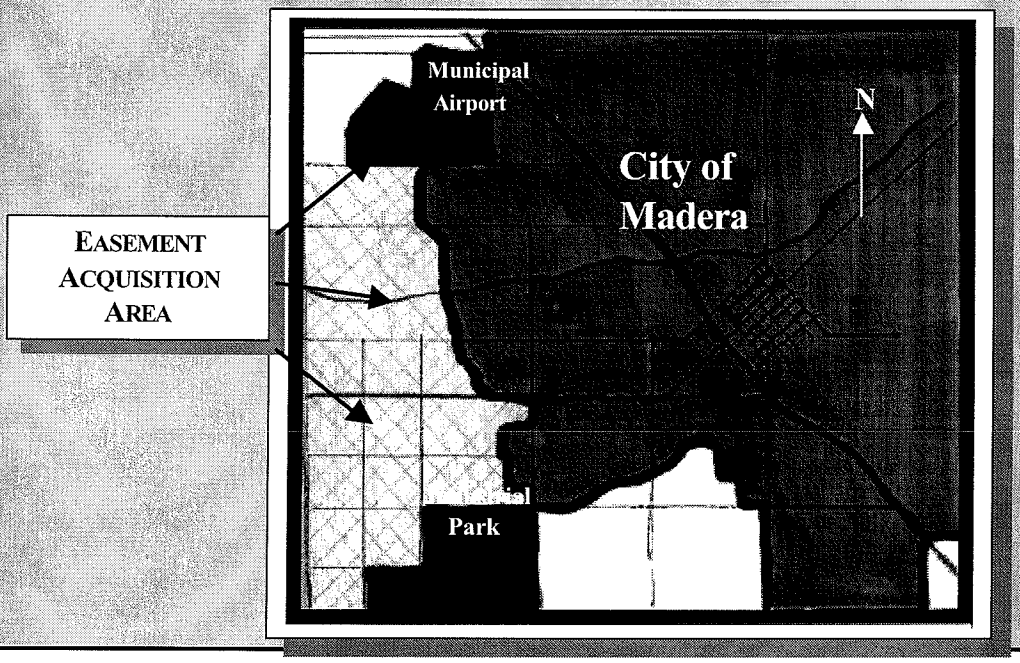
The City of Madera offers a good example of how easements can be used strategically. This area is known for producing several varieties of dessert wines. The landowners in the area are largely a close-knit group of Italian-American vintners whose families have been producing grapes and wine in the area for decades.

Concerns arose when development for the area was first proposed. If residential growth expanded beyond the airport and the industrial park, the thinking went, nothing would stop future expansions over thousands of acres of prime farmland.

Some community members saw an opportunity. If easements could be purchased across the gap between the airport and the industrial park, they would effectively create a growth boundary to protect the farmland under immediate threat and shield thousands of additional acres between the City of Madera and the San Joaquin River, nearly 10 miles away. This program worked because several key elements came together.

- ***Landowner Cooperation.*** The American Farmland Trust committed to the program early and worked extensively with landowners to negotiate the easements.
- ***Local Agency Cooperation.*** The City of Madera passed resolutions of support that were required to receive funding from the state. The city is now working to revise its general plan to take the conservation program into account.
- ***Outside Funding.*** The state's Farmland Conservancy Program contributed $2.2 million to purchase the easements, and the federal Farmland Protection Program contributed an additional $1.1 million.

Finally, the plan was tailored to the specific needs of the community and geography of the region. Thus, while some of the techniques could be borrowed in other communities, it would be difficult to replicate the program wholesale in other communities.



BALANCE REGULATORY BURDENS FOR LANDOWNERS

STRATEGY 7

One criticism of farmland protection programs is that that they do not treat all landowners the same. Those who are permitted to develop their property often reap the windfall of dramatically increased land values, while in protected farmland areas, landowners' property values remain unchanged. A few local agencies have adopted regulations that attempt to balance these impacts, using development credit transfers and mitigation fees.

DEVELOPMENT CREDIT TRANSFERS

Transferable development credits[1] (development credits or TDCs) allow landowners to transfer the opportunity to develop property from one parcel to another. Typically, a credit is transferred from an agriculturally zoned "sending area" to a developable parcel in a "receiving area." The number of credits assigned to each property can be set at a constant ratio or may vary, depending on soil quality, slope or location. Once sold, the sending site is "burdened" with a conservation easement to prevent future development.[2] There are several ways to implement such programs, including:

- ***Different Parcels, Same Owner***. This arrangement allows an owner to develop one parcel at increased density in exchange for protecting other parcels. Such programs can be limited to adjacent parcels or extended to nonadjacent parcels under the same ownership.

- ***Different Parcels, Different Ownership***. Owners of tracts in receiving areas must purchase an appropriate number of credits from a sending area in order to develop at increased densities.

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[1] "Transferable development right" or "TDR" is perhaps the more common term for this land use tool. However, it is a misnomer insofar as it implies that, in absence of the program, there is an underlying "right" to develop according to the number of credits assigned.

[2] The courts have generally upheld such programs. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. ___ (2002); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978); *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997); *American Savings & Loan Assn. v. County of Marin*, 653 F.2d 364 (9th Cir. 1991); *Aptos Seascape Corp v. County of Santa Cruz*, 138 Cal. App. 3d 484 (1982).

- ***Regional Transfers***. This option allows the transfer of credits across local agency boundaries.

The key to a development credit program is the zoning ordinance, which establishes the sending and receiving zones. Ideally, the program is designed so that purchasing the development credits is the most profitable way to develop property in the receiving zone. For example, San Luis Obispo County's transferable credit program allows development at levels of 50 percent over maximum density when sufficient credits are purchased from sending areas. To further encourage compact development, the bonus percentage decreases as the distance increases from the development to an urban center. [3]

IMPLEMENTATION ISSUES

Development credits are most suitable in places where large areas of farmland remain and growth can be channeled to distinct areas. The idea

HOW DEVELOPMENT CREDITS IDEALLY WORK

Assume that three farmers own separate 100-acre tracts of prime farmland in a "sending" area. Each tract is zoned "Exclusive Agriculture" with a development capacity of 100 residences (one house per acre) under a development credit ordinance. A developer owns a fourth 100-acre tract in a "receiving" area that is zoned at one house per acre. The zoning in the receiving area, however, permits development at four houses per acre upon the purchase of the appropriate number of credits from the sending area. Assume that:

- The full cost for building and marketing a single-family residence is $150,000.
- The market price for a single house on an acre lot is $210,000. The price of four homes on smaller lots is $185,000 each.
- The market rate for credits is $15,000.

Under these conditions, the agency has created an incentive. Without purchasing any credits, the developer will make $60,000 per acre ($220,000 sales price minus $160,000 building costs) or $6 million on 100 acres. But by purchasing the development credits, the developer nets $95,000 per acre ($740,000 in sales minus $600,000 for costs minus $45,000 for TDCs). The developer's profit margin has increased by 50 percent. In the process, 300 acres of farmland have been protected, and each of the three farmers received $1.5 million ($15,000 per acre for 100 acres) to offset lost development opportunities, which can be reinvested into their operation.

This successful outcome depends on a variety of factors, including all three farmers' willingness to sell their development credits to the developer in a timely fashion. [4]

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[3] County of San Luis Obispo, Cal., Ordinance § 22.040.500 and following (2001).

behind most programs is that imposing low densities on development in receiving zones will encourage developers to purchase development credits in sending areas. Setting these ratios, however, requires technical expertise and a working knowledge of the margins that drive the building industry. A poorly planned program could stall growth altogether.

Timing imposes another hurdle. Most TDC programs occur in small areas, which limits the ability of the market to match willing buyers and sellers. Some agencies create a development credit bank to facilitate transactions. The bank purchases credits from farmers when there is no buyer and sells credits to buyers when there is no seller. Other considerations include:

- ***Clear Definitions***. It's important to clearly define what a credit is. Including square-foot definitions and other specifics helps to clarify exactly what is being transferred.

- ***Efficient Process***. Paperwork can be complex. Designing a simple process and sample forms helps considerably. With a little planning, most problems or glitches can be spotted and solved in advance.

- ***Public Education***. Buying or selling an intangible like a development credit is a difficult concept to understand for those who are unfamiliar with the regulatory process. Programs that explain the process accelerate the participation rate.

- ***Interagency Cooperation***. The pool of buyers and sellers increases when the program covers a larger geographic area, which is more likely when agencies cooperate.

California has a few examples of successful TDC programs. The Santa Monica Mountain Conservancy has facilitated more than 500 transactions. San Luis Obispo County also manages a program to discourage development on steep coastal hillsides near Cambria.[5] However, of the 27 programs listed in one survey, most saw little or no activity.[6] The most difficulty appears to be developing the right mix of incentives to create a viable market for the credits.[7] Thus, although there are a few successful examples of TDCs, the number of inactive programs underscores the importance of a well-designed program.

INGREDIENTS FOR A SUCCESSFUL PROGRAM

- Well-defined "sending" and "receiving" zones;
- Integration with the Williamson Act (Strategy 10);
- Worthwhile investment incentives;
- Certainty that zoning will not be changed;
- Clear, easy-to-understand definitions;
- Easements that effectively protect farmland;
- Consistency with the general plan;
- A public education program; and
- Efficient, consistent procedures.

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[4] This example is a voluntary program - the developer can still opt to build only one house per acre. A mandatory program requires that the developer must purchase TDRs before development can proceed. *See* Johnston, R., and Madison M., *From Landmarks to Landscapes: A Review of Current Practices in the Transfer of Development Rights*, *J. Am. Plan. Ass'n*, Summer 1997, at 365.

[5] The County also allows a land trust to sell credits to the land it is conserving to fund additional conservation. *See* Land Conservancy of San Luis Obispo County, *About the Land Conservancy* (visited Mar. 15, 2002) www.special-places.org/about.htm.

[6] Rick Pruetz, *Putting Transfer of Development Rights to Work in California* 73-74 (1993).

[7] *Id.* at 101.

MITIGATION: FEES AND DEDICATIONS

Another mechanism for balancing the burdens of agricultural regulation is to place a mitigation, or linkage, fee as a condition on new development.[8] Mitigation fee ordinances usually ask developers to protect one acre of farmland of equal or greater quality for each acre of farmland that is converted to non-farm uses.[9] Similar fees have been imposed to build affordable housing, protect habitat and offset other offsite impacts of development, such as water pollution. The present fee rates generally range from $2,500 to $10,000 per acre, but can vary widely depending on local land and crop values.

Only a few agencies in the state have adopted mitigation programs to offset the conversion of farmland. These programs generally require developers to negotiate and purchase an easement themselves (with agency approval) or pay an alternative in-lieu fee. Paying the fee is usually easier and less time-consuming for the developer. But the in-lieu fee means that the agency must devote resources, such as staff time and acquisition funds, to purchasing conservation easements. In such cases, several local agencies have found it beneficial to work with local land trusts that have expertise in working with landowners and negotiating easements (see Strategy 6).

For example, the City of Davis has a one-to-two mitigation requirement; that is, for each acre of farmland that is converted to nonfarm use, two acres must be permanently protected.[10] Yolo County Land Trust actually acquires and holds the easements. Locations of the easements accepted or purchased by the city are coordinated through the open space plan. All easements must be located within the Davis planning area (160 square miles). Easement lands are organized in large contiguous blocks that provide farmland and habitat value and define urban form. The city has secured 2,500 acres of easements and received in-lieu fees of more than $900,000, which have been used as matching funds for California Farmland Conservancy Program grants.

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[8] The distinction between a mitigation fee and linkage fee is blurred. *See* Abbot, et al, *Exactions and Impact Fees in California* 26 (2001). Generally, impact fees fund physical improvements directly attributable to development and linkage fees are used mitigate secondary impacts. The same constitutional and statutory limitations apply to both. Our research suggests that the term "mitigation" is commonly used for what are technically linkage fees. See City of Davis, Cal., Municipal Code art. 15.15 (2002).

[9] A 1 to 1 ratio is common. See American Farmland Trust, *Saving American Farmland: What Works* (1997).

[10] Developers can grant a conservation easement or pay a fee that would cover the cost of protecting a comparable amount of land. But lands identified by developers to satisfy this requirement must meet several standards, including: (1) No more than 20 percent habitat present; (2) Compatible with city and county general plan; (3) Comparable soil quality; (4) Adequate water supply for continued farming; and (5) No other encumbrances on the land.

COMPARING DEVELOPMENT CREDITS AND MITIGATION FEES		
	DEVELOPMENT CREDITS	MITIGATION FEE
ACQUISITION	Developer must locate farmers willing to sell and negotiate credits	Development fee used by local agency to purchase conservation easements
INTERMEDIARIES	Development credit bank facilitates transfers; land trust holds easements	Local agency can act on its own or work with a land trust to negotiate and hold easements
PUBLIC EDUCATION	Market may not readily understand what constitutes a "credit"	Some education necessary, but easier to understand, particularly for developers
THRESHOLDS	Can be designed to accommodate small parcels	Lends itself to bigger parcels except where land values are exceptionally high
SETTING THE FEE	Determined by willing buyers and sellers	Amount charged to developers is set by formula and is usually updated annually

Several elements of fee programs should be addressed in advance:

- ***Ordinance.*** These fees should always be adopted by ordinance and apply equitably to a broad class of landowners. Fees that are adopted individually or on an ad hoc basis will attract greater judicial scrutiny if challenged (see discussion in Strategy 23).

- ***Setting Fees.*** The fee must be high enough to pay for the conservation easement, transaction costs and staff time to administer the process. Some fee programs also include the cost of an endowment to fund the monitoring program. Rapidly rising land prices can often cause fee revenues to fall short of the amount needed to complete the easement purchase. One possible solution is to adopt an adjustable fee based on current land valuations or to reset the fee annually.

- ***Setting Conversion Thresholds.*** In most cases, it's probably inefficient to purchase conservation easements on one, two or five acres of farmland. Setting a minimum project size will allow small projects to move forward. Such thresholds vary. While 10 acres might be appropriate for vineyards and "truck" farms, 20 acres or more is probably more appropriate in areas where commodity crops are grown.

- ***Time to Purchase.*** Given the speed at which California land can appreciate in value, the longer agency holds onto the fee without purchasing the easement, the less likely it will be able to protect the amount of farmland intended when the fee was originally collected.

- ***Purchasing Strategy.*** A "block" of contiguous easements is more effective at controlling growth than a patchwork of individual ones. The downside is that some farmers will hold out for better prices when they realize their farm is targeted. Including a fair price cap or providing a degree of discretion in implementing the program may help avoid such situations.

Another issue that arises in connection with mitigation fees is whether a nexus, or a direct relationship, is required between the impact of the development and the purpose of the fee.[11] While there is good authority to suggest that such a nexus is not necessary,[12] some agencies elect to develop a nexus study to identify the linkage between new development and the loss of agricultural land. A nexus study can also be useful in developing the formula for the fee and developing supporting findings if a mitigation ordinance is adopted. It provides a good reference if a developer decides to challenge the fee in court.

CITY OF BRENTWOOD CASE STUDY

The fast-growing City of Brentwood in northwest Contra Costa County is home to high-producing orchards and row crops. Regional agricultural production generated $51.2 million in 1998. Local farming was threatened, however, as the suburbs of the San Francisco Bay Area expanded eastward. The city's population has grown more than 200 percent since 1990 and its current population of 23,000 is expected to nearly double again before the city reaches its anticipated build-out population of 43,000.[13]

In response, the council appointed an Agricultural Enterprise Committee, composed of farmers, developers and others, to advise the city on how to protect and enhance agriculture in Brentwood. The committee met 11 times in one year and developed recommendations, many of which were implemented by the council. The program's cornerstone is the use of conservation easements to permanently protect farmland. The city designed a process that relies on both a mitigation program and transferable agricultural credits. The city also created a land trust to hold easements.[14]

MITIGATION PROGRAM

Brentwood's mitigation program is straightforward. Developers must provide one-to-one mitigation when farmland is converted to any other use, including residential and commercial development. Developers have two choices: They may either purchase a conservation easement over an equivalent acreage or pay an in-lieu fee of $5,000 per acre. The fee is based on an economic analysis of easements in the area. The city elected to apply the fee to current applications where full discretionary approval was

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[11] *See San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002) (holding that a generally applicable fee adopted by ordinance is not subject to heightened judicial scrutiny).

[12] *Homebuilders Association of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001).

[13] DDS Marketing, *Economic Analysis Report for the City Of Brentwood April 2000* (last visited Mar. 28, 2002) www.ci.brentwood.ca.us/department/econ/demographic_Study/index.htm.

[14] See City of Brentwood, Cal., Municipal Code § 17.730 (2001); *Agricultural Advisory Commission*, (visited Mar. 28, 2002) www.ci.brentwood.ca.us/boards/aarg/aarg.htm.

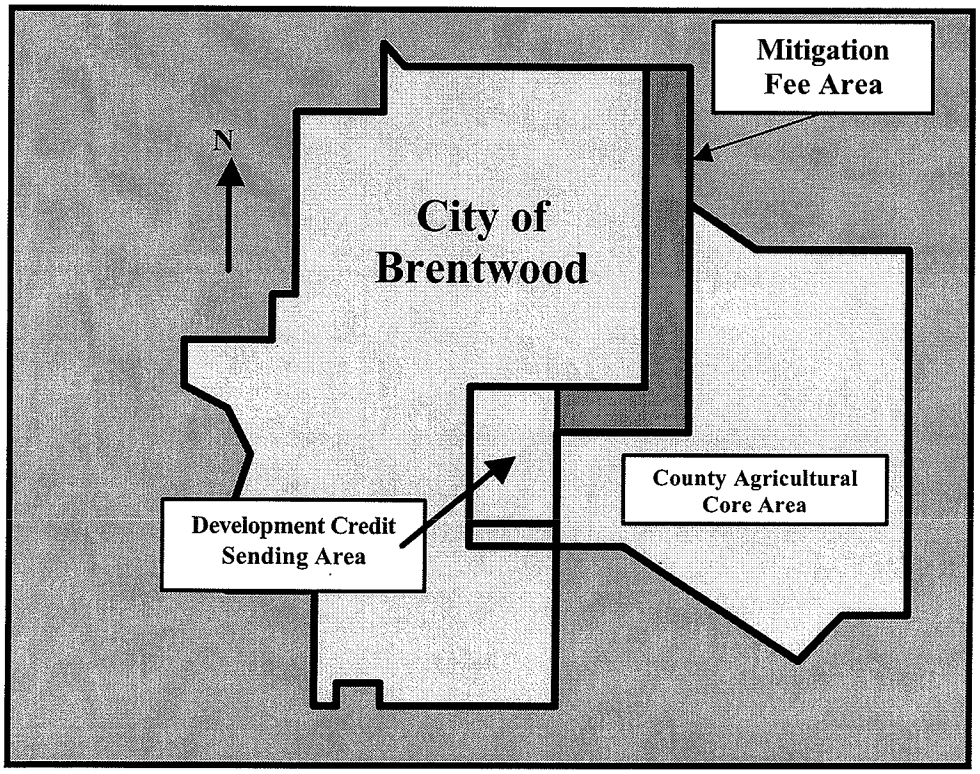
still pending. The fees are deposited into a trust account that may be used only for the conservation easement program. No more than 5 percent of the fee may be applied to administrative costs.

TRANSFERABLE AGRICULTURAL CREDIT PROGRAM

The transferable agricultural credit program was designed to meet the unique needs of a 2,160-acre block of land directly south of Brentwood (see map below). This area contained prime soils and was vulnerable to development because much of it had already been subdivided into smaller, high-value parcels. These property values suggested to the committee that the mitigation fee alone would be insufficient to purchase easements on a one-to-one basis.

The program assigns two credits to each acre of farmland within a "credit sending area." These credits can be transferred to receiving areas within the city. Once transferred, development can proceed at increased densities. For example, land designated as medium-density (usually developed at eight units per acre) may be developed at 10 or 11 units per acre. Developers who purchase agricultural credits can also forgo paying the mitigation fee if the development involves the conversion of existing farmland.

The credit program was designed with another local characteristic in mind.



Many of the landowners who own developable land within the city also own land in the sending area. The city expects that one of the usual drawbacks to TDC programs — the challenge of matching willing buyers with sellers — will not affect transactions that merely involve the same owner transferring credits from one parcel to another. Of course, developers who don't own property in the sending area may still participate by negotiating their own purchases of credits from other farmers in the area.

FORMATION OF A NEW LAND TRUST

The city also created the East Contra Costa County Agricultural Land Trust. Interestingly, there was another land trust operating in the area, but farmers felt uncomfortable working with it because they believed that it was "too environmental." So Brentwood formed its own land trust. The trust's board consists of three members appointed by the city, three appointed by the East Contra Costa County Irrigation District (representing agricultural interests) and one member selected by the first six. The trust oversees the purchase and monitoring of conservation easements and seeks additional funding, such as that provided by the state Department of Conservation, to purchase additional easements.

MORE ABOUT THE BRENTWOOD PLAN

In developing its program, the City of Brentwood used a comprehensive approach to protecting farmland extending beyond the components described here. Buffer policies and economic development strategies, among other things, were also part of the plan.

A copy of the final report of the Agricultural Enterprise Committee is posted on the portion of the Institute's Web site that supports this guide (www.ilsg.org/farmland, keyword search "Brentwood").

COMMUNITY EDUCATION

To successfully implement the plan, the city is now beginning to conduct a public education program. Its components include:

- ***A New Farmers' Market.*** The city is helping establish a weekly farmers' market to give residents more access to local produce and promote the benefits of farmland protection in the community.
- ***Information at the Corn Festival.*** The city's annual Corn Festival includes an "information alley" feature where groups can share information. The city will sponsor an information booth here as well.
- ***Education about Agricultural Credits.*** The city has mailed information to landowners in the agricultural credit sending area that explains the program and how owners can sell credits.
- ***General Plan Update.*** The city embraced the agricultural enterprise program by including the elements in a recently revised general plan.

Through these efforts, the city is working to educate urban residents about the connection between land use planning and agriculture. It is hoped, for example, that the community will be less opposed to increases in density associated with the credit program when they understand that it is helping to save farmland at the city's edge. Only time will tell how successful the program will be. However, Brentwood's experience provides a great deal of information that's helpful for other agencies.

PROMOTE SOUND ANNEXATION POLICIES

STRATEGY 8

Local agency formation commissions (LAFCOs) govern changes to city and special district boundaries, and the extension of public services. Nearly every county in the state has a LAFCO. Consequently, LAFCOs provide another possible forum for implementing farmland protection policies.

Each county may develop LAFCO guidelines and policies to address issues within its region. In the context of farmland protection, policies can be useful to offset the problem that sometimes occurs when different agencies within a county don't share the same conservation goals. An agency that has a desire to confine growth may abandon such policies if the net effect of this effort merely enables neighboring jurisdictions to annex more land. Adopting countywide rules that specifically address the degree to which farmland may be annexed or developed helps to ensure that large tracts of farmland remain intact.

LAFCO BASICS

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LAFCOs oversee annexations, service extensions and even new agency formation. They are charged with seeing that services are provided to the public as efficiently and economically as possible.[1] At the same time, they must also attempt to direct new growth away from prime agricultural land.[2] LAFCOs do not dictate planning goals to other local agencies. Instead, they reconcile differences between agency plans. The most significant of these powers related to farmland protection concerns the following issues:

- ***Annexations***. The authority to approve, reject or impose conditions on all boundary-change proposals;[3]
- ***Service Extensions***. The authority to review requests to provide or extend services outside jurisdictional boundaries;[4] and
- ***Sphere of Influence.*** The authority to oversee and update sphere of influence (or, for an agency, probable growth area) boundaries.[5]

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[1] Cal. Gov't Code § 56301.

[2] Cal. Gov't Code § 56377.

[3] Cal. Gov't Code §§ 56375(a), 56886.

[4] Cal. Gov't Code §§ 56133, 56434.

When reviewing proposals, LAFCOs balance the orderly provision of services with the need to protect farmland. For example, in reviewing a proposed sphere of influence change, a LAFCO must make a written determination as to how the change will affect agricultural land.[6] For annexation proposals, LAFCOs must consider the effect of the proposal on maintaining the physical and economic integrity of agricultural land.[7] These policies do not mean that the LAFCO will reject an annexation or boundary change that will have the effect of converting agricultural land to non-agricultural uses. However, such policies do encourage local agencies to plan comprehensively to avoid farmland conversion.

DEVELOPING COUNTY-SPECIFIC POLICIES

LAFCOs provide a significant opportunity to forge a countywide farmland protection program. Each LAFCO may develop its own policies,[8] including criteria for determining when unincorporated farmland may be annexed by

SAMPLE LAFCO POLICIES

SPHERE OF INFLUENCE POLICIES

- ***Infill First.*** Discourage conversion of territory located on a city boundary prior to developing vacant land within the city area.
- ***Seek Contiguous Development.*** An amendment to the sphere of influence must seek to include land that is physically contiguous to the existing boundary and adjacent to an existing developed area.
- ***Protect Prime Land.*** Urban services should not be extended into prime agricultural lands.
- ***Plan Proactively.*** Submit an annexation plan that includes components for protecting agriculture.

ANNEXATION POLICIES

- ***Likely Consequences.*** Discourage annexations that convert prime land unless effective measures have been adopted to preserve prime agricultural lands within the sphere of influence.
- ***Review Process.*** Establish criteria to determine whether annexation adversely affects agricultural resources, including soil quality, water and the value of land; and whether infrastructure would be extended through or adjacent to other agricultural lands.
- ***General Limitation.*** Land engaged in agriculture shall not be annexed to a city or a sanitary sewer agency for urban development.

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[5] Cal. Gov't Code §§ 56425; 56430.

[6] Cal. Gov't Code § 56425(e).

[7] Cal. Gov't Code § 56668(e). Agricultural lands means lands currently in agricultural use or participating in crop rotation, agricultural subsidy or set aside programs. Cal. Gov't Code § 56016.

[8] See Cal. Gov't Code § 56425(a).

a local agency. Several counties have adopted comprehensive procedures for evaluating such proposals. Solano County has developed five specific criteria for addressing an annexation's impact on maintaining the integrity of agricultural lands:[9]

- ***Soil Quality.*** The quality of the agricultural land in question.
- ***Justification for Conversion.*** A determination of: (1) whether the probable 10-year growth horizon justifies the conversion; (2) whether the proposed annexation abuts existing urban development; and (3) the extent to which there is a shortage of nonprime land.
- ***Infill Alternatives.*** The extent to which the agency facilitates infill development through redevelopment, capital improvement programs, land use changes and housing programs.
- ***Planning Consistency.*** Consistency with the city's comprehensive annexation plan (which inventories 10-year growth projections).
- ***Williamson Act Provisions.*** Annexation of Williamson Act lands is generally prohibited unless certain conditions apply.

MISSION STATEMENT

"To encourage the orderly development and reorganization of local governmental agencies, to preserve agricultural land and to discourage urban sprawl."

? San Joaquin County LAFCO

There are two additional reasons for working through LAFCOs to develop countywide policies. First, LAFCOs can be effective forums because they are composed equally of representatives from cities, special districts and the county. Second, recent legislative amendments require that LAFCOs be independent.[10] As such, LAFCOs provide a good forum in which different local agencies can work together on farmland protection and other growth management issues.

THE GILROY AGRICULTURAL LANDS AREA

In 1994, a unique collaboration began in Santa Clara County. The county, LAFCO and the City of Gilroy jointly commissioned a study to identify ways ensuring the long-term viability of agriculture in 14,000 acres of farmland south and east of Gilroy (also known as "the garlic capital of the world"). The study, *Strategies to Balance Planned Growth and Agricultural Viability*, presented several strategies supporting the region's agricultural productivity. A key element of the study suggested that the

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[9] Solano Local Agency Formation Commission, *Standards and Procedures* 25-28 (1999) (available online at www.solanocounty.com/em/forms/lafco/lafco_stdsproc.pdf).

[10] Cal. Gov't Code § 56381.

LAFCO POLICIES: GILROY AGRICULTURAL LANDS AREA

1. ***Support of Growth Boundary.*** LAFCO support of the city's 20-year growth boundary. No service expansion will be approved in the agricultural area, except as provided in Policy 6.
2. ***Acknowledgement.*** LAFCO acknowledgment that agricultural land within the boundary will be converted to urban uses.
3. ***LAFCO Considerations.*** When reviewing proposals within the boundary, LAFCO may consider the growth boundary, together with the city's other agricultural protection strategies, as mitigation farmland loss.
4. ***Contiguous Annexations.*** Urban service area expansion proposals must be contiguous to the urban service area boundary and may not include land under Williamson Act contract.
5. ***Requests to Extend Service Area.*** Requests to extend urban service area must be shown to be necessary for promoting the city's planned, orderly and efficient development.
6. ***LAFCO Endorsement.*** LAFCO will not approve annexations east of the growth boundary unless it endorses the amended boundary. In making this decision, LAFCO may consider, among other things, the city's ongoing mitigation measures, the degree to which the city has supported the agricultural industry and the availability of other land within the city's urban service area.
7. ***One Amendment per Year.*** LAFCO will consider amending the urban service area only once every 12 months.[11]

county, city and LAFCO should agree upon a set of standards to protect the area from piecemeal encroachment.

Eventually, the study led to a special set of seven criteria, approved by LAFCO, the city and the county, that apply only to proposals to annex territory within the Gilroy Agricultural Lands Area (see "LAFCO Policies," above). The process has not been entirely smooth. There is some dispute, for example, about when it is appropriate for LAFCO to hold back its "endorsement" of a city proposal to annex land within the agricultural zone. The city would like to annex 660 acres as part of a comprehensive general plan update. The LAFCO has indicated a reluctance to "endorse" this plan. Because the term "endorse" is vague, it has resulted in minor controversy about the word's meaning.

Regardless of this controversy, some community members credit the study and its process for increasing public discussion of how the City of Gilroy should grow. More than ever before, the community is engaged in the issues of when, where and how the city should manage its growth.

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[11] County of Santa Clara, Cal., *LAFCO Policies*, (last modified Feb. 27, 2002) http://santaclara.lafco.ca.gov/sclafcopolicies_main.html.

THINK REGIONALLY

STRATEGY 9

A regional approach to protecting farmland can be an important element of a long-term protection strategy. One agency's farmland protection program will accomplish little over time if nearby communities continue to annex land and expand at low densities.

Regional or cooperative planning agreements, supported by appropriate changes to the general plan and implementation ordinances, can be useful in managing growth in a way that takes neighboring communities into account. Working across jurisdictional lines is not always easy — particularly when land use decisions can have major fiscal impacts. But several local agencies have found a way to deal with these issues positively, using cooperative planning agreements.

COOPERATIVE PLANNING AGREEMENTS

Cooperative planning agreements between public agencies enable local agencies to coordinate their planning on a regional level. Because of their voluntary — and thus political — nature, cooperative plans usually require a great deal of discussion and negotiation before they are adopted. But once adopted, such agreements can help individual local agencies avoid piecemeal planning decisions.

Cooperative Planning Agreements 57

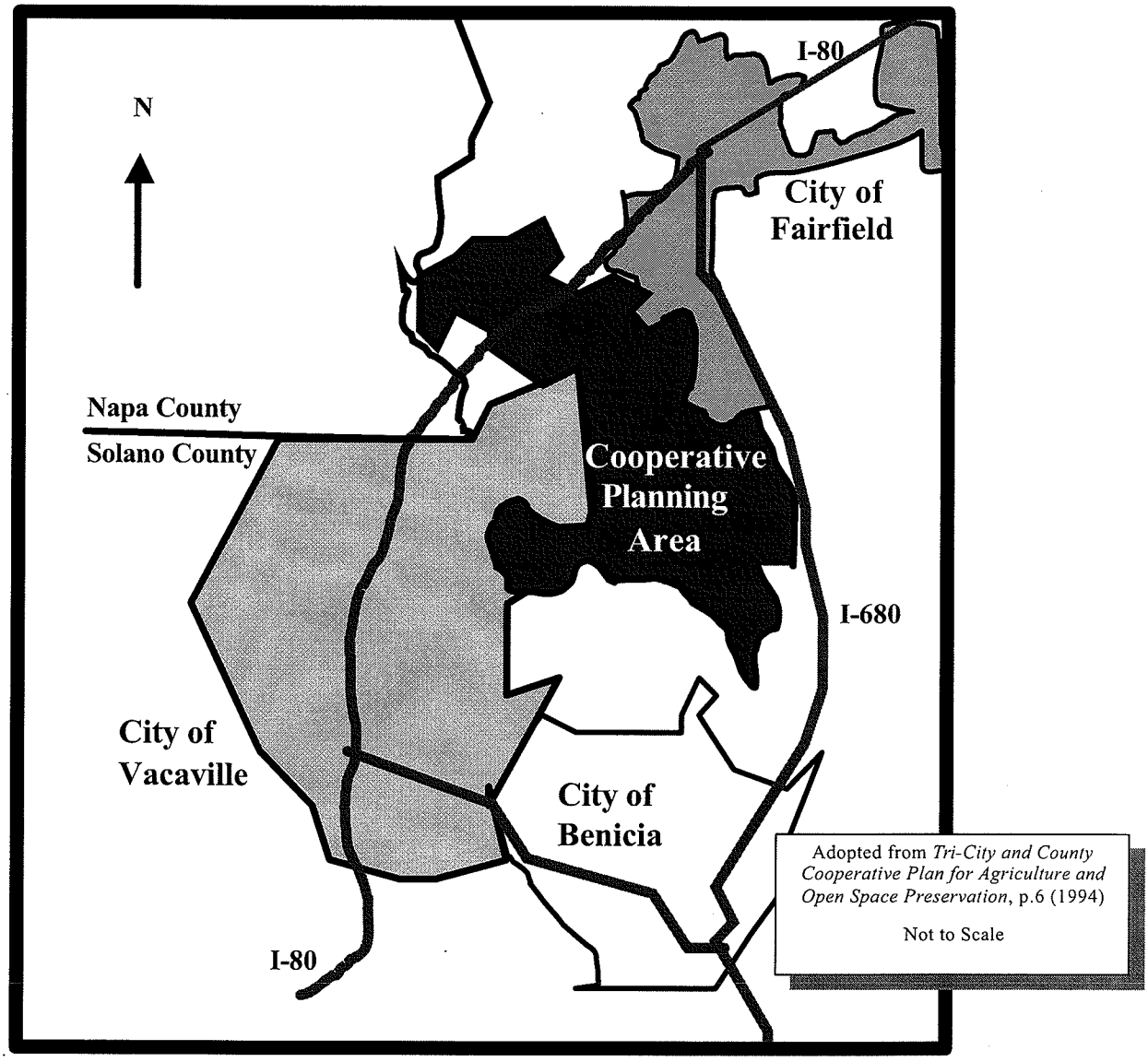
Potential Management Structures 60

Cooperative planning efforts require an ongoing commitment from everyone involved. Changes in the political or economic climate of even one of the participating agencies can affect the outcome of the planning process. It's essential to address the structure, implementation and funding of the planning effort. Additionally, a cooperative agreement cannot limit an agency's authority to adopt future ordinances that might conflict with the agreement.[1] As a general rule, governing bodies are prohibited from adopting resolutions that would restrict the options of future governing bodies.

Nevertheless, there are several examples of successful joint planning. A joint effort between the cities of Vallejo, Fairfield and Benicia involving 10,000 acres of ranchland demonstrates the promise of cooperative planning. The

[1] A provision of a planning agreement that made any general plan amendment adopted by one city regarding the plan area ineffective without adoption of a parallel amendment by another city was rejected as an unlawful delegation of the police power. *See Alameda County Land Use Association v. City of Hayward*, 38 Cal. App. 4th 1716 (1995). Legislation that would have authorized such agreements was vetoed. *See* AB 1877 (Klehs), 1993-94 session (vetoed Sept. 30, 1994).

cities created the Tri-City and County Cooperative Planning Group, a joint powers agency, to develop a plan.[2] Once the plan was in place, the cities revised their general plans to conform to the plan. Each planning group member must consult with the agency before amending its general plan in a way that directly impacts the planning area. The cooperative planning group cannot actually stop such actions, but the consultation requirement provides a forum for expressing and addressing concerns.



The formation of the Tri-City and County Cooperative Planning Group also provides a vehicle to obtain outside funding. Many funding sources give priority to programs that demonstrate cooperation among multiple jurisdictions. The agency has also worked with a land trust to secure an option to purchase an additional several thousand acres, or more than half of the total planning area.

Some cooperative planning efforts include a revenue-sharing element. One reason for this is to address a possible consequence of joint planning. Some agreements may have fiscal impacts that would limit the ability of one or more of the participating agencies to continue to provide public services at desired levels. The decision to forgo new development in unincorporated rural areas, for example, may reduce revenues that the county was depending on to provide health and social services to a broader population.

Revenue sharing has its limitations. For example, revenue-sharing agreements do not necessarily generate new revenue as much as they direct growth and reapportion existing funds. Thus, they are not a substitute for long-term, statewide reform of local government finance in California. In addition, it is difficult to precisely predict future revenue streams. Since no local agency wants to be placed at a disadvantage, the agreements may need to take certain contingencies into account.

INTERGOVERNMENTAL AGREEMENT CHECKLIST

Most intergovernmental agreements should address the following issues to minimize the risk of misunderstanding:

- ***Identify Parties.*** Specify which agencies will be involved, including cities, counties, special districts and state and federal agencies.
- ***Set Out Expectations.*** Describe the nature of relationships. Explain the purpose of the agreement and define its parameters.
- ***Create Accountability.*** Assign roles, responsibilities and powers.
- ***Define Process.*** Define procedures for meetings and votes of the overseeing body.
- ***Assign Risk.*** Address risk, liability and indemnification.
- ***Address Costs and Finances.*** Apportion costs, including unexpected costs, and include a process for ensuring fairness. Identify "in-kind" contributions. Explain how financial returns and remuneration will be handled.
- ***Plan for Termination.*** Define the duration of the agreement and the process for termination and disposition of holdings.
- ***Plan for Disputes.*** Provide a procedure to resolve disputes.
- ***Retain Flexibility.*** Provide flexibility to deal with changed conditions.

POTENTIAL MANAGEMENT STRUCTURES

At some point in a joint planning process, the parties consider what form the cooperative effort will take. This structure can range from a simple agreement of principles to the more complex action of creating a new public entity to oversee the effort. The appropriate structure varies on a case-by-case basis. There are, however, a few basic forms that lend themselves most readily to cooperative planning.[3]

AGREEMENTS IN PRINCIPLE

An agreement in principle is a nonbinding document that endorses or states an intention to plan cooperatively, manage growth in a certain manner or undertake some other kind of activity. For example, several cities in Fresno County endorsed the principles contained in the *Landscapes of Choice* report published by the Growth Alternatives Alliance (see Strategy 1). Entering into the agreement is significant because it creates the expectation that the agency will follow through on its commitment. The agency risks negative public attention (sometimes referred to as the "shame factor") if it does not follow through.

PUBLIC-PRIVATE PARTNERSHIPS

Public-private partnerships involve public and private organizations working cooperatively toward shared goals. One of the most active public-private partnerships in the state related to agricultural land protection is the Tri-Valley Business Council in Alameda and Contra Costa counties. The council recently published *Vision 2010*, which includes several regional goals for protecting agriculture. While such partnerships are very productive in developing plans and building community support, they are sometime less effective at instigating real change because they do not usually enjoy any true authority to take action.

NONPROFIT LAND TRUSTS

A nonprofit organization, such as a land trust, can be effective when the primary purpose of the joint effort is to hold agricultural conservation easements. Such trusts are flexible and, as 501(c)(3) nonprofit organizations, can qualify for funding unavailable to government agencies. One consideration is how the trust's board of directors will be formed. Although

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[3] For a good discussion of these options within an open space planning context, see Placer Legacy Open Space and Agricultural Conservation Program, Public Review Draft, May15, 2000 (Chapter 7, Open Space Government Structure) (www.placer.ca.gov/planning/legacy/5-18-00-draft-toc.htm).

the local agency may want to appoint the board, farmers often prefer trusts where other farmers make up a majority of the board. Accordingly, the agency may have to give up a degree of control in order to be effective.

A memorandum of understanding (MOU) works like a contract. Any number of parties can sign an MOU, including state and federal agencies and nonprofit organizations. These agreements work well for program elements that are functional or self-executing, like crediting funds or operation and maintenance, and that don't require a lot of additional decision-making. Attempts to use MOUs to limit the discretionary land use authority of a city or county legislative body would almost certainly constitute an invalid delegation of the police power.

JOINT POWERS AUTHORITY

State law permits two or more public agencies to combine forces to jointly exercise their powers to accomplish mutual goals.[4] In effect, the partnering agencies create a new public entity, such as the Tri-City and County Cooperative Planning Group mentioned earlier, that focuses on implementing the terms of the underlying agreement.

DIXON AND VACAVILLE SEIZE AN OPPORTUNITY: JOINT POWERS FOR JOINT SUCCESS

The neighboring cities of Vacaville and Dixon are a central part of the fast-growing I-80 corridor between San Francisco and Sacramento. In the midst of the economic downturn in the early 1990s, a key thousand-acre parcel of prime farmland located between the two cities became available for purchase. In addition to physically separating the two communities, the land served as an important regional scenic asset owing to its location along Interstate 80.

Vacaville and Dixon seized the opportunity. They formed a joint powers agency to purchase and manage the property. The JPA placed a conservation easement on the property and then resold it. Although it was prepared to sell at a loss in order to protect the agricultural land, the agency was able to recover its entire purchase price. The JPA continues to monitor the easement, but little staff time is required to maintain the project. The project received a Helen Putnam Award for Excellence from the League of California Cities.

The authority of joint powers authorities (JPAs) is limited to the terms of the underlying formation agreement and by the principle that it may not undertake any activity that could not be conducted by at least one of its member agencies. A JPA may, however, issue bonds irrespective of whether the JPA agencies could independently exercise such powers.[5]

The organization of each joint powers agreement is generally defined in the operating agreement. The member agencies usually appoint representatives to the organization's board. In some cases, the JPA will have its own staff; in others, staff is provided by one or more of the member agencies. A JPA may encounter difficulty if the cooperating agencies' interests and funding priorities change, but it does provide a flexible structure for creating an agency that is dedicated to a particular task, such as conserving of farmland.

OPEN SPACE DISTRICTS

A special district is the most formal option available for implementing a region wide open space or farmland protection program. The Sonoma County Agriculture and Open Space District is perhaps the most active example in the state, in terms of agricultural preservation. The district has more than 20,000 acres in easements and is funded by a voter-approved sales tax increase. One primary advantage of this structure is that it institutionalizes the effort to protect farmland. Funding sources may include taxes, bond measures and fees. The process for forming such districts is more rigid than most other alternatives. There must be specific statutory authority[6] and LAFCO approval.[7] Working with a pre-existing district may be appropriate in some instances.

Some districts, such as the Marin County Open Space District, are "dependent" because the county board of supervisors serves as the board for the district. This structure has the advantage of ensuring that the district's actions are consistent with county policy. However, such a board may subject the district to greater political pressures. An "independent" district, where the district's board members are elected, is another possibility. An independent district, however, may result in overlapping duties with other local agencies within the district.

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[4] See Cal. Gov't Code § 6500 and following.

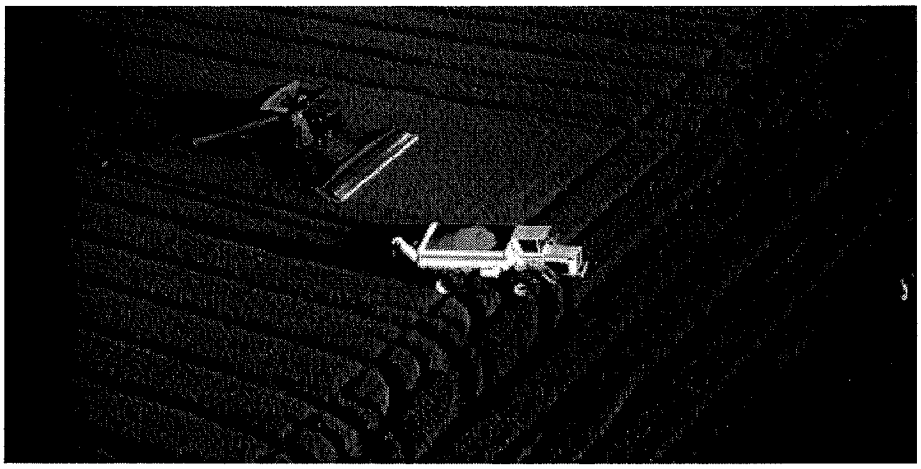
[5] *See* Cal. Gov't Code §§ 6584-6599 (commonly referred to as Marks-Roos Local Bond Pooling Act of 1985; 75 Cal. Op. Att'y. Gen. 6, 7-8 (1992).

[6] Cal. Pub. Res. Code §§ 5500 and following.

[7] Cal. Gov't Code §§ 56000 and following.

Part III

PLANNING FOR AGRICULTURE



"Suppose they had a war and nobody came?" was a popular counter-culture slogan in the 1960s. Its modern counterpart for farmland protection might be, "Suppose we protect farmland and nobody farms?" The key to protecting agriculture is ensuring that farming and ranching in protected areas remain viable enterprises. The value of protecting such lands is greatly diminished if agriculture does not remain an important element of the local economy.

In some respects, the task of keeping agricultural land viable may be more daunting than protecting the land from development. Modern farmers must contend with many new trends. International trade, biotechnology and corporate mergers have changed the face of agriculture. Complications from other agricultural issues, such as water and farm labor, also make the practice of farming today more difficult and complex than it was a generation ago.

Fortunately, there are a great many programs that local agencies can initiate or facilitate to help improve agricultural profit margins. The most common program is offering property tax breaks under the Williamson Act. However, economic development, permit streamlining and agricultural marketing strategies can also play key roles in developing a viable farmland protection strategy.

LAY OF THE LAND

Chance that a farm had Internet access in 1997: 1 in 4 [1]

Chance that a farm had Internet access in 1999: 1 in 2 [1]

Amount of each dollar spent on food that actually goes to farmers: 21 cents [1]

Percentage of California's surface and groundwater supply is used by agriculture: 43% [1]

Percentage of Californians who say that maintaining the water supply for farms and agriculture should be the most important priority for future water planning: 42% [4]

Number of Californians that say new homes and development should receive priority: 20% [4]

Chance that an irrigated acre of farmland applies water through a drip, sprinkler or trickle system: 1 in 3

Amount that the California Farm Bureau estimates California farmers have invested in irrigation systems since 1975: more than $1 billion

Change in the number of University of California Agricultural Experiment Station scientists between 1990 and 1998: -20% [1]

Average share of California's total agricultural production that is exported: 16-19% [1]

Percentage of farmers who are 44 years of age or younger: 20% [1]

Percentage who are 70 years of age or older: 20% [1]

Percentage of farm workers in California who are foreign-born: 95% [1]

Chance that a farm labor job exceeds 150 days: 1 in 3

Estimated annual total of personal income generated by California agriculture: $59 billion [1]

Total number of jobs supported by agriculture in California: 1.1 million [1]

SOURCES: **(1)** Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • **(2)** Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) **(3)** California Farm Bureau Federation (www.cfbf.org) • **(4)** Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • **(5)** Kuminoff *et al, Issues Brief: Farmland Conversion: Perceptions and Realities,* Agricultural Issues Center (May 2001) (see www.aic.ucdavis.edu) • **(6)** American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (see www.farmland.org/cfl/survey.htm).

ADOPT A PROPERTY TAX INCENTIVE PROGRAM

STRATEGY 10

The Williamson Act was one of California's first farmland protection tools.[1] It allows farmers to contract with local agencies to lower their property taxes. Instead of paying a property tax based on the land's market value, the land is assessed at its agricultural value. In exchange, farmers give up the option to develop the land for urban uses for a minimum of 10 or 20 years. The state then pays a subvention to local agencies to offset the reduced revenues that result from lower property taxes.[2]

Nearly 16 million acres are enrolled under Williamson Act contracts, approximately one-third of which is prime land.[3] The Department of Conservation estimates that the Williamson Act saves most landowners from 20 to 75 percent in property tax liability each year. In one survey, one in three farmers with enrolled land claimed that they would no longer be farming were it not for the Williamson Act.[4] Property tax reductions can be a valuable incentive to keep land in agriculture. Without such protection, property tax on farmland will be based on its appraised sale price, which often reflects the development potential of land. Thus, land that is worth $3,000 per acre for agricultural production might be assessed at values in excess of $10,000 per acre when demand for development is high.

Despite its success, the Williamson Act is not without critics. Many believe that it failed to provide sufficient incentives to enroll land that was most at risk near fast-developing urban areas. In addition, the permitted uses were so broad that many nonfarm uses, such as golf courses, received the same benefits as neighboring farms. The Legislature addressed many of these perceived loopholes in 1998 and 1999. One key development was the passage of the "Super Williamson Act," which authorized the creation of farm security zones to provide increased benefits and new restrictions for enrolling farmers.[5] Agricultural Preserves and Farm Security Zones

Agricultural Preserves and Farm Security Zones 66

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[1] See Cal. Gov't Code 51200 and following.

[2] See Cal. Gov't Code § 16140; California Farm Bureau Federation, *The Farmland Security Zone: Preserving California's Prime Agricultural Farmland* (visited Mar. 18, 2002) www.cfbf.com/issues/landuse/fsz.htm.

[3] Division of Land Resource Protection, *Williamson Act Enrollment Patterns* (last modified Mar. 12, 2002) www.consrv.ca.gov/dlrp/LCA9798_enrollment.htm.

[4] UC Agricultural Issues Center, *Land in the Balance* (1989).

[5] Cal. Gov't Code §§ 51296 and following.

AGRICULTURAL PRESERVES AND FARM SECURITY ZONES

Agricultural preserves are the cornerstone of the Williamson Act. Owners of land located within the preserve can enter into contracts to receive reduced tax assessments. This process involves three steps:

1. ***Develop an Administrative Framework.*** The agency adopts rules for authorizing preserves, such as filing and processing requirements.[6] Within certain guidelines, the agency also determines the extent to which nonagricultural uses may be allowed within the preserve.[7]

2. ***Establish the Preserves.*** Preserves are established after conducting a public hearing. The planning department must also report on the proposal's consistency with the general plan. The minimum size of a preserve is 100 acres.[8] Minimum parcel sizes within the preserve are 10 acres for prime agricultural land and 40 acres for nonprime land.

3. ***Contract with Landowners.*** The agency may contract with landowners whose land is devoted to agricultural use within a preserve.[9] Local agencies also have the option to negotiate more restrictive contracts.[10]

There are two types of Williamson Act contracts: the traditional 10-year contract and the newer farmland security zone or 20-year contract. Most of the nearly 16 million acres enrolled in agricultural preserves statewide are under 10-year contracts. Only 400,000 are in farm security zone contracts, but this is beginning to change. For example, San Joaquin County is actively trying to convert its 10-year contracts to farm security zones.

TRADITIONAL TOOL: THE 10-YEAR CONTRACT

Landowners can enter into 10-year contracts by agreeing to restrict their land to agricultural use.[11] The local agency determines specific eligibility criteria, such as minimum parcel size and farm income requirements. The contracts automatically renew each year unless a notice of nonrenewal is filed. Upon such notice, the contract terminates in nine years and the

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[6] Cal. Govt. Code § 51231.

[7] Cal. Govt. Code § 51238.1

[8] Smaller preserves can also be created. Cal. Govt. Code § 51230.

[9] Cal. Govt. Code § 51201(b).

[10] Cal. Govt. Code § 51240.

[11] Cal. Gov't Code § 51201(d).

property taxes on the land gradually increase.[12] Although most lands are contracted for the 10-year period, local agencies have the option to adopt longer durations.[13]

The contract may also be cancelled if this is consistent with the Williamson Act's purpose or is in the public interest.[20] The owner pays a cancellation

CONTRACT OPTIONS		
	TRADITIONAL 10-YEAR CONTRACT	FARM SECURITY ZONE CONTRACT
Eligible Land	Prime land and some grazing land	Land designated on Farmland Series Map
Contract Period	10 years, annual renewal	20 years, annual renewal
Cancellations	Must be approved by local agency upon specific findings	Must be approved by local agency and Department of Conservation
Penalty	12.5% of fair market value	25% of fair market value
Assessed Value	Agricultural fair rental value	35 % less than agricultural preserve
Subvention Rate	$5 per acre for prime land, $1 for range land	$8 per acre within 3 miles of sphere of influence[14]; $5 outside sphere boundary[15]
Compatible Uses	Broadly defined;[16] determined by local agency[17]	More narrowly construed[18]
Farm Residences	Excluded from benefit	Excluded from benefit
City Role	Cities can make concerns known about contracts within planning area	City referral necessary for contracts within one mile of sphere of influence
CEQA	Agency approval of contracts exempted	Legislative note states that exemption applies[19]
Annexation	Not applicable	Strict limitations on annexations and purchases by school districts

[12] Cal. Rev. & Tax. Code § 426.

[13] Cal. Gov't Code § 51240

[14] Cal. Gov't Code § 16142.1.

[15] Cal. Gov't Code § 16142.

[16] "Compatible" uses include agricultural, recreational, and open space uses. Cal. Gov't Code § 51201(e). Farm labor housing is a compatible use. Cal. Gov't Code § 51238.

[17] Cal. Gov't Code § 51231.

[18] Compatible use provisions concerning nonprime land in agricultural preserves (Cal. Gov't Code § 51238.1(c)) do not apply to Farmland Security Zone parcels. Cal. Gov't Code § 51296.7.

[19] Cal. Code Regs. title 14, § 15317 (2002).

[20] Cal. Gov't Code § 51282. These findings are: (1) a notice of non-renewal filed; (2) cancellation will not remove adjacent lands from agricultural use; (3) the alternative use is consistent with the general

SHOULD CITIES CREATE FARM SECURITY ZONES?

Counties are probably best suited to create farm security zones for two reasons. First, such zones require minimum acreages not likely to be found within city boundaries. Second, if the overall goal of farmland protection program is to encourage compact urban growth, then it is unlikely that cities will be managing the broad swaths of farmland needed for a viable agricultural district. Of course, there are exceptions. Cities that have already annexed large areas of farmland may want to use the Williamson Act to phase in growth or otherwise protect agricultural land of significant importance.

fee equaling 12.5 percent of the current fair market value of the land[21] and reimburses the deferred taxes for the period that the land was restricted. The landowner may avoid the cancellation fee by dedicating a conservation easement on comparable lands.[22]

NEW TOOL: FARMLAND SECURITY ZONE CONTRACT

Farm security zone contracts differ from traditional 10-year contracts in that landowners receive an additional 35 percent reduction in their property tax. In return, the landowners are subject to stricter provisions, such as a 20-year contract period, state approval of cancellations and a penalty set at 25 percent of the land's fair market value. Farmers in 10-year contracts may re-enroll their land in a farm security zone contract without penalty.[23]

Requirements for entering the program are also stricter. Only land designated on the Department of Conservation's Important Farmland Series Maps as prime farmland, farmland of statewide significance, unique farmland or farmland of local importance is eligible[24] (see Strategy 21). Procedures for nonrenewal and cancellation are substantially the same as for agricultural preserves.[25] However, the local agency's discretion is more limited in approving alternative land uses in such zones.[26]

A farm security zone contract also affects local agencies' ability to annex territory. In most cases, a city is prohibited from annexing contracted lands.[27] Contracted land may not be annexed to a special district that provides sewers, nonagricultural water or streets and roads unless these services benefit the uses allowed under the contract.[28] A school district is also prohibited from acquiring land enrolled as a farm security zone. Finally, newly adopted special taxes for urban-related services must be levied on contracted land at reduced rates unless the tax specifically benefits the land within the farm security zone.

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plan; (4) cancellation will not result in discontiguous growth patterns; and (5) that there is no proximate non-contracted land which is both available and suitable for the proposal. *See also, Sierra Club v. City of Hayward*, 28 Cal. 3d 840 (1981) (construing the ability to terminate contracts narrowly).

[21] Cal. Gov't Code § 51283(a). *See People ex rel. Wheeler v. Triplett*, 48 Cal. App. 3d 233 (1996) (regarding the appraisal of current fair market value for purposes of calculating the cancellation fee). In some cases, the local agency may waive the cancellation fee. Cal. Gov't Code § 51283.1.

[22] This program is a link between the Williamson Act and the California Farmland Conservancy Program Act (Cal. Pub. Res. Code §§ 10200 and following). The comparable land must be of equal size or suitable for agricultural use. Cal. Gov't Code § 51256.

[23] Cal. Gov't Code § 51296.1. Landowners not enrolled in Williamson Act contracts may apply directly for farm security zone contracts.

[24] Cal. Gov't Code § 51296.8.

[25] Cal. Gov't Code §§ 51296.9 and 51297.

[26] Cal. Gov't Code § 51296.7.

[27] Cal. Gov't Code §§ 56749; 51296.3.

[28] Cal. Gov't Code §§ 56856; 51296.4.

The goal of these provisions is to strengthen the Williamson Act. Interestingly, the creation of a farm security zone is one of the few long-term solutions to farmland protection that is *not* a conservation easement. From a planning perspective, such zones help to ensure that land remains in productive agriculture for a period of 20 or more years without locking it up in an easement that will be difficult to rescind.

Kings County has been very effective at adapting to the new farm security zone program. In 1998, the first year of implementing the program, the county transferred 208,901 agricultural preserve acres into farm security zones. From 1999 through 2000, another 33,000 acres were converted. As of 2000, Kings County had enrolled more land in the program than any other agency: 242,615 acres. (Kern County was the runner-up with 85,211 acres.) Of the Kings County land, 28,421 acres were considered "urban prime" — land within three miles of a city's sphere of influence.

TOP 10 SUBVENTION PAYMENTS 2001 (ALL COUNTIES)

Fresno	$5,757,402
Kern	$5,233,922
Tulare	$3,506,396
Kings	$2,786,645
San Joaquin	$1,991,968
Stanislaus	$1,722,411
Madera	$1,359,352
Yolo	$1,354,347
San Luis Obispo	$1,074,304
Tehama	$ 978,674

FISCAL IMPACTS ON LOCAL AGENCIES

The consequence of lowering property tax values in agricultural zones is that less money ultimately flows to local agencies. To offset this, the Williamson Act authorizes the state to provide a payment, called a subvention, for each acre of farmland enrolled under the act. The state currently spends about $39 million annually in subventions.

The system works the same way for agricultural preserves and farm security zones, except farm security zone payments are larger. For land enrolled under a 10 year contract, the state pays $5 per acre for prime agricultural land and $1 per acre for all other land.[29] In farm security zones, subvention payments are $8 per acre for land within three miles of a sphere of influence boundary and $5 per acre for land beyond this boundary.

To receive payment, the local agency submits an application to the state Department of Conservation's Division of Land Use Protection by Oct. 31 each year.[30] Once the local agency receives the subvention payment, the funds are unrestricted and may be used for any expenditure. The receiving agency may also allocate a portion of the funds to any special district or

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[29] Cal. Gov't Code §§ 16140 and following.

[30] See Division of Land Resource Protection, *Programs To Conserve California's Farmland & Open Space Resources* (last modified Mar. 12, 2002) www.consrv.ca.gov/dlrp. A local government may be ineligible for subvention payments if it fails to adopt a local open-space plan or to comply with the provisions of the Williamson Act contracts. Cal. Gov't Code § 16146. Cal. Gov't Code § 65560.

LOCAL AGENCY REVENUES UNDER THE WILLIAMSON ACT (PER ACRE OF FARMLAND)			
	NORMAL	10 YEAR CONTRACT	FARM SECURITY ZONE
VALUATION	Sale price -fair market value	Capitalized of fair rental value	65% of 10-year contract or market value, whichever is less
ASSESSED VALUE	$2,000	$1,250	$812.50
TAX RATE	1 %	1 %	1 %
TAX BILL	$20.00	$12.50	$8.12
COUNTY SHARE [32]	$3.40	$2.12	$1.38
REVENUE DECREASE	0	$1.28	$2.02
SUBVENTION	$0	$5 on prime and $1 on nonprime land	$8 within 3 miles of sphere; otherwise $5
TOTAL GENERAL FUND REVENUE	$3.40	$7.12 on prime land; otherwise $3.12	$9.38/acre within 3 miles of sphere; otherwise $6.38.

school district located within the assessed area whose revenues are reduced by the lower property valuation.[31]

ASSESSING THE IMPACT ON LOCAL REVENUES

The California Constitution requires that property tax assessments of land reserved for agriculture be based on the land's actual use.[33] Land covered by a Williamson Act contract is valued according to the annual income it can be expected to generate from rent or agricultural production.[34] This is called the "capitalization of income formula."

The California Farm Bureau Federation has developed an analysis of the economic effects of Williamson Act contracts for counties and landowners (see "Local Agency Revenues Under the Williamson Act," above).[35] This analysis takes a parcel of prime land with an assessed value of $2,000 and

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[31] Cal. Gov't Code § 16145.

[32] Actual proportions vary from area to area and even parcel-to-parcel. *See* Legislative Analyst's Office, *Property Taxes: Why Some Local Governments Get More Than Others* (1996).

[33] Cal. Const. art. XIII, § 8.

[34] Cal. Rev. & Tax. Code §§ 423, 423.4. Proposition 13 establishes a property tax rate of one percent of full cash value as determined by the 1975-76 assessor's roll. Reassessment occurs due to a change in ownership or new construction. Full cash value increases by two percent each year.

[35] California Farm Bureau Federation, *Economic Effects of Farmland Security Zone (FSZ) Contract for Landowners and Counties*, www.cfbf.com/issues/landuse/study.htm.

provides a comparison of the per-acre property tax payments by the landowner and the corresponding effect on local agency revenues.

Of course, the bottom line for many agencies is whether they come out ahead financially after recouping the subvention from the state. Today, the answer appears to be that many local agencies *do* come out ahead. The information provided by Sutter and San Joaquin counties (see "Impact of Williamson Act Assessments," next page) demonstrates that the state's subvention payment more than compensates for reduced property tax revenues.

On a parcel-by-parcel basis, the following "break-even points" can be used as a very rough rule of thumb to determine at what property value level the state's farm security zone subvention payment becomes less than the local agency's share of lost property tax revenue:[36]

- ***Within a Three-Mile Boundary.*** The break-even point is $6,700 per acre.[37] If land values exceed that amount, the subvention will not offset lost revenue. This break-even point is probably higher for most cities — $13,450 — because designations are less likely to affect special district revenues.[38]

- ***Outside the Boundary.*** For land more than three miles from a sphere-of-influence boundary, the value is $4,200 per acre.

These break-even figures suggest that there is sufficient incentives for local agencies to create farm security zones.[39] However, these figures are only approximations and vary from county to county and even from parcel to parcel, depending on various factors.

While this information is helpful, there are at least three compelling reasons to review the program on a jurisdiction wide basis, rather than using a parcel-by-parcel approach: First, wide variations in the assessed value of thousands of parcels make the exact financial gain or loss resulting from individual Williamson Act contracts difficult (and time-consuming) to calculate. Second, any net loss on a single contract is more

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[36] Per acre break-even point calculated by the following equation: (LV)(.34)(.01) = [LV (.65)(.01)(.34)] +8; where LV = break-even land value; (.01) = property tax rate; (.34) = estimated share of property tax revenue for counties and special districts; (.65) = reduced property tax rate in farm security zone; (8) = subvention payment within three miles of sphere of influence.

[37] This assumes that the county will reimburse special districts for lost revenues.

[38] This number assumes that the subvention would not have any effect on special district revenues and that the city only receives 17 percent of the property tax.

[39] It is only in the limited circumstance when agricultural land has a high value (vineyards, for example); or when the land value reflects some development pressure, that the incentives may not pencil out for local government on a case-by-case basis.

IMPACT OF WILLIAMSON ACT ASSESSMENTS IN SAN JOAQUIN AND SUTTER COUNTIES		
	SAN JOAQUIN[40]	SUTTER[41]
Number of Williamson Act Parcels	6,932	72
Williamson Act Acreage	550,948	6,802
Base Value of Williamson Act Acreage	$1,968,761,235	$18,997,970
Restricted (Williamson Act) Value	$1,616,277,889	$12,834,055
Decrease in Assessed Value	$352,483,346	$6,163,915
Decreased Assessments (1% of Value)	$3,524,833	$61,639
Decrease in Tax Revenue to County[42]	(599,222)	(10,479)
Estimated State Subventions to County	$2,030,337	$34,010
Estimated Net Gain/Loss to General Fund	$1,431,115	$23,531

than offset by contracts in other areas that provide a net gain to local agencies. Third, even a minor decrease in revenue is a small price to pay when compared to the cost of purchasing conservation easements. For substantially less money (most of which is offset by other net gains), a local agency can use farm security zones to direct growth away from entire blocks of enrolled land.

The potential impact on special district revenues should also be addressed when designing a property tax incentive program. Special districts can be hardest hit by such programs because they are not directly entitled to any subvention payment. However, local agencies receiving payments are authorized to share them with special districts to offset this effect.[43]

From a growth management and a financial standpoint, the Williamson Act — and the farm security zones contract in particular — appears to create a win-win situation for landowners and local agencies.

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[40] San Joaquin County Assessor's Office. San Joaquin County has 393 Farmland Security Zones.

[41] Sutter County Assessor, *2001/02 Roll Report* (2002).

[42] Assumes county general fund receives 17 percent of property tax revenues.

[43] Cal. Gov't Code § 16145.

PLAN FOR ADEQUATE WATER SUPPLIES

STRATEGY 11

Water is a vital resource for California agriculture. By managing and increasing the local water supply, local agencies can help to ensure that farms remain viable. Although many policy alternatives are beyond the scope of local agencies, several proactive policies and programs can be implemented to maintain an affordable water supply.

The Tri-Valley Business Council, a public-private partnership operating in fast-growing Alameda and Contra Costa counties, recently created the Agricultural Water Task Force to implement a planning process that focuses on identifying sufficient water supplies to support local agriculture. The task force has three goals:[1]

1. Create a plan to obtain water for increased irrigated agriculture in a way that integrates economic profitability and environmental health, and respects the needs and desires of all people in the region;

2. Identify and resolve issues of common concern related to an increase in irrigated agriculture; and

3. Promote communication and understanding among the different interests involve in agricultural land decisions.

The task force is composed of community leaders from a variety of interest groups. Although there are very significant challenges in achieving these goals, the fact that diverse interests are working together for the benefit of agriculture and the community as a whole may provide the momentum necessary to accomplish the task.

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PLANNING FOR NEW DEVELOPMENT

New developments can pose a threat to local agriculture when they share the same source of water. When urban uses require ever-increasing amounts of water, it makes the availability of water uncertain for agriculture — particularly in times of drought. Consequently, ensuring that local agriculture has an adequate water supply means that there must also be adequate water for new urban development.

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[1] *See* www.tri-valley.org

An initial step is identifying sources of water to serve new development before it is built. State legislation now requires most large projects[2] to conduct water availability assessments at various stages of the development process, such as environmental review and subdivision approval.[3] Water suppliers (or purveyors) have traditionally produced urban water management plans that describe total water supplies for present use (including agriculture) and all planned development. Proponents of new development must now show that there are sufficient supplies, even in multiple dry years, to meet new water demand for 20 years. This requires greater agency understanding of water supply issues.

In some respects, these new requirements codify what several agencies have already been doing. For example, Santa Barbara County already requires developers to provide the gross and net water demand for new developments and a description of how the project will be served during droughts. Furthermore, water purveyors have a standing obligation to determine whether there is an adequate supply of water to serve existing customers before the supplier can add new connections.[5]

WATER CERTAINTY AND FARMLAND PROTECTION: IS THERE A DEAL TO BE MADE?

From time to time, the issue arises of how to better connect water certainty to farmland conservation. In other words, is there a way to reward farmers for forgoing development by providing them with a certain, affordable water supply?

Such proposals take various forms. Noted *Cadillac Desert* author and water commentator Marc Reisner suggested offering guaranteed Bureau of Reclamation water deliveries to farmers at reduced costs in return for entering into 20- to 40-year contracts to conserve farmland (similar to a Williamson Act for water supply).[4] While it's impossible to predict if or when such a statewide program would go into effect, the underlying concept may be helpful for local agencies working to develop local solutions to farmland protection.

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[2] 500 units or equivalent, retail of 500,000 square feet, office space of 250,000 square feet, 500 room hotel, 650,000 square feet of industrial or 10 percent increase in service connections for communities of 5,000 connections or less. See Cal. Water Code § 10912.

[3] SB 221 (ch. 642, stats. of 2001); AB 901 (ch. 644, stats. of 2001).

The new water assessment requirements are likely to mean more proposals to increase nontraditional sources of water, such as water marketing, improved efficiencies and water recycling. For example, the City of Tracy is planning to construct an aquifer storage and recovery well and four monitoring wells and pipelines to store treated surface water in its area aquifer. The project would bank 2,000 acre-feet per year of treated Delta Mendota Canal contract water. Extraction will depend on dry-year needs and storage availability.

THE ECONOMIC VALUE OF WATER

What does water mean to a community? One study examined the effects of a 56 percent reduction in surface water deliveries to the community of Mendota from 1990–92.[6] The study found that:

- Irrigated cropland decreased by 14 percent;
- Farmers substituted pumped groundwater for lost surface deliveries;
- Demand for farm labor decreased dramatically;
- Farm and packing wage and salary income declined by $4.8 million;
- Three out of seven area wholesale firms went out of business;
- A total of 18 farms went out of business;
- Retail sales in Mendota decreased 11 percent (compared to a 4 percent countywide *increase*);
- Agricultural land values declined by 30 percent; and
- City tax revenues and business license fees declined substantially.

[4] Marc Reisner, *Water Policy and Farmland Protection: A New Approach to Saving California's Best Agricultural Lands* www.farmlandinfo.org/fic/ft/calwater.html.

[5] Cal. Health & Safety Code § 4010. Scott S. Slater, *The Role of Cities in Managing and Regulating Water*, 1996 League of California Cities City Attorneys Spring Conference Papers, 553, 568.

[6] D. Villarejo, *93640 at Risk: Farmers, Workers and Townspeople in an Era of Water Uncertainty* (1996).

IMPROVING GROUNDWATER SUPPLIES

Many farming operations are partially or wholly dependent on groundwater — particularly in times of drought. Thus, local aquifer management can play an important role in keeping agriculture viable. The amount of groundwater in each basin is a function of inputs (rainfall and recharge from surface water) less extractions (pumping). Local agencies retain some authority to manage groundwater supplies,[7] unlike surface water, where the state regulatory authority has largely pre-empted local discretion.[8] In addition, recent court decisions confirmed the right of landowners to pump underlying groundwater from their properties, making comprehensive management of the resource a more difficult prospect.[9]

Nevertheless, the water planning legislation addressed in the previous section (page 74) highlights the significance of managing groundwater.

USEFUL RESOURCES FROM DWR

The State Department of Water Resources (DWR) will publish (July 2002) two documents that can be useful in helping assess local water supplies:

- ***Bulletin 118.*** Bulletin 118 is a statewide inventory of groundwater basins that provides a detailed analysis about nearly 500 California groundwater basins. It also includes a discussion of policy options.
- ***Water Planning Guidebook.*** A guide for water suppliers, cities and counties to implementing recent legislation that requires the integration of water supply management and land use planning.

More information can be obtained by visiting the Web site:

http://wwwdwr.water.ca.gov

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[7] *See Baldwin v County of Tehama*, 31 Cal. App. 4th 166 (1994). In the Sacramento Valley and the Sacramento-San Joaquin Delta, Water Code section 1220 limits exportation of water without consultation with water districts and a vote of the counties overlying the groundwater.

[8] Surface water transfers are subject to extensive state regulation, but there may be some room for local regulation that does not conflict with the State Water Resources Control Board. Slater, *supra*. at 567. For example, surface water transfers that are promised on the fact that lost water will be supplemented by increase groundwater pumping may be subject to local reticulation. *Id.*

[9] *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224 (2000).

Local water purveyors will have to include an assessment of groundwater availability, including any groundwater management plan, whenever groundwater will be used to serve large development projects. As a result, it's important to develop a groundwater budget and collect other data about the quantity and quality of local groundwater sources.[10]

The need for a local agency to take action on conserving groundwater resources varies by area. Many regions already have special districts in place that manage groundwater basins.[12] A few counties have also taken steps to address groundwater issues by adopting a groundwater export ordinance. For example, Fresno County has implemented a permit system that requires anyone who directly or indirectly exports groundwater outside the county to apply for a permit. The permit is conditioned on a finding that the extraction will not increase the overdraft or injure also the

SEVEN STEPS FOR MANAGING GROUNDWATER SUPPLIES[11]

1. ***Identify Extraction Points.*** Record each well's location. Collect driller's logs and compile water level measurements and a water quality analysis for each well. Plot these data on maps to begin a monitoring program.
2. ***Define Outputs.*** Calculate the amount of groundwater extracted plus consumptive use, exports, evapotranspiration, surface flow and other outputs.
3. ***Define Inputs.*** Quantify how much water is coming into the basin through precipitation, surface water and other inputs.
4. ***Draft and Map a Water Budget.*** Inflow minus outflow equals the change in groundwater. Mapping this information is useful for understanding past, present and projected inflow and extraction levels.
5. ***Estimate Specific Yield.*** Estimate the amount of water available from an unconfined aquifer. The specific yield can be used to calculate the amount of groundwater in storage.
6. ***Project Future Extractions.*** Use the specific yield values to calculate the estimated change in groundwater level that will occur during a given period of time. Groundwater quality data can also be used to estimate the effect of such extractions on the movement of underground contaminants.
7. ***Develop a Management Plan.*** A management plan can reduce the amount extracted by specific wells, either through a reduced rate of pumping or by restricting the length of time the pump can be operated. Such reductions have to be voluntary unless the plan is adopted and implemented by a local agency.

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[10] *See* Cal. Water Code § 10910.

[11] Department of Water Resources, *7 Steps for Managing Groundwater Supplies, Water Facts:* (February 1996) (http://wwwdpla.water.ca.gov/publications/pubs/supply/gw/water_facts_2.pdf).

[12] For a listing, see Department of Water Resource, *Groundwater Management in California* (1999) (www.dpla.water.ca.gov/publications/pubs/supply/gw/gwm_report.pdf).

reasonable uses of other groundwater users.[13]

Conjunctive use management (the combined use of groundwater and surface water) is another way to increase local water supplies. Conjunctive use involves managing the aquifer system as an underground reservoir. During wet years, when more surface water is available, surplus surface water is stored underground by recharging the aquifers with it. During dry years, the stored water is available in the aquifer system to supplement diminished surface water supplies. A groundwater management plan can also be used to address other specific issues, such as salinity intrusion, contaminants, wellhead protection, overdraft mitigation, replenishment and monitoring.

The state Department of Water Resources also has periodic funding programs, such as the Local Groundwater Assistance Fund Grant Program, that can be tapped by local agencies to underwrite some of the initial costs of developing a groundwater management program. Although the availability of funds varies from year to year, it's worth monitoring these programs at least annually to see whether funding is available to implement a new management plan.[14]

WATER RECYCLING

Recycling wastewater is a relatively new option for local agencies. New technology purifies used water for reuse. Now, instead of discharging wastewater into rivers, it's treated and stored until needed. This reclaimed water is delivered to various points to irrigate crops, golf courses and other landscaped areas. In the southern San Joaquin Valley, more than 32.7 billion gallons of reclaimed water are used largely for agricultural irrigation.[15]

Water recycling is not without its drawbacks, however. Its implementation, including a system of pipes to deliver the water, can be costly. Water quality can also be an issue. The treatment processes must be carefully monitored to ensure that the discharged water is safe for the environment.

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[13] County of Fresno, Cal., Code § 14.03.01 (2000).

[14] See Department of Water Resources, *Division of Planning and Local Assistance Grants and Loans* (last modified Mar. 8, 2002) wwwdpla.water.ca.gov/grants-loans/.

[15] Great Valley Center, *The State of the Great Central Valley: The Environment* 38 (2001) (www.greatvalley.org/research/publications/pdf_folder/indicator_enviro_report.pdf.)

If the discharged water is highly saline, it can damage salt-sensitive crops or reduce soil productivity. [16]

Nevertheless, water recycling's potential deserves serious consideration. Monterey County built a $78 million recycling system to offset the serious groundwater overdraft and concurrent threat of salt-water intrusion from the adjacent Monterey Bay. The reclaimed water is mixed with groundwater in a 2-to-1 ratio and used to irrigate 12,000 acres of lettuce and other vegetables. The project is expected to reduce the groundwater extraction by 20,000 acre-feet in and around the City of Castroville annually. Some local farmers, however, have expressed concern about possible market impacts due to the public's potentially negative perception of irrigating vegetables with recycled water. [17]

The State Revolving Fund program offered by the U.S. Environmental Protection Agency provides low-interest loans (at half the interest rate of general obligation bonds) for planning, designing and constructing municipal wastewater treatment works, including water-recycling systems. The federal government matches the state funds on a 5-to-1 basis. Such funding played a key role in the development of the Monterey County project mentioned above. The county received an $8.8 million loan from the State Revolving Fund program and $52 million (over an eight-year period) from the Bureau of Reclamation to finance the project.[18]

THE WATER EDUCATION FOUNDATION

A good starting point for gaining a better understanding of water issues in California is the Water Education Foundation. The Foundation serves as an impartial nonprofit organization dedicated to creating a better understanding of water issues and helping resolve water resource problems through educational programs. The Foundation's *Laypersons Guide* series (priced at $7 each) provides excellent, easy-to-read executive summaries of most of the urgent water issues facing California today. Visit their Web site for more information:

www.water-ed.org

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[16] Water Education Foundation, *A Layperson's Guide To Water Recycling* (1999). This publication is an excellent introduction to the issue and only costs $6. *See* www.water-ed.org/.

[17] *Id.*

[18] *Id. See* www.epa.gov/safewater/dwsrf.html for more information about loan program.

RESOURCES FOR WATER RECYCLING

- ***Bureau of Reclamation.*** The bureau has limited funding for up to 25 percent of design and construction costs and 50 percent of planning costs (Title 16 program). It also works with local agencies to develop feasibility studies. *Contact:* Water Recycling Coordinator, 2800 Cottage Way, Sacramento, CA 95825-1898; (916) 978-5100; www.mp.usbr.gov/.
- ***State Water Resources Control Board.*** The state board regulates and permits the state's surface water. *Contact:* P.O. Box 100, Sacramento, CA 95812; (916) 341-5250; www.swrcb.ca.gov.
- ***Environmental Protection Agency.*** The U.S. EPA sets applicable biosolid standards. It also administers the State Revolving Fund program. *Contact:* Office of Groundwater and Drinking Water, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; (202) 564-3750; www.epa.gov/OW.
- ***California Department of Health.*** The department establishes health criteria for the treatment and use of recycled water. *Contact:* Recycled Water Unit, 601 North 7th Street, Sacramento, CA 95814; (916) 445-0498; www.dhs.ca.gov (search: "water recycling").
- ***Department of Water Resources.*** The department provides resources and information for recycling programs. *Contact:* Division of Planning and Local Assistance, P.O. Box 942836, Sacramento, CA 94236-0001; (916) 651-9236; http://wwwdwr.water.ca.gov.
- ***WateReuse Association.*** This is an organization of groups and agencies involved in water recycling. A portion of its Web site is dedicated to California and includes a model water-recycling ordinance. *Contact:* 635 Slaters Lane, 3rd floor, Alexandria, VA 22314; (703) 684-2409; www.watereuse.org (only one "r").

SPONSOR PROGRAMS TO ESTABLISH NEW FARMERS

STRATEGY 12

The pool of available skilled farmers who have the means to enter the industry is a resource that's vital to a strong, successful local agricultural economy, and it's often overlooked. This is becoming a more significant issue in California, where the farmer's average age is 55 and rising (compared to the national average age of 47). This trend is compounded by the fact that many in the next generation do not follow in their parents' footsteps, increasing the likelihood that farms will be sold for development.

New farmers face several challenges. Not only is it difficult to obtain the capital necessary to purchase a working farm, but banks and other financial institutions also generally require the borrower to have experience operating a farm or other business before financing such a purchase. Local agencies can play an important role in preparing prospective farmers to overcome these challenges and other initial barriers.

INCUBATOR FARMS

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A new farm incubator program can be an innovative way to help new farmers become established. Typically, a farm is purchased, divided (not formally or legally) and then subleased at affordable rates to people who have demonstrated an interest in owning and operating a farm. In many cases, these individuals have a great deal of experience as farmworkers, but have never had the opportunity to own a farm.

Once invited to participate in the program, the prospective farmers make all the farming decisions for their section, but receive guidance from advisors. Classes on farm business management are usually provided. Where practicable, other local farmers offer advice and experience through a mentor relationship. Ideally, the program also includes additional assistance, such as low-interest loans, to help new farmers get started.

Prospective farmers generally stay in the program for two to five years. The benefit to the prospective farmers can be significant. Not only do they receive valuable experience in operating a farm, but they also generate a track record that will help obtain financing to purchase their own farm.

While local agencies may not have the resources to manage a farm incubator, they can help launch a program with funding and by bringing key players together. A local land trust and the local cooperative extension service are ideal partners for this purpose, as they are generally better positioned to engage and help in the program's long-term management. Communities that are home to a university with an agriculture program may also be excellent partners.

CASE STUDY: FRESNO'S MISITA PROPERTY[1]

The Misita Farm operates on the City of Fresno's south side. The farm is 40 acres of rich farmland planted in a variety of Asian vegetables. The land is bordered to the east by a large subdivision and to the west by productive farmland.

When the farm's original owner, Dusan Misita, decided to retire from farming, he received many offers from developers with plans to subdivide the property or convert it to non-agricultural uses. However, Misita wanted to see his farm remain in production. Through a unique collaboration between the American Farmland Trust (AFT) and the local Hmong-American community, the land became a farm incubator and demonstration site for new farmers. Small plots of land are leased to minority or small-scale farmers until they qualify for land-acquisition loans to buy their own larger parcels of land. During this period, these farmers receive technical assistance to improve their skills and chance for commercial success.

"This project will help transform minority and small farmers from farm laborers and tenants on small plots of land to commercially successful landowners," said Greg Kirkpatrick, AFT's California field representative. "At the same time, we ensure that the Misita land stays in farming. It's a win-win solution."

To guarantee that the land is used solely for farming, AFT is placing an easement restriction on the property. The trust's investment in Misita Farm is part of a strategy to identify and protect high-quality farmland located at the edges of cities. Purchasing and protecting Misita Farm begins to draw the line on urban growth southwest of Fresno, where farming historically has dominated the landscape.

"The purchase of Misita Farm is a first step toward making farmland available to hundreds of local farmers who are crying for land," said Toulu Thao, community builder for the Department of Housing and Urban Development, and a member of the local Hmong community. "The project will be a dream come true for many farmers."

The Misita Farm project is an outgrowth of the Small Farm Development Task Force convened by Congressman Calvin Dooley to identify the needs of small farmers and develop a comprehensive program to ensure their success. The Small Farm Resource Network, a collaborative effort involving several agricultural agencies and nonprofit organizations that offer assistance to small farmers, is now implementing many of the task force recommendations. The network's goal is to provide coordinated services for helping small farmers acquire land, as well as providing access to capital, technical assistance and marketing.

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[1] American Farmland Trust, *Farmland Provides Training Grounds for New Farmers* (May 13, 1999). Available online at www.farmland.org/news/051399.htm.

An incubator farm also provides other advantages. For example, funding can be used to place the farm in a location to help reduce sprawl or serve as a buffer between residences and large farm operations. It may also provide an opportunity for public education through the local schools or other programs that can help connect people to local agriculture.

FARMLINK PROGRAMS

One relatively new nonprofit association, California FarmLink, specializes in structuring creative financial deals to help entry-level farmers get started. The organization, which presently has staff and offices in Sonoma, Yolo and Fresno counties, is modeled after other successful programs around the country that match retiring farmers with prospective or current farmers who wish to purchase a farm but generally cannot yet afford it.

FarmLink can structure real estate transactions in a way that it makes it easier for new farmers to purchase farmland. Sometimes, these transactions are coupled with the sale of a conservation easement to a local land trust. This reduces the overall cost for the new farmer and helps to ensure that the land remains as farmland. While such transactions are often complex and time-consuming, retiring farmers may be willing to enter into them on the knowledge that their farm will be transferred into good hands. In addition, if the deal is structured with the help of a good attorney or financial planner, the farmer may realize substantial tax benefits from such a sale.

FarmLink conducts community workshops on a variety of related topics, including farm succession planning, business planning, farm financing and developing on-farm mentoring relationships. It also serves as a clearinghouse for farm apprenticeship programs and opportunities throughout the state.

Finally, California FarmLink has started to partner with local agencies, such as the Sonoma County Agriculture and Open Space District, that want to implement farm transition policies on a regionwide scale. These partnership activities include making presentations to community stakeholder planning groups and at public meetings about strategies for farm transitions and promoting economic development, conservation and smart growth.

FOR MORE INFORMATION

California FarmLink
P.O. Box 2224
Sebastopol, CA 95473
(707) 829-1691
www.californiafarmlink.org

Beginning Farmer Center
National Farm Transaction Network
(Iowa University Extension)
www.extension.iastate.edu/bfc/

HOW DOES FARMLINK PRESERVE LAND FOR FARMING? A HYPOTHETICAL EXAMPLE[2]

After farming for more than 40 years, Mr. and Mrs. Smith want to retire but they are unsure about how to proceed. Developers have inquired whether they would be interested in selling, but no firm offer has been made. Although they want to see the land remain in agriculture, their three children aren't interested in farming. The Smiths reluctantly decide to sell their farm, but they have concerns:

- They want to realize their equity in the farm;
- If possible, the land should remain in agriculture;
- They want to retain a source of income to take care of special needs, such as long-term health care, as they arise; and
- They would prefer to remain living in the farmhouse located on the property.

The potential sale has raised concerns in the community. The farm is located along the main highway and contributes significantly to the town's rural character. In addition, the town's planning department has recognized that the farm would be an important part of any growth management plan. If developed, the necessary infrastructure would have to be built in a way that would threaten thousands of acres of additional farmland.

A council member suggests contacting FarmLink. After studying the Smiths' needs, FarmLink proposes a two-part solution. First, the Smiths can sell a conservation easement on the property, which would allow them to capture much of the property's development value without taking the land out of farming. Given the land's unique character, the potential for funding the deal would be high. The money can then be invested in more liquid assets that can be annualized over a period of years.

Second, the Smiths should lease the land for agriculture. The annual income from the lease can either supplement their retirement income or help offset unexpected costs. Moreover, they can remain in their house. Although they could lease to anyone, FarmLink offers to match them with a young family interested in starting their own farm. While such arrangements may start under a lease, they often evolve into a sale when the Smiths (or their heirs) are ready to part with the land. To help facilitate the transaction, the city alters zoning on the parcel so that an additional home can be built to house the tenant family. The Smiths' proximity on the land also gives the new tenant the opportunity to learn from their experience. Even after their retirement, the Smiths periodically visit the farm's fruit stand, much to the delight of their former customers.

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[2] Adopted from examples that are posted on the California FarmLink Web site at www.californiafarmlink.org/.

DESIGN FARM-FRIENDLY PERMIT PROCESSES

STRATEGY 13

Designing and implementing farm-friendly local permit processes is a prudent step for local agencies interested in farmland protection. Most farmers must split their time between tending their fields and managing their business. They have little spare time to engage in lengthy permit procedures — particularly for a relatively minor project like a barn expansion or a small building improvement. When local agencies can streamline their permit process, adjust their fee schedule or otherwise make the process easier to navigate, farmers can spend more time and energy on the farm.

SIMPLIFY THE PERMIT PROCESS

Simplifying permit procedures means making the process of seeking a permit easier and more intuitive for permit applicants. There are several ways to streamline permit processes, including the following:

- ***Consolidate.*** Create "one-stop" permitting centers that provide all information and approvals in one location.
- ***Expedite Review.*** Provide clear directions about the information needed to complete the application and then work to make quick determinations.
- ***Delegate Approval Authority.*** For small projects, such as barns and sheds, give approval authority to the zoning administrator.
- ***Assign Permit Coordinators.*** Assign a permit coordinator for each application to avoid situations where applicants receive conflicting messages from different staff members.
- ***Improve Customer Service.*** Providing attentive customer service helps to create public confidence.
- ***Use the Web.*** While it may be a few years before most agencies can accept permit applications via the Internet, they can use their existing Web site to explain the permit process to farmers and others interested in seeking a permit.

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Create a "Farmbudsperson" Position 87

- ***Consider Self-Imposed Timelines***. Local agencies that are truly committed to speedy processes may want to impose timelines on themselves for issuing permit decisions, and discount the permit fees (or provide some other benefit) when those deadlines are missed.[1]

Regardless of which methods are ultimately chosen, the important thing is to make the process easily understood and user-friendly. The community's interest is best served when the permit process, which protects public health and safety, is both efficient and responsive to its customers' needs.

PERMIT SIMPLIFICATION: IDEAS FOR GETTING STARTED[2]

- **Know the Purpose of the Regulation.** Simplifying permit procedures should not compromise their fundamental health and safety purposes. Identify the underlying purposes of the regulations and keep them in mind when considering changes.
- **Involve Stakeholders**. Bring local officials and stakeholders together to determine the scope of the streamlining effort. Those who have been involved in the process can best identify its flaws and those who use the permit system can make sure that the result still supports the public good.
- **Learn From Other Agencies**. Talking with agencies in other jurisdictions that have implemented permit streamlining can yield important lessons and reduce the time needed to study the issue.
- **Coordinate with Other Agencies**. Some permits require review by multiple public agencies. Work with these agencies to determine whether there are ways to streamline the process.
- **Identify and Collect Key Information**. Consider conducting a permit audit or inventory to see whether the permitting process is inconsistent or redundant. Create a timeline for a typical permit, and look for trends in appeals. Identify the most common mistakes. Such audits often identify several potential solutions.
- **Make it a Priority**. Include permit simplification for farmers (or everyone) within an element of the general plan.

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[1] Such action would be very different from the local agency obligations under the Permit Streamlining Act, which requires agencies to process certain development applications within specific time periods. Cal. Gov't Code §§ 65920 and following.

FEE ADJUSTMENTS

Another way of encouraging farming is to analyze the agency's fee structure for typical agricultural permit applications. For example, permit fees can be reduced for typical agricultural structures such as barns, packing sheds and silos. Simplifying some of the requirements may dimish the amount of time staff spends processing the fee, which in turn decreases the cost that must be recaptured through the fee.

The Stanislaus County winery ordinance offers a good example of tailoring an ordinance to fit such needs. This ordinance classifies wineries by their size (such as boutique, small and large) and provides a graduated fee scale. As a winery expands, the fees increase. This process better suits the small wineries, which originally had to pay the same fees as the large wineries. This solution was reached as part of a collaborative effort involving the California Farm Bureau, the county's Community Development Department and the wine industry.

CREATE A "FARMBUDSPERSON" POSITION

Ombudspersons are government officials who work independently of regulatory staff to serve as a neutral contact for the public. A "farmbudsperson," therefore, serves as an ombudsperson for the farming community. Frequently, farmers do not have the necessary resources to participate in the regulatory process that affects them. A farmbudsperson can help farmers gain access to and navigate the regulatory process.

Depending on how the local agency structures the position, a farmbudsperson can be vested with a variety of responsibilities. Generally, ombudspersons do not advocate for a specific party. Many agencies, including the California Air Resources Board,[3] have such positions to help citizens navigate regulatory processes. Other duties of a farmbudsperson may include:

- ***Reviewing and making recommendations*** to local authorities about the development and implementation of regulations that affect the farm community;

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[2] *See* Office of Permit Assistance, *Twelve Tips to Make the Permitting Process Easier* (last visited Mar. 18, 2002) http://commerce.ca.gov. Search on keyword "twelve tips."

[3] *See* California Air Resources Board, *Office of the Ombudsman* (last modified Nov. 1, 2001) http://arbis.arb.ca.gov/ba/omb/omb.htm.

- ***Investigating complaints.*** Investigating complaints about enforcement;
- ***Helping to disseminate information*** about upcoming regulations and land use controls that might affect farming;
- ***Connecting farmers with grant programs***, such as environmental compliance assistance grants, for which they may be eligible;
- ***Explaining the permit process*** and helping farmers navigate it;
- ***Referring Farmers.*** Referring farmers to appropriate specialists for help with specific needs; and
- ***Conducting studies*** to evaluate the role that farming plays in the economy and the potential impact of proposed legislation.

In many counties, the agriculture commissioner plays some of these roles. But the commissioner is also expected to enforce county regulations. A separate farmbudsperson who is not charged with regulatory compliance may be better able — at least in some instances — to help improve communication between local government and the farming community.

PROVIDE ENVIRONMENTAL COMPLIANCE PROGRAMS

STRATEGY 14

In the past 30 years, the public has demanded better environmental performance from agriculture. Concern about conserving soil and water has expanded to include nonpoint source pollution, wetland protection and biodiversity. Environmental regulations on agriculture have become more stringent, and farmers have had to find alternatives to conventional practices. New technologies may not be as well researched, proven or profitable as the methods that were promoted and used in the past.[1]

Environmental problems can result in farmland conversion. If water supplies become scarce or polluted, rationing and regulations may increase the cost of farming. Soil erosion also reduces agricultural productivity. Maintaining the natural resource base is a relatively new issue for state and local farmland protection programs.

By collecting and providing helpful information about environmental laws, local agencies can make compliance easier for farmers, particularly in areas where a group of farmers is facing the same regulatory problems. In addition, local agencies may also help to identify and obtain funds for programs that protect the environment. Finding ways to assist local farmers can help protect environmental quality and the vitality of local agricultural economies.

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RESOURCE CONSERVATION DISTRICTS

Resource conservation districts ("resource districts") provide a unique and often overlooked way to help farmers with environmental compliance and conservation issues on their properties. Resource districts operate as special districts[2] and are governed by locally elected or appointed volunteer boards composed of landowners. Generally, the county supervisors appoint

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[1] American Farmland Trust, *Saving the Farm: A Handbook for Conserving Agricultural Land*, 13 (1990).

[2] Cal. Pub. Res. Code §§ 9001, 9151. As such, the county's local agency formation commission governs their formation. *See* Cal. Gov't Code § 56000.

RESOURCE CONSERVATION DISTRICTS IN ACTION

- **Glenn County** obtained $600,000 in federal funding to address overgrazing problems and implement 32 separate conservation plans.
- **Inland Empire** helped provide flood controls to protect dairies from local urban runoff, which had flooded agricultural areas in previous years.
- **Monterey County** obtained federal funding to improve conservation practices within the sensitive Elk Horn Slough area; installed projects that prevented an estimated 26,827 tons of eroding soil from entering watercourses; and conducted outreach to non-English speaking farmworkers.
- **Shasta and Scott Rivers** helped establish the 995,000-acre Shasta and Scott Rivers rural watershed groups to address bank degradation and threats to salmon habitat. They also installed fish screens, watering facilities, riparian fencing and buffer zones; and stabilized stream banks.
- **Salinas Valley** obtained $440,000 for conservation on more than 52,000 acres of rangeland, and worked with landowners on rangeland management to protect water quality from excessive sediment pollution.
- **Feather River** implemented a $1.3 million program to reduce sediment and improve trout and game habitat by teaching ranchers to manage their pastures, to use fencing and seeding on stream banks, and to install offsite livestock watering holes.
- **Tulare County** partnered with land trusts and trade organizations to control infestations of noxious weeds and to implement an education program about noxious and invasive plants.
- **Willows** coordinated $2 million in funds to address conservation issues on 131,000 acres of farm and ranchland, including tail-water pond creation, riparian enhancement, controlled burns and hedgerow buffers.

the directors, but they can also be elected through county government elections. Resource districts generally address soil conservation, irrigation and water quality issues and implement programs that educate landowners about resource conservation. (See "Resource Conservation Districts in Action," above).

Collaborating with a resource conservation district can provide unique advantages when implementing a farmland protection plan. Perhaps more than any other agency, resource districts can provide expertise and specific knowledge about the resources that drive the agricultural industry. In addition, they often have established networks among local landowners, created from training and information programs. Finally, they can be extremely helpful in obtaining federal and state funding.

The Resource Conservation District of Greater San Diego County offers one example of how resource districts can help. The San Diego district, working with the California Coastal Conservancy, administers the Carlsbad Agricultural Grant Program to help local farmers increase productivity. To date, the Carlsbad program has funded a variety of projects, including a recycling program and a grant to the University of California, Riverside, for developing biological pest control measures as an alternative to pesticides. Like other resource districts, the Greater San Diego RCD offers technical assistance to help farmers manage soil and

water resources, and reduce farm operations' negative environmental impacts. In many cases, practices that conserve soil and water resources for farming benefit the environment as well.[3]

Throughout California, resource districts provide training and hands-on assistance to farmers facing a variety of environmental compliance challenges. The U.S. Department of Agriculture's Environmental Quality Incentives Program (EQIP) funds a variety of education projects and supports cost-share programs for "on-farm" conservation practices. In 2001, EQIP provided $5.8 million for projects in California, including $340,000 for education projects sponsored by resource conservation districts and other local farm and conservation groups.[4]

UC COOPERATIVE EXTENSION SERVICE

The University of California Cooperative Extension Service is another resource on environmental compliance issues. Its farm advisors are based in more than 50 county offices and collaborate with campus-based researchers to help farmers improve productivity using environmentally sound agricultural practices. For example, the UC Cooperative Extension service offers a program that helps dairy producers comply with the water quality regulations. The program teaches techniques for using manure to optimize cropland production and minimize groundwater contamination.[5]

One area where the extension service has been particularly active in recent years is helping dairy producers comply with water quality laws. The program is a cooperative effort between the University of California, the California dairy industry and the U.S. Environmental Protection Agency. These organizations created a voluntary environmental compliance certification program, called the California Dairy Quality Assurance Program. The program provides classroom and onsite instruction on how to dairy producers on how operate their facilities in compliance with state and federal regulations. UC Cooperative Extension dairy and animal waste management specialists developed the curriculum for the project. The UC

FOR MORE INFORMATION

California Association of Resource Conservation Districts
801 K Street, Suite 1318
Sacramento, CA 95814
(916) 447-7237
www.carcd.org

UC Cooperative Extension Service
(offices statewide)
http://ucanr.org

USDA Natural Resource Conservation Service
California State Office
430 G Street, No. 4164
Davis, CA 95616-4164
(530) 792-5600
www.ca.nrcs.usda.gov/

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[3] See the Resource Conservation District of Greater San Diego Web site at www.rcdsandiego.org.

[4] U.S. Natural Resource Conservation Service, *Over $340,000 Released For California Conservation* (last visited Mar. 18, 2002) www.ca.nrcs.usda.gov/eqip/graphic/indexg.html.

[5] Practical Dairy Nutrient Management Education Program for Dairy Producers. For more information, contact UC Cooperative Extension, 3800 Cornucopia Way, Suite A, Modesto, CA 95358; (209) 525-6800.

Cooperative Extension Service, in partnership with local agencies, provides instruction.[6]

FEDERAL INCENTIVE PROGRAMS

A number of federal programs also provide assistance with environmental issues, such as nonpoint sources of water pollution, wetlands preservation and wildlife habitat, including:

- ***Conservation Reserve Program.*** This program encourages farmers to plant cover crops to reduce soil erosion and runoff on land that meets specific criteria. Farmers can be reimbursed for up to 50 percent of their costs. Contracts usually are for periods of 10 to 15 years.

- ***Wildlife Habitat Incentives Program.*** This program provides technical assistance and cost-share payments to help improve habitat on private lands. Property owners must prepare and implement a habitat plan. Contracts usually last between five and 10 years, and NRCS monitors implementation. In return, NRCS offers technical assistance and pays up to 75 percent of the installation cost. Funds cannot be used for mitigation.

- ***Environmental Quality Incentives Program.*** This program offers financial and technical aid for conservation management. Other incentives encourage nutrient, manure, pest, irrigation water and habitat management. Contracts last for five to 10 years, and other federal, state or local governments can partner to preserve habitat on private property.

A good place to start is the Natural Resources Conservation Service (formally the Soil Conservation Service) of the U.S. Department of Agriculture (see "For More Information," previous page, for contact information).

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[6] *Id.*

BUILD FARMWORKER HOUSING

STRATEGY 15

Farmworkers are an essential component of California's agriculture. Farm employees and their families need access to adequate housing, whether they are temporarily or permanently employed in an area. Without adequate housing, farmers cannot attract and retain the labor necessary to operate profitably. In some cases, farmers improvise by converting garages and sheds to house workers. Such improvised housing often lacks sufficient plumbing and electricity, and overcrowding frequently compounds these hazardous conditions.

One estimate places the housing shortfall at 164,000 units for nonmigrant workers and 121,000 units for migrant workers.[1] Accordingly, anything local agencies can do to provide adequate housing for farmworkers can help give local farmers a competitive edge. Many communities address farmworker housing within their general plans.[2] Fortunately, this is another area where local funding can be leveraged to attract state and federal funding.

LEADERSHIP ROLE FOR LOCAL AGENCIES

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Local agencies play a pivotal role in providing affordable housing for farmworkers. Not only are they instrumental in obtaining various sources of funding, but they also have ultimate approval and siting authority over most projects. As a result, local agencies interested in developing projects can facilitate collaboration among a variety of interested parties, including housing advocates, developers and even other governmental agencies.

In addition, through the general plan process, local agencies can identify places where farmworker housing would be most appropriate. Siting such projects is often a challenge because of conflicting priorities in location requirements, including proximity to education, health care, transportation

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[1] Rural Housing Conditions, Trends, and Needs: California and the Nation, Hearings Before the Millennial Housing Commission, (June 4, 2001), [hereinafter Hearings](testimony of Robert J. Wiener, Executive Director, California Coalition for Rural Housing).

[2] In 1999, state law required local housing elements to identify adequate sites for farmworker housing. *See* Cal. Gov't Code § 65583.

routes and job sites. Local agencies are uniquely situated to design projects address these needs.

Once a project is under way, local agencies can streamline the permit process, waive fees or reduce the length of the design review. There are multiple examples of successful programs, including:

- ***Sonoma County.*** Sonoma County amended its zoning regulations to allow growers to build farmworker housing on parcels larger than 10 acres. Projects that meet basic criteria do not require use permits and receive administrative approval within one week. Growers pay for building permits, but the county waives all impact fees.

- ***Napa County.*** Napa County recently loosened zoning restrictions in farm areas for farmworker housing. In addition, the county provided $800,000 for a 60-bed facility to the Napa Valley Housing Authority, which will also seek state funding.[3] A local trade organization contributed a loan and a local vineyard provided the land for the project.

Finally, local agencies can work to develop community consensus and support for such projects. Many projects meet initial resistance based on preconceived stereotypes. Local education programs and community involvement can help people overcome such fears.[4]

TEMPORARY AND PERMANENT HOUSING

Farm housing can be permanent or temporary. Both types of housing are essential to the success of agricultural operations, but they are constructed, regulated and financed differently.

TEMPORARY HOUSING

Providing housing for seasonal labor is often the more difficult problem to solve. Many agricultural crops require a great deal of labor for short periods of time, such as two or three weeks. Growers and labor contractors

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[3] *See* Cal. Gov't Code § 25210.4(h) (authorizing the Napa County Board of Supervisors to establish a county service area to acquire, construct and maintain farmworker housing). The County can tax property owners up to $10 per acre of vineyard, assuming that two-thirds of the growers approve the assessment.

[4] *See* Strategy 22: *Develop Consensus.*

NAPA'S UNIQUE SOLUTION FOR TEMPORARY HOUSING

Traditionally used in the Siberian desert, Mongolian yurts provide a unique farmworker housing solution outside the City of Yountville. The tent-like structures are constructed from wood frames, vinyl roofs and foam-insulated fabric walls.

The program started at the joint suggestion of a local farmworker housing committee and the Nesting Bird Yurts company.[5] Napa County purchased 12 yurts for $130,000. Two larger structures are used for dining and recreation. The remaining 10 units accommodate four people each. Each structure is connected to electricity, water and a septic system.

The Napa Valley Housing Authority operates the camp during the annual grape crush. Residents pay $10 per day for three hot meals and a bed. Occupancy is first-come, first-served. The yurts are easily disassembled and stored for the next season.

have renewed interest in providing housing as a means of attracting their best workers back each year.

One of the largest sources of temporary housing is offered by the state Office of Migrant Services (OMS), which provides housing for more than 12,000 workers in 26 migrant agricultural housing centers throughout the state.[6] But this is not enough to assist the estimated 90,000 migrant workers who work in the state each year. Part of the problem is that there are regulatory and financial disincentives to building additional housing, including:

- ***Federal Regulation.*** Unlike housing for permanent workers, temporary housing is governed extensively by federal law.[7] Federal Occupational Safety and Health Administration regulations include detailed standards for labor camp location, sleeping quarters, kitchen

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[5] Nesting Bird Yurts, 713 West Park Ave., Port Townsend, WA 98368; www.nbyurts.com.

[6] Typically, counties, housing authorities and grower associations provide the land for migrant centers as an in-kind contribution. OMS owns the structures and contracts for management for each center. The furnished units rent for $5 to $8.50 per day. To qualify, workers must earn at least 50 percent of their total annual household income from agricultural employment, and travel outside a 50-mile radius of the housing center for three of the past six months.

[7] Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (1983).

WILLIAMSON ACT AND FARMWORKER HOUSING

The Williamson Act allows farmworker housing projects to be built on up to five acres of farmland. The land remains assessed at the agricultural rate for as long as the rest of the parcel is enrolled in the Williamson Act.[10] (See Strategy 10).

facilities, water supply and sewage disposal.[8] The paperwork necessary to build and maintain such housing is a disincentive for many farmers.[9]

- ***Cost-Benefit Ratios***. It's difficult to justify a large capital outlay for a building that may only be occupied for a few weeks each year, particularly when there is a shortage of permanent farm housing.

However, the temporary housing issue lends itself to unique solutions (see "Napa's Unique Solution for Temporary Housing," previous page). Many migrant workers travel on their own away from their families. This means that they can be housed in more efficient dormitory-like facilities rather than individual units.

PERMANENT HOUSING

Local agencies generally have more influence and control over projects to house permanent labor. Permanent farmworkers are more likely to live with family members. Thus, typical apartment complexes are more appropriate. Such facilities can also serve as an efficient means for delivering a variety of government services. Indeed, in many communities, several government services offer support to farmworkers and their families. Two Riverside County projects offer examples of successful collaboration:

- ***Nueva Vista Apartments***. The Coachella Valley Housing Coalition manages this complex of one- to three-bedroom apartments. The state Department of Housing and Community Development and Department of Education fund a childcare facility on the site, which also has a library and medical facility.[11] Local agencies helped by streamlining the permit process and reducing fees.

- ***Tlaquepaque Apartments***. Low-income housing tax credits funded this development of one-, two- and three-bedroom units.[12] Services offered to residents include two Head Start programs and language classes.

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[8] 29 C.F.R. § 1910.142 (1980).

[9] In 1955, growers registered more than 9,000 labor camps with the state. By 1968, there were less than 3,000. In 1994, only 900 camps housed 21,310 workers.

[10] Cal. Gov't Code § 51230.2.

[11] California Budget Project, *Locked Out: California's Affordable Housing Crisis* May 2000; www.cbp.org/reports/r0005loc.html.

[12] The California Tax Credit Allocation Committee administers low-income housing tax credit programs to encourage private investment in rental housing for very low- and lower-income families and individuals. *See* www.treasurer.ca.gov/ctcac/ctcac.htm or call (916) 654-6340. A table of income limits for very low-, lower-, median-, and moderate-income categories of varying household sizes is posted on the Department of Housing and Community Development Web site at www.hcd.ca.gov. *See* www.hcd.ca.gov/hpd/hrc/rep/state/inc2k2.pdf.

The complex is available to those with annual incomes of between $10,000 and $15,000. Local officials facilitated the project by familiarizing developers with the low-income housing tax credit program.[13]

Building projects to accommodate education and health services helps to ensure their effective delivery and improves the community's quality of life.

FUNDING FOR HOUSING

A variety of state and federal programs provide funding for farmworker housing. The California Department of Housing and Community Development, the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture offer the following specific funding for farmworker housing:

- ***Joe Serna, Jr. Farmworker Housing Grant Program***[14] provides grants and loans for the construction or rehabilitation of housing for agricultural workers and their families. The program favors funding for permanent dwellings for year-round occupancy. The program awards funding on an annual basis as it is made available by the Legislature.
- ***Home Investment Partnership Program (HOME)***[15] provides grants and loans to local agencies to create and retain affordable housing. Most assistance is in the form of loans from local agencies to project developers. The loans are repaid to local HOME accounts for reuse.
- ***State Community Development Block Grants (CDBGs)***[16] are another source of federal funds for affordable housing, including farmworker housing.[17] The program provides states with annual direct grants, which they in turn award to smaller communities and rural areas for use in revitalizing neighborhoods, expanding affordable housing and increasing economic opportunities. Program funds serve communities with populations of up to 50,000.[18]

FOR MORE INFORMATION

USDA Rural Development
State Office
430 G Street, #4169
Davis, California 95616
(530) 792-5800
www.rurdev.usda.gov/ca

Department of Housing and Community Development
1800 Third Street
P.O. Box 952050
Sacramento, CA
(916) 445-4782
www.hcd.ca.gov/fwhg

California Housing Law Project
1225 8th Street, Suite 425
Sacramento CA 95814
www.housingadvocates.org
(keyword search "farmworker")

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[13] *See* the Coachella Valley Housing Coalition Web site at www.ruralisc.org/cvhc.htm.

[14] *See* also Cal. Health & Safety Code §§ 50517.5 and following; Cal. Code Regs., tit. 25, §§ 7200 and following.

[15] Cal. Health & Safety Code §§ 50896 and following.

[16] Administered by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development.

[17] Hearings, *supra.*

[18] 42 U.S.C. §§ 5301 and following.

- ***Farm Labor Housing Loan and Grant Program*** provides capital financing to develop or renovate farmworker housing.[19] Local agencies are eligible for these funds. Applications are available from the Rural Housing Service, a branch of the U.S. Department of Agriculture. Typical loan amounts range from $1 million to $2 million.

In addition, local agencies can also provide seed money or develop additional sources of funding, such as development impact fees, to ensure that adequate housing is built.

A SUCCESS IN SANTA MARIA

These funding sources can often be used in combination. For example, the 65-unit Los Adobes project in the City of Santa Maria used funding from several different sources:

- $490,000 from a Community Development Block Grant;
- $6,690,000 from USDA Farm Labor Housing Funds;
- $320,000 in state Housing and Community Development Farmworker Housing Grants; and
- $30,000 in county In-Lieu Mitigation Housing Grants.

The program offers day care, health services and English language classes. To qualify for housing, families must earn at least 51 percent of their annual income from agriculture. Rents are capped at 30 percent of the family's income. Some nonprofit housing organizations provide training and technical support to help local agencies apply for housing assistance and implement housing development programs.[20]

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[19] 42 U.S.C §§ 1484 and 1486.

[20] *Hearings, supra. See also* California Housing Law Project, *Links* www.housingadvocates.org/default.asp?ID=111.

DESIGN AN ECONOMIC DEVELOPMENT PLAN FOR AGRICULTURE

STRATEGY 16

Perhaps the best way to keep land in agriculture is to ensure that farming remains profitable. A vibrant agricultural economy creates an incentive to keep farming instead of selling land for development. In communities that have implemented land use controls to protect farmland, this strategy helps the land designated for agriculture remain productive.

FARMING IN TODAY'S ECONOMY

As in many other industries, a great deal of change is occurring in agriculture. The factors driving this change are detailed in a New Valley Connexions report entitled *Producing a Competitive Advantage.*[1] Although written to addresses specific issues in the San Joaquin Valley, these underlying trends identified in the report are affecting farming statewide:

- ***Market Fragmentation.*** Current marketing practices have moved away from the mass market to niche markets. Thus, collecting data to and other techniques to better understand changing market demographics is increasingly important to local producers.

- ***Consolidation of the Food Distribution Chain.*** In the past, most agricultural commodities moved from producer to consumer through a multi-tiered marketing system. That model is quickly changing as traditional channels are eliminated to increase efficiency. Consolidation among producers, processors, and retailers will continue to divide producers into two distinct categories: mega-marketers and niche marketers.

- ***Globalization.*** The trend toward global partnerships and marketing is accelerating. While globalization means more worldwide competitors, it also provides growth opportunities for producers and processors who operate competitively and efficiently. Consumers expectations also

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[1] *Producing a Competitive Advantage: Agritech in the San Joaquin Valley* (2000). Available online at www.greatvalley.org/nvc/. New Valley Connexions is a partnership of the Great Valley Center and the Division of Science, Technology and Innovation of the California Trade and Commerce Agency.

expect year round-supplies and are more likely to accept new produce varieties.

- ***Technology.*** Technology is both a force for change and a tool that enables competitive advantage. The flow of information between producer and seller is becoming increasingly significant and requires grower access to advanced communication infrastructure.

- ***Science and the Environment.*** Environmental regulations and other concerns, such as limited water supplies, pose new challenges. New science in combination with technology (such as satellite imagery), is improving the ability to solve environmental problems. This will lead to new management styles and more efficient farming techniques and use of natural resources.

Finally, regional areas of expertise, or industry clusters, are increasingly becoming key elements in developing new economic bases.[2] An industry cluster is a regional concentration of companies and industries that share interconnected markets or products and support suppliers, trade associations and educational institutions. The wine industry in Napa and Sonoma counties is a classic example of an industry cluster. While the individual wineries compete in the same markets, their concentration creates significant benefits: There are a greater number of specialized suppliers (bottling, harvesting, fermentation supplies, etc.), and the pool of available labor is especially skilled for the industry. These combined benefits give each winery in the region a competitive advantage against wineries outside the region.[3]

AGRICULTURE AND ECONOMIC DEVELOPMENT

An agricultural development strategy is best incorporated as an integral part of the vision for the community and the region. Although agriculture is not often thought of as a "high end" industry like high tech, it may nevertheless be the driving force behind many higher-end industries. For example, in the Sacramento Valley, the emergence of a new biotech industry is largely due to the area's simultaneous proximity to a large agricultural region, advanced universities and Silicon Valley. Identifying

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[2] An easy to read but more detailed description of these trends can be found in three New Valley Connections reports: *Producing a Competitive Advantage, The Economic Future of Sacramento Valley and The Economic Future of the San Joaquin Valley.* These reports are available online at www.greatvalley.org/nvc/index2.html.

[3] Michael Porter, *Clusters and the New Economics of Competition*, *Harv. Bus. Rev.*, Nov.-Dec. 1998, at 78-90 (describing the wine industry cluster in the Napa region).

these kinds of benefits will help local agencies structure some land use controls as economic protection measures. If the agricultural land upon which this industry is based were converted, it could increase the likelihood of such industries relocating to areas where the long-term future of agriculture is more certain.

Local agencies can also provide significant leadership in building the capacity to support agriculture in today's economy. Local agencies can be active partners in developing new businesses, leadership models and technologies by using the following methods:

- ***Identify Regional Strengths.*** Each region has natural economic strengths based on a combination of factors, including proximity to markets, labor and natural resources. Identifying cluster networks can be key to developing an effective economic strategy. Local agencies can finance studies to help identify cluster network areas within the regional economy.

- ***Create Interlinked Networks.*** Once a cluster is identified, local officials can facilitate forums, workshops and electronic networks that build relationships between companies and producers that are involved in the same industry. Although these groups and companies compete in the marketplace, such collaboration fosters innovation within an industry, particularly with respect to common support and distribution needs. As a result, small and medium-sized companies can create the large scale efforts necessary to serve global markets.

- ***Encourage Innovation and Entrepreneurship.*** Entrepreneurship often follows collaboration and frequently leads to the production of higher-value products and higher salaries. When it involves agricultural products, entrepreneurship can also create new markets for agricultural production. Local agencies can help cultivate innovation by providing meeting space, financial support and other resources that encourage people to work together on developing new products.

- ***Build Infrastructure.*** Build an infrastructure that gives businesses and the workforce to have access to high-end technology. Broadband communication technologies are necessary to establish and maintain niches. In addition, basic infrastructure needs, such as roads and utilities, play a more important role as manufacturing and processing industries develop more refined inventory strategies.

- ***Maintain the Quality of Life.*** Attracting and retaining a skilled workforce is essential. As an economic development tool, create a high-quality living environment attractive to workers, including vital downtowns and protected landscapes. In addition, local agencies can maintain local environmental standards by encouraging the use of technology to address air and water quality issues often associated with agricultural production.

OPPORTUNITY FOR REGIONAL LEADERSHIP

The new economy's focus is shifting from a system that pits local agencies against each other to one that focuses on how a region can best take advantage of its collective assets. It is becoming more common for entire regions to work collectively. This requires participants to understand that siting a new processing facility in one region will strengthen the surrounding economies as well. To compete globally, leaders within a region must cooperate in establishing an identity and filling niches in the global marketplace. Local agencies can develop networks of business and community leaders to take the lead in responding to such challenges (see "Economic Development for the New Economy," below).

ECONOMIC DEVELOPMENT FOR THE NEW ECONOMY

Stanislaus County. The nine cities within Stanislaus County joined with the county to develop vision statements that address the community's future. This vision recognizes agriculture as an ongoing base industry for new specialties in manufacturing, processing and support services. As a result, local agencies are working to implement a countywide sales tax agreement and reprioritize projects of regional significance.

Five Cities Economic Development Authority. Five rural cities in Fresno County (Fowler, Parlier, Reedley, Sanger and Selma) have created a joint powers authority[4] to expand the region's economic development opportunities. Although the agency is not focused solely on agricultural issues, this kind of formalized cooperation provides a possible model for other local agencies.

Fresno General Plan. Amendments to the City of Fresno's general plan acknowledge the existence of the agricultural cluster in the community and call for the city to take steps supporting its continued development.[5]

Rice Straw Industries in the Sacramento Valley. Efforts are under way in the Sacramento Valley to find new uses for an old waste: rice straw. This byproduct's abundance is driving new development of fuels and building products.

New Valley Connexions. New Valley Connexions, a joint project of the Great Valley Center and the California Trade and Commerce Agency, worked with Collaborative Economics[6] to develop a series of reports identifying economic opportunities in the predominantly agricultural areas of the San Joaquin and Sacramento valleys. These reports are available online.[7]

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[4] Donna Silva, *5 Cities JPA a First*, *New Valley CONNEXIONS Newsl.*, Winter 1999/2000, at 14.

[5] City of Fresno, *General Plan* (1984).

[6] A private consulting firm. *See* www.coecon.com.

[7] Such analysis has already been conducted for the Sacramento and San Joaquin Valleys. Great Valley Center, *New Valley CONNEXIONS*; www.greatvalley.org/nvc/index2.html.

ENCOURAGE MARKET DIVERSIFICATION

STRATEGY 17

The inability to generate consistent profits from crops is an ongoing problem for small farmers. In a way, farmers and ranchers are victims of their own efficiency: Although per-acre yields have increased over the years, the price a farmer receives has remained relatively constant or, in some instances, even decreased. Some farmers, however, have found ways to bypass wholesale markets and market directly to consumers. Others differentiate or "position" their goods, which helps in negotiating a higher price for them. Such strategies have added benefits for local economies. In most circumstances, products that are higher in value require more labor to handle them, which creates jobs and increases wealth throughout the community.

Issues such as marketing, branding and agricultural tourism may not be typical activities for a local agency. Nevertheless, these issues seem to arise consistently in stakeholder and community groups that meet to discuss local needs in agriculture. A workshop sponsored by the Solano County Board of Supervisors illustrates this point. The attendees were asked what barriers prevented them from developing a profitable agricultural business in the next 10 years. Then they were asked to develop solutions. The group decided that local marketing could have the greatest impact in keeping local agriculture profitable.

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ZONING FOR VALUE-ADDED ENTERPRISES

Most people think of agriculture as a raw-product industry. A farmer grows a crop, such as tomatoes, and then sells it to a processor who turns it into soup, salsa or pasta sauce. However, some farmers process or "add value" to their crop before it leaves the farm. Value can be added by simply cleaning or freezing, and can extend to processing, packaging and distributing the farm's produce. For example, a dairy might process its own milk to make cheese, or an orchard farmer may add value by allowing consumers direct access by selling peaches on a "u-pick" basis. In other cases, the farmer may supply a restaurant or operate a fruit stand that features the farm's produce.

Value-added enterprises enable farmers to be more productive. Generally, the farmer must invest in processing or retail facilities to increase the farm's profitability. These projects can open new markets, establish name

recognition for the farm and create local jobs. Such operations have the potential to add a great deal to the local economy.

One of the major burdens for this kind of value-added enterprise can be local zoning ordinances and other land use restrictions. In fact, farmland protection programs that are designed with an eye toward protecting the open space nature of farmland do not always address agriculture's business needs. Successful value-added enterprises often require processing or retail facilities to be built on agricultural land. Thus, one way to retain the vitality of local agriculture is to implement land use policies in a way that allows farmers to engage in value-added enterprises. There are several ways that local agencies can expand the scope of value-added enterprises in agricultural areas, including:

- ***Flexible Zoning***. Local officials can acknowledge the importance of value-added enterprises in the general plan and permit the construction of facilities in agricultural areas. Conditional use permits can address concerns about haphazard or disproportionate development.
- ***Thinking Creatively for Extended Growth***. When value-added enterprises become very successful, they can outgrow their rural surroundings. When larger facilities are proposed, it may be worth reviewing whether, through incentives or reduced permitting fees, the local agency can encourage the farmer to locate the facility in a nearby commercial area where the needed infrastructure already exists.
- ***Providing Education***. As an economic development strategy, local agencies can match farmers with experts in the food manufacturing business to determine the viability of value-added enterprises.

Value-added enterprises are an important method of diversifying investment and potentially increasing the value of the farmer's product. In addition, it opens new markets and extends the market season, which creates additional jobs and captures the community's character with locally produced specialty foods. It can play a vital role in ensuring the long-term viability of agricultural protection programs.

MARKETING 101

Access to U.S. Highway 101 is the key for a small farmers' market in the Marin County community of Laytonville. Its location attracts many tourists who continue to purchase goods from the vendors afterward through a mail-order business. Not all farmers' markets need to be so ideally located. Many successful roadside stands are located along roads with less traffic, and the Internet is providing fresh opportunities for farmers to reach new markets.

DIRECT MARKETING

Direct marketing of farm products is a growing trend in agriculture that provides farmers an opportunity to bypass middlemen and sell directly to consumers. One of the prime examples of direct marketing efforts is selling through local farmers' markets. Such markets draw consumers a step closer to the farm and create popular meeting places in urban locations.

Community-supported agriculture is also increasingly popular. Under this strategy, customers sign up in advance to buy "shares" of a farm's harvest. The customer assumes part of the risk, accepting less produce if a crop is damaged or fails. Shareholders sometimes help on the farm for additional

credit. Harvested crops are usually delivered to a central pick-up point or, for a higher price, delivered directly to the shareholder. Although this type of farming is labor-intensive — it requires one farmer to grow a variety of crops in smaller quantities — the farmer gains by minimizing risks. Such farms are ideal when located close to urban areas. Not only do they provide a service close to its customer base, but their small scale is also less likely to create "nuisance"-related problems encountered when larger farms operate next to residences.

Direct marketing, however, is not for every farmer or crop. It's most likely to be successful for seasonal items or relatively high-value products, including value-added or processed products, and for small farmers close to urban population centers or on access roads in major tourism areas.

DIRECT MARKETING MODELS[1]

	CHARACTERISTICS	LOCAL AGENCY'S ROLE
FARMERS' MARKET	Farmer sells at a weekly market. This provides direct access to consumers and enhances the ability to establish personal relationships with them.	Helps facilitate siting and issue appropriate permits, and promotes market in media and announcements. Sponsors booth to inform shoppers about programs to protect agriculture.
COMMUNITY-SUPPORTED FARMING	Steady income during extended harvest season. Requires farmers to grow several crops on a small scale. Delivery costs and logistics need to be addressed. Producers often use newsletters to keep consumers interested.	Connects local producers with experts in operating this type of business. Encourages such farms near urban boundaries.
ROADSIDE STANDS	Low-cost, low-tech way to sell. Involves some liability issues, particularly with "u-pick" operations.	Allows flexible zoning standards, connects producers with expertise and training to minimize risks and liabilities, and promotes farm tours in the region where appropriate.
INTERNET MARKETING	Provides broad consumer access. Easier to establish specialty niche in large market; there may be some difficulty in getting started; relies on shipping.	Works to improve broadband access in rural areas, and connects local producers with business experts.

[1] A good general resource is the *Direct Farm Marketing and Tourism Handbook* published by the University of Arizona, and available at http://ag.arizona.edu/arec/pubs/dmkt/dmkt.html. More information, including insurance, is available through the North American Farmers Direct Marketing Association at www.nafdma.com.

DEVELOPING A REGIONAL BRAND

PRACTICE TIP

When working to develop a regional brand, it's helpful to review economic development strategies in the region before settling on a logo and message, to ensure that the two are consistent.

The value of "branding" local products is gaining recognition in many agricultural regions. Demand for local agricultural products can grow when local products are differentiated from typical market offerings. Such products do not necessarily have to be superior in quality, though that's certainly one of the easiest ways to make a distinction. It's enough that there is some other distinguishing characteristic, such as locally grown, organic, environmentally friendly, pesticide-free or high quality.

Regional branding requires significant cooperation among area growers. Voluntary marketing associations are usually the mechanism that farmers use to develop brands and marketing plans to distinguish their products. Association membership can vary. Some associations consist only of growers, while others include processors and retailers.

Marketing associations, however, can be difficult to get started. Many growers don't have time to invest in developing such programs from scratch. Others are hesitant to make contributions until they are certain that the effort will actually make a difference to their operation. Local agencies can play a key economic development role by facilitating initial meetings, providing meeting space and seed money or sponsoring speakers who can help the group get a project off the ground.

As the effort gains momentum, the group may need additional guidance in forming an organization to carry out its mission. Useful second-phase skills that local agencies can help secure include grant proposal writing, legal advice and financial management. As the organization matures, the local agency's role will diminish.

The Sonoma County Board of Supervisors created the "Select! Sonoma County" program in 1989 (see "Case Study: Sonoma County Marketing Association," next page). Its goal was to increase farm revenues by financially supporting and promoting local agricultural products and encouraging farmers to stay in agriculture instead of converting their land for non-agricultural uses. The program costs about $200,000 annually. The county contributes approximately 50 percent of this amount through transient-occupancy-tax revenues. Grants, special events and dues from its 350-members fund the remainder. The funds are used for promotions, consumer education special events and a monthly newsletter.

CASE STUDY: SONOMA COUNTY MARKETING ASSOCIATION

"Select! Sonoma County" is a regional nonprofit agricultural marketing association that has been in operation since 1989. The program was founded with the help of a three-year, $250,000 grant from the U.S. Department of Agriculture. Its purpose is to encourage consumers in the North Bay Area to purchase locally grown produce.

Select! Sonoma County membership consists of 300 producers, processors and product consumers. The association licenses its "Sonoma Grown" and "Sonoma Made" logos, and develops promotions, educational programs and marketing opportunities for the county's producers. Dues vary by the size and type of farm or processing facility. In return, members receive a referral service, marketing leads and advertising.

One early issue was establishing a brand identity. The "Sonoma Grown" and "Sonoma Made" brands were developed, but the next step was to identify their meaning. For example, several wines produced in Sonoma County use a combination of grapes, only some of which are grown in the county. Could a wine that was of only 40 percent Sonoma County grapes call itself "Sonoma Grown"?

Ultimately, the association established standards. To be certified as Sonoma Grown, at least 70 percent of the ingredients, by both weight and volume, must have been grown in Sonoma County. For wine or olive oil, the standard is 75 percent. For meat, the animal must have spent 70 percent of its life in Sonoma County. To be certified "Sonoma Made," the majority of a product's manufacturing must have occured in Sonoma County.

Select! Sonoma County also works with retailers to post "We feature ..." or "Proud supporter of ..." signs to inform shoppers about the brand. The organization also provides advocacy for agricultural marketing concerns, and a database of programs and information. Its Web site has a product directory with links to sellers of Select! Sonoma County products. Member farmers who sell at farmers' markets can use Sonoma Grown banners on their booths, while grocery stores use point-of-sale cards.

AGRICULTURAL TOURISM

Agricultural tourism is a hot topic in agricultural market development. Agri-tourism works best in scenic farming communities close to large urban areas. Entrepreneurial growers are offering educational and recreational services, including school tours, hay rides, crop mazes, petting zoos and overnight farm home stays[2] as well as "u-pick" operations, roadside stands, harvest festivals and various other activities, such as bird-watching hikes and farm tours. The success of Napa and Sonoma counties in attracting tourism dollars has spurred this interest. Areas along the central coast and in the Sierra Nevada, including Santa Barbara and Amador counties, have also successfully promoted certain regions as wine-tasting destinations.

FOR MORE INFORMATION

The Web site for the Small Farm Center, a program of the U.C. Cooperative Extension Service, serves as an excellent resource for agricultural tourism.

www.sfc.usdavis.edu

[2] Farmers offering guest accommodations may serve meals without having to meet all the public health standards of a typical commercial kitchen when agriculture is the primary source of income for the establishment. *See* Cal. Health & Safety Code § 113870.

Other efforts to capitalize on the natural character of agricultural lands are also under way. The communities around Fresno and Chico promote spring "blossom tours" to showcase flowering orchards. Chico and Butte County also promote waterfowl tours to attract bird-watching tourists in the fall. The communities designate tourist routes and, in some instances, such promotions may require improvements to roads or other amenities.

While these efforts demonstrate promise, agricultural tourism is probably best considered a secondary or supplemental marketing or economic development strategy. Agricultural tourism alone cannot ensure the long-term viability of local farms. The unique natural amenities associated with particular type of agriculture are not easily replicated. Agricultural tourism is most successful in areas where geography and specialty crops combine to create an especially attractive rural character. The most successful programs already have an established base of crops with particular public appeal, such as grapes, berries, pumpkins or apples. Areas that are far from rural areas or that primarily grow crops like wheat and cotton, for example, may have more difficulty generating public interest.

THREE OTHER MARKETING IDEAS

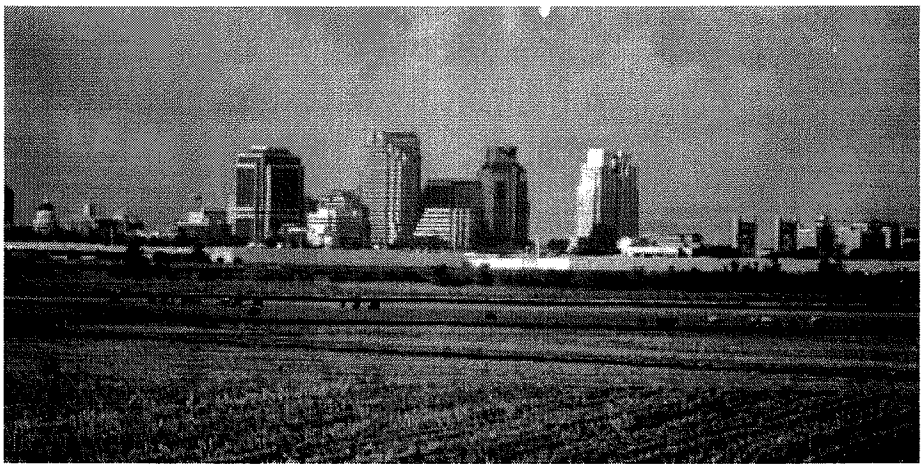
1. **Farm Sign Programs.** A farm sign program usually involves placing signs in farm fields, along major highways, that identify the crop grown there, and also involves membership in a local marketing association.[3] The signs connect local and interstate consumers to local food sources, and create brand awareness.
2. **Farm Reports.** A lighthearted weekly or monthly farm report included with other local government announcements and media can create a connection between residents and local farm produce. Anecdotes, biographies, recipes and harvest reports encourage the community to purchase local produce.
3. **Data Collection.** Local officials can collect and distribute meaningful data to help producers market agricultural goods. A good way to start is by conducting a survey or focus group to identify what information would be most useful to local growers. The next step is to collect the data and find a way to effectively disseminate it to growers. Such information might also be useful in supporting the agency's economic development strategy.

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[3] Some agencies have fairly restrictive sign ordinances to protect the scenic character of rural landscapes. Creating an exception for farm signs may compromise the entire ordinance on First Amendment grounds if it is determined that the exceptions effectively regulate the content of speech. Such programs should be reviewed by the agency's attorney.

Part IV

AG-URBAN BOUNDARIES



This situation is a common one: A fast-growing community approves a subdivision located on farmland, placing new homes right next to farms. Proximity to the bucolic landscape is one of the development's most attractive features. But the new homeowners are soon disillusioned by pesticide drift, night harvesting, odor, flies, dust and slow-moving tractors.

Farmers also have concerns about adjacent development. Theft and vandalism increase when the surrounding area urbanizes. Imported pests and increased traffic also affect operations. As a result, farmers see the next wave of development as inevitable, and accordingly reduce investments in their operation. The operation becomes less profitable, real estate becomes more valuable, and soon another farmer is willing to entertain offers from developers.

Farming and residential uses are fundamentally incompatible. When they are located next to one another, local agencies can anticipate significant complaints and problems. However, there are several strategies that local agencies can use to head off or reduce such problems, such as creating physical barriers and educating residents to create more appropriate expectations. Such approaches can improve both the quality of life in new subdivisions and farmers' ability to remain a viable part of the local agricultural economy.

LAY OF THE LAND

Percentage of Californians who feel that it is at least somewhat likely that too much farmland will be built over, causing food shortages and rising food prices: 63% [2]

Number of agricultural commodities in which California leads the nation: 77 [3]

Percentage of woman farm operators in California in 1978: 7.6% [1]

Percentage of woman farm operators in California in 1998: 13.6% [1]

Estimated number of farmers' markets in the United States: 2,800

Increase in the number of local farmers' markets from 1994 to 2000: 63%

Chance that a pound of fertilizer sold in California will be used in agricultural production: 1 in 3 [1]

Percentage of farm operators who consider farming their principal occupation: 53% [1]

Number of people fed annually by the typical farmer in 1980: 25

Number of people fed by annually the typical farmer today: 135

Number of California farms owned by African Americans, Hispanics, Asians and Pacific Islanders: 10.5% [1]

Percentage of farms owned by African Americans, Hispanics, Asians and Pacific Islanders nationally: 3.3% [1]

Approximate number of California counties that have adopted right-to-farm ordinances: 50

Approximate number of California cities that have done the same: 40

Amount spent in legal fees by one Elk Grove, California farmer defending his turkey operation against a single nuisance complaint from a neighboring landowner: $1.5 million [7]

SOURCES: **(1)** Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • **(2)** Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) **(3)** California Farm Bureau Federation (www.cfbf.org) • **(4)** Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • **(5)** Kuminoff *et al, Issues Brief: Farmland Conversion: Perceptions and Realities,* Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • **(6)** American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm) • (7) Sacramento Bee, Farms and suburbs can make troublesome neighbors (October 19, 1998).

RESOLVE AG-URBAN CONFLICTS

STRATEGY 18

Residential neighborhoods and agricultural zones are not ideally suited to be located side by side. The business of farming produces side-effects that urban residents may find objectionable. Likewise, farmers often incur additional costs associated with living in close to large residential areas. This section describes the sources of this controversy; how to minimize it by reorienting local planning and structural design practices; and examines mediation and other community solutions to unavoidable disputes.

SOURCES OF CONTROVERSY

A number of potential conflicts are likely when urban areas encroach on farmland. Pesticide application, addressed on the next page, is perhaps the most obvious. Other issues include:

- ***Farm Equipment Storage.*** Farmers often accumulate equipment to use for parts or future needs. But urban neighbors see the collection of pipes, trailers and other miscellaneous objects as a junkyard and complain to the code enforcement officer. Similar problems result from dilapidated storage sheds, barns and other structures.

- ***Trespassing and Theft.*** Urban communities pose the threat of theft. Targets include vehicles, fruit, livestock or anything else that may be valuable. Farmers have greater liability risk when increasing numbers of people are tempted to wander onto farm property. Theft can also have a major impact on a farmer's livelihood. In San Joaquin County, farm thefts (including trucks and tractors) exceeded $683,000 in 2001.[1]

- ***Shared Roadways.*** Residential development brings cars, bicycles and pedestrians onto roadways used by farm trucks and slow-moving tractors. This increases the risk of accidents and mutual inconvenience.

- ***Odors and Livestock.*** Wind shifts can cause unpleasant reminders of nearby cows, pigs and turkeys. Farm animals occasionally escape and appear unexpectedly on roads. Farm pests sometimes stray from fields to make new homes in backyards and living areas.

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Mediation Techniques 114

[1] Farm Theft Reaps Big Rewards for Criminals, Oakland Tribune (April 29, 2002).

- ***Pets.*** New residents bring pets that may attack livestock. Dog attacks cause livestock stress, which can reduce the number of lambs born in sheep operations or reduce milk production in dairies.

- ***Noise.*** Machinery often operates late into the night during harvest season and other times of the year.

PESTICIDE ISSUES

Perhaps the most difficult and persistent point of conflict between farmers and their urban neighbors is the spraying of pesticides.[2] Agricultural commissioners enforce regulations on pesticide application.[3] Nevertheless, the increased proximity of urban populations heightens concern that drifting pesticides will create human health risks and damage property.

State law prohibits local agencies from adopting regulations that control pesticide application or its timing.[4] Accordingly, local agencies must rely on informal processes to resolve disputes. The silver lining is that the remaining available options require farmers and their neighbors to engage in community problem-solving.

Kern and Napa counties are good examples of an informal process that has been developed between grape growers and their neighbors. The grape farmers provide notice before dusting their crops with sulfur (necessary to combat a grapevine fungus). The nearby residents can then plan around the farmers' dusting schedule. The county agricultural commissioners take an active role in making sure that the parties communicate.

Another type of resolution was reached in Fresno County, where a large percentage of farms use crop dusters (airplanes and helicopters) to apply pesticides and fertilizers. Fresno County uses an ad hoc method of restricting air space to crop dusters, called 'red zoning." Red zoning began in the 1970s, when the agricultural commissioner drew a line approximately a one-half mile outside the City of Fresno's developed areas. Inside the line, crop dusters voluntarily seek the commissioner's approval before they apply any material.[5]

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[2] In California, laws regulating pesticide application include herbicides as well. Cal. Food & Agric. Code § 12753.

[3] *See* Cal. Code Regs. tit. 3, § 6460.

[4] Cal. Food & Agric. Code §§ 11501 and following. Methyl bromide is the only chemical for which the state has a fumigation notification requirement. Cal. Food & Agric. Code §§ 14081, 14082.

[5] Douglas N. Edwards, *Proceedings of a Workshop: Farmers & Neighbors, Land Use, Pesticides, and Other Issues,* UC Agricultural Issues Center (1996) at 39.

OTHER TOOLS FOR COMMUNITY PROBLEM-SOLVING

Many conflicts can be addressed by creating forums to resolve differences before people's positions become entrenched. Community problem-solving can be achieved through:

- ***Community Meetings.*** One-time events are held to identify problems and solutions.
- ***Neighborhood Committees.*** Area residents address issues in an ongoing series of meetings.
- ***Advisory Committees.*** Stakeholders address issues in an ongoing series of meetings.
- ***Study Circles.*** A fact-finding group studies a single issue; participants are given reading material prior to meeting; and moderating duties rotate.
- ***Roundtables.*** These small groups use facilitated discussions around a particular issue, generally held in a single meeting so citizens can share ideas and concerns.
- ***A Working Committee.*** A fact-finding committee investigates issues and makes recommendations; it can include representatives from the legislative body.
- ***Hotlines or an E-mail Suggestion Box.*** Hotlines and e-mail are effective, convenient tools for gathering information and viewpoints.
- ***A Web Site.*** Feedback is often improved when the community has access to better information. The Internet provides an affordable way to disseminate information.

INFLUENCE OF PLANNING AND DESIGN

Some conflicts between farmers and their urban neighbors can be "planned away" by using design elements that increase the distance between farmland and residential properties near urban limit lines. For example, planners may require that a large buffer be placed between farmland and a new development to physically separate the two uses. Other techniques include increasing set-back requirements or even planting trees. Another technique is to gradually "feather" densities toward farmland to decrease the number of residents that actually abut farm areas.

Thoughtful design can minimize some conflicts by changing a building's orientation or adjusting the window or deck locations according to their surroundings. In one example in San Diego County, a design flaw caused problems for residents of a condominium development, which was constructed adjacent to well-established greenhouses. The condo balconies faced the greenhouses, and the greenhouse vents released pesticides directly toward the balconies on treatment days. This problem could have been avoided if the design review committee had recognized the proximity to the greenhouses as a potential problem, and refused to issue a permit for the project without an alternate design that solved the problem by reorienting the balconies.

MEDIATION TECHNIQUES

Inevitably, disputes arise despite all efforts to isolate residences from agricultural operations or improve communication between farmers and urban neighbors. When direct negotiation fails, local agencies can use dispute resolution programs that offer a simple, inexpensive means for those involved to air their differences. Mediation is generally a method of nonbinding dispute resolution, involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

The City of Davis has established a grievance procedure intended to settle disputes resulting from "inconveniences or discomfort" caused by agricultural operations. The process involves a meeting held within 25 days of submitting of the dispute to a hearing officer. Prior to the meeting, the hearing officer investigates the underlying facts. The parties in the conflict are encouraged to ask the county agricultural commissioner for a statement that addresses whether the underlying activity is an accepted farming practice. At the meeting, both parties have an opportunity to present their side of the dispute. Attorneys may be present only if both sides agree to it beforehand. The hearing officer issues a written decision within five days of the meeting and the parties split the cost. The process does not preclude either party from bringing legal action against the other. Neither party is required to use the grievance procedure before pursuing legal action.

San Diego County's Agricultural Interface Board provides a different model. The board brings farmers, neighbors and the relevant public agencies together to discuss complaints concerning agricultural operations. At the request of community members, the agricultural commissioner may convene the board, which then holds a series of meetings. The first meeting allows neighbors to vent frustrations and concerns. Agencies and farmers spend most of their time listening. The meeting is facilitated because of its emotional nature.

After the first meeting, the agricultural commissioner assigns a staff person to serve as an intermediary between the farmer, the neighbor and the appropriate contact people in the agencies. Follow-up meetings are used to assess progress, and provide the agencies and farmer an opportunity to explain the factors affecting their ability to address the complaint.

ADOPT A "RIGHT-TO-FARM" ORDINANCE

STRATEGY 19

One difficulty that farmers face in urbanizing areas is that new residents may perceive typical farming practices as a "nuisance" (see "A Word About Nuisances," next page). Right-to-farm ordinances were developed to offset this problem in two ways: by providing dispute resolution mechanisms for neighbors as an alternative to filing nuisance-type lawsuits against farming operations; and by notifying prospective buyers about the realities of living close to farms *before* they purchase property.

When new residents have clear expectations, the theory goes, they are less inclined to complain about sprays, dust, odors, noise and other aspects of agricultural activities. However, it's one thing to acknowledge that farmers work long hours in the fields and quite another to be awakened at sunrise by the sound of a nearby tractor. While right-to-farm ordinances do not eliminate all conflicts, they can help reduce problems by educating new and prospective residents about life near a farm.

ORDINANCE ELEMENTS

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Approximately 40 counties and 50 cities have adopted right-to-farm ordinances. These ordinances, however, are more about awareness than property rights. State law already limits lawsuits resulting from farm practices that disturb neighboring property owners.[1] Local agencies accordingly focus on public education and dispute mediation. Most local right-to-farm ordinances include one or more of the following elements:

- ***A Policy Statement.*** A policy statement can outline the intent to preserve agricultural operations, promote a good-neighbor policy or articulate agriculture's valuable role in the local economy.

- ***Definitions.*** Most ordinances define "agricultural operation" according to state code.[2] This section may also designate the areas where the

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[1] Cal. Civ. Code §§ 3482.5, 3482.6 (protecting agricultural and agricultural processing activities).

[2] Cal. Gov't Code § 3482.5 (defining "agricultural operation" as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur-bearing animals, fish or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market).

protection applies. Some counties define farmland more broadly as land that currently or potentially supports active farm operations.

- ***A "Coming to the Nuisance" Warning***. This is a declaration that normal farming operations do not constitute a nuisance. State law already protects operations that have been in place for three or more years.[3] Some local ordinances reduce this time to one year.

- ***An Agricultural Use Notice***. An agricultural use notice requires sellers, real estate agents or title companies to inform prospective homebuyers that commercial farming operations are close by and that odors, dust, flies and noise may accompany such operations.[4]

- ***Grievance Procedures***. A grievance committee may be established to mediate disputes between farmers and nonfarm residents.[5]

- ***Vandalism Fines***. Fines may be levied for vandalism, pilferage or loss of livestock due to domestic animal predation.

These elements can create a degree of certainty for farmers. Knowing that their operations have some protection, farmers are more likely to continue to invest in farming.

A WORD ABOUT "NUISANCES"

The original idea behind right-to-farm ordinances was to prevent new residents from suing to stop or alter established farm practices. Such disputes usually involved claims that farm practices were so invasive in terms of noise, odor or other elements that they unreasonably interfered with the use and enjoyment of neighboring properties. Typically, the remedies sought (in addition to money) involved regulating the operation of farm machinery, application of pesticides and fertilizers, disposal of manure, storage of machinery or other typical farming activities. State law limits neighboring property owners from bringing these types of claims against farm operations and agricultural processing facilities.

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[3] Cal. Civ. Code § 3482.5. However, this is not a blanket protection. The activity must be conducted in a manner consistent with accepted industry standards in the locality. *Mohilef v. Janovici*, 51 Cal. App. 4th 267 (1996). The protection only applies when: (1) it's an agricultural activity (2) conducted for commercial purposes (3) in manner consistent with proper standards (4) as followed by similar operations in same locality; and (5) the claim of nuisance arises due to any changed condition (6) after activity has been in operation for more than three years; and (7) the activity was not nuisance at time it began. *Souza v. Lauppe,* 59 Cal. App. 4th 865 (1997).

[4] Local agencies are authorized to adopt such provisions under Cal. Civ. Code § 1102.6(a).

HOW EFFECTIVE ARE RIGHT-TO-FARM ORDINANCES?

What do people who manage urban-agricultural issues say about right-to-farm ordinances? This question was posed to agricultural commissioners, farm bureau leaders, real estate representatives and UC Cooperative Extension Service staff in 15 counties. The study's findings are summarized below.[5]

- ***Primarily Educational Tools.*** Right-to-farm ordinances are primarily educational tools. They promote awareness of the value of agriculture. Their most important role is to alert homebuyers to the realities of living near a farm.
- ***Useful for Mediation.*** Right-to-farm ordinances serve as a valuable reference for local officials responding to complaints and facilitating dispute resolution.
- ***No Substitute for Good Planning.*** Right-to-farm ordinances do not take the place of land use regulations that define urban-agricultural boundaries. They lack the power of zoning and subdivision controls to preserve farmland.
- ***Weak Implementation.*** Only a few local agencies play an active role in implementing disclosure requirements for real estate transactions. In general, this implementation suffers from a lack of coordination among agencies involved in developing and revising right-to-farm ordinances.
- ***Do Not Insulate Farmers from Lawsuits.*** Right-to-farm ordinances offer little additional protection from lawsuits beyond that already provided in the state's right-to-farm law.
- ***Impact on Complaints is Uncertain.*** Adopting a right-to-farm ordinance has no definitive impact on the number of complaints directed against farming.

INCREASING PUBLIC AWARENESS

Right-to-farm ordinances can shape community expectations by providing a clear picture of what it means to live close to agricultural operations. Disclosure is usually accomplished in one of three ways:

1. ***Tax Bills.*** The annual tax bills sent to owners of property close to farm areas may include disclosure information.

2. ***New Projects.*** Disclosure information may be provided in connection with new development located near agricultural activity, usually when a subdivision or parcel map is approved or building permits are issued.

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[5] Most programs are seldom used. M. Wacker, A. Sokolow and R. Elkins, *County Right-to-Farm Ordinances in California: An Assessment of Impact and Effectiveness*, University of California Agricultural Issues Center, AIC Issues Briefs, May 2001, at 4.

[6] Wacker, et al., *supra.* at 3.

3. ***Notice at Sale.*** Disclosure information may be included as part of a real estate sale transaction involving residential or other property located near agricultural activity.

Each of these methods reaches different audiences and has varying levels of effectiveness. Tax bill notifications, for example, while broad in scope, serve notice only after the property has been purchased. A notice at the time of sale, however, is not an ongoing notice. As a result, many local agencies require more than one method of notification. For example, Stanislaus and Sonoma counties use all three methods. Sonoma County has even added a fourth component by having sheriff's deputies distribute pamphlets that describe county agriculture to residents.[7]

Thus, local agencies that want to implement or revisit a right-to-farm ordinance have several options. An effective ordinance is one that fully informs affected parties and the community at large about the importance of maintaining productive agriculture in the face of urban growth.

THE RIGHT-TO-FARM IN DAVIS

The City of Davis has a right-to-farm ordinance with the following elements:

- ***Notification.*** Buyers considering home purchases within 1,000 feet of agricultural land and processing facilities must be notified that farming operations are permitted within the city and county;
- ***Acknowledgement.*** The possibility of inconvenience or discomfort from such operations is acknowledged;
- ***Environmental Compliance.*** Farmers, agricultural processors or others must still comply with all local, state and federal laws. For noncompliance with appropriate state, federal or local laws, legal recourse is possible by, among other ways, contacting the appropriate agency;
- ***Contact Point.*** Concerned citizens may contact the county agricultural commissioner; and
- ***Grievance Procedure.*** A grievance procedure is provided if a dispute escalates.

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[7] *Id.* at 5.

CREATE BUFFER ZONES

STRATEGY 20

Every city adjacent to agricultural areas has a point where the urban area ends and farming begins. Agricultural buffers provide a way to minimize conflict by creating space or improving the barrier between agricultural operations and urban residents. There are two basic methods of creating buffers. The first is to create space or place a physical barrier between the agricultural operation and the residential use. The second is to use transitional zoning techniques to ensure that the uses on the boundary are generally compatible.

An ideal buffer would be located along a permanent boundary between agricultural and urban uses. Indeed, many agencies report a reduction in the number of complaints they receive about neighboring agricultural operations in areas where buffers have been created.[1] A buffer area may be as narrow as a stand of trees or a country road, or as large as 1,000 feet or more. Buffer zones reduce the amount of noise and odor that can carry to residential areas. They also reduce the risk to farmers of domestic animal predation, crop theft and damage and complaints from neighboring urban dwellers. A fixed boundary also reduces the chance that additional farmland will be converted to urban uses.

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Buffers can also be used to protect environmental quality. Appropriately placed buffer strips control soil erosion and protect water quality, which can help local farmers comply with environmental regulations. Buffers can remove up to 50 percent of the nutrients and pesticides, 60 percent of the pathogens and 75 percent of the sediment associated with agricultural runoff, which can harm water quality.[2] When coupled with farm management practices such as nutrient control and cover cropping, buffer strips achieve a measure of environmental sustainability. Furthermore, farmers with buffer strips usually undertake additional conservation practices, such as minimum tillage.[3] One study found that buffers can

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[1] Laura Thompson, The Conflict at the Edge, *Zoning News,* February 1997, at 1. *See* American Planning Association Web site at www.planning.org/ZoningNews.

[2] U.S. Department of Agriculture, Natural Resources Conservation Service, *Benefits of Buffers* www.nhq.nrcs.usda.gov/CCS/Buffers.html#Anchor-WhatBuffer.

[3] Applied Research Systems, Inc., *The National Conservation Buffer Initiative: A Qualitative Analysis* 51 (1999). Available through the Natural Resources Conservation Service Web site at www.nhq.nrcs.usda.gov/CCS/BuffQual.pdf.

actually increase the value of the farm on which they are located by as much as 5 to 15 percent. [4]

PRACTICE TIPS

Take Advantage of Existing Geography. Look for existing physical features when planning a buffer zone. A road, canal, railroad tracks, streams and waterways or other pre-existing features can provide elements to help separate farmland from its surroundings.

Health and Safety Findings. When implementing buffer programs, public agencies should make findings describing the health and safety benefits of buffer zones and how the agency's individual program is tailored to meet the community's health and safety needs.

TYPES OF PHYSICAL BUFFERS

Buffers should be designed to fit each community's needs. In most cases, farmers want to maintain the land's traditional use. Urban residents, however, may have multiple demands. In addition to keeping the agricultural operation (and its "nuisance" activities) at a safe distance, urban residents may also be concerned about the buffer's aesthetics, maintenance and landscaping. Fortunately, there are a variety of tools that local agencies can use to implement buffer programs, including:

- ***Fences and Barriers.*** Particularly in cases where houses are built immediately adjacent to farmland, barriers such as fences, walls or tree rows may be the only available option. Many farmers already plant tree rows to reduce the likelihood of pesticide drift onto neighboring properties. One consideration is whether to include some design element for walls and fences to avoid a plain, stark appearance.

- ***Physical Dedications.*** When large developments are approved, a local agency will sometimes require that a strip of land be dedicated or maintained as a buffer as a condition of new development.[5] Other infrastructure requirements, such storm drainage, can often be incorporated into the buffer area to limit the developer's cost.

- ***Topographic Buffers***. Existing land uses and topography can form very effective buffers. Such barriers can be natural, such as rivers, flood plains or hillsides; or man-made, such as roads, railroad tracks, parking lots or power line rights-of-way. Some communities use irrigation canals, which can often contribute a swath of 100 feet or more (including service roads) to the buffer. Integrating buffers into the existing landscape saves money and reduces the perception that they impose an "artificial" boundary on development.

- ***Setback Requirements.*** A setback is a restriction (usually implemented by zoning ordinance) that limits building within a certain number of feet from the property line that abuts the farming operation. Setbacks range from 100 to 1500 feet, but are commonly set at 150 to 300 feet. Setbacks are typically used in connection with rural residential zoning,

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[4] National Association of Conservation Districts, *Buffers Work in Urban Areas Too!*, *Buffer Notes* (June 2000) www.nacdnet.org/buffers/00Jun/urban.htm.

[5] To the extent that a local agency imposes such a requirement on new development, it is better to adopt the requirement by ordinance. *See* Strategy 2.

which creates a block of large "ranchette" lots (five to 20 acres) between farmland and urban residential areas. The ranchette landowner can use the buffer strip for less intensive purposes, such as storage or livestock grazing.

IMPLEMENTATION ISSUES

Many of the same funding sources that are available for agricultural conservation easements (see Strategy 23) may be available for buffer programs. Two other key considerations are the arrangements for long-term maintenance and use of the buffer:

- ***Maintenance.*** One critical issue that should be addressed in any buffer program is who will own the buffer and assume responsibility for weed and pest control, fire hazard management and other maintenance issues. In many cases, the local agency elects to maintain the buffer itself and includes the costs in its park maintenance budget. In some cases, where the buffer set-aside was required as a condition of development, the ownership may remain with a homeowners

TWO BUFFER PROGRAM EXAMPLES

City of Davis. The City of Davis requires a 150-foot buffer and encourages a 500-foot aerial spray setback.[6] Public access is kept to a minimum in the first 100 feet adjacent to the agricultural operation. Buffers allow these types of land uses: trees, drainage swales, utility corridors and certain agricultural uses, such as organic farming. The last 50 feet abutting the development allows increased public uses, such as bike paths, hedgerows and trash enclosures. The entire 150 feet is generally dedicated to the city by the developer after the improvements have been made, whereupon the city annexes the area to an existing lighting and landscape district for maintenance.

San Luis Obispo County. San Luis Obispo designates buffer width on a case-by-case basis. Factors in the calculation include the type of crop production, zoning, site topography and wind direction. Distances range from 400 to 800 feet for vineyards, 300 to 800 feet for irrigated orchards, and 100 to 400 feet for field crops.[7]

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[6] City of Davis, Cal., Code §§ 40A.01.050 and following (1995).

[7] Thompson, *supra*. at 2.

association — particularly if the area doubles as a park or storm drainage. If the buffers are maintained privately, then code enforcement officers should be assigned to conduct periodic visits to ensure the program's integrity.

- ***Permitted Uses.*** It is often tempting to create some kind of trail to provide public access to a buffer and its views of agricultural land. However, farmers may be concerned about having trails close to their cropland. The presence of human activity too close to farmland may restrict farmers' ability to apply pesticides.[8] Encouraging public use of the strip may also increase the number of complaints. One way to balance these competing interests is to divide the buffer into subzones. The City of Davis accomplished this by locating trails in the part of the buffer closest to the residential area, while the part of the buffer adjacent to the farmland includes trees and drainage swales.

FIVE STEPS FOR GETTING STARTED

A report by the Great Valley Center (see 'For More Information", next page) provides a five step process for designing and implementing a buffer policy:

1. ***Determine Local Need.*** Study the community issues. What type of farming exists at the urban fringe? Assess the type and frequency of complaints. What role should buffers play in addressing these issues?
2. ***Examine the Process.*** Establish a buffer team. Are there special issues that should be addressed at the outset? What other jurisdictions should be involved? To what extent will LAFCO policies affect options? Encourage communitywide agriculture awareness and education.
3. ***Define the Community's Agricultural Principals.*** How does the community envision its growth? Assess the strength of local will to maintain agriculture as economic contributor.
4. ***Adopt an Effective Policy.*** How well do current policies address growth issues? How can existing buffer programs be improved? Review general plans to determine how best to close existing gaps. Review policy direction on rural residential development. Where will it be allowed and where does it fit in?
5. ***Investigate Funding Options.*** Explore local options for funding buffers as part of the necessary infrastructure. Identify potential external funding sources.

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[8] Cal. Code Regs. tit. 3, § 6614 (1995) (prohibiting pesticide application where there is a reasonable possibility of contamination of persons not involved in the application process).

- ***Environmental Considerations.*** Several federal programs to improve water quality and erosion are encouraging farmers to place buffer zones on their land. More information on these programs is available on the National Conservation Buffer Initiative Web site, operated by the U.S. Department of Agriculture.[9]

Finally, a truly effective buffer strategy depends upon the permanence of the ag-urban boundary. Today's buffer zone can be tomorrow's linear park, if the ag-urban boundary is continually advancing into farmland.

AGRICULTURE-RESIDENTIAL TRANSITION ZONES

Parcels of land are not always available to serve as dedicated buffer areas. In such cases, zoning regulations provide another alternative for separating incompatible uses by creating intermediate zones where only less-intensive urban and agricultural uses are permitted.

On the urban side, zoning can be used to discourage the build-out of residential neighborhoods adjoining rural lands. For example, parcels that are likely to border agricultural operations may be better suited for commercial or light industrial uses rather than parks, schools or homes. Such uses are less likely to generate the conflicts associated with residential uses. Ideally, agricultural service industries, such as processing, warehousing or farm machinery businesses, could also be located in these areas. It is unlikely that agriculturally related businesses would perceive neighboring agricultural operations as a nuisance.

Similarly, agricultural operations can also be zoned to reduce potential conflicts. Not all farming activities have the same impact on surrounding residents. For example, zoning can be used to separate foul-smelling livestock and poultry operations from residential neighborhoods. This concept is analogous to creating light and heavy industrial zones.

Such programs usually require an initial investment in documenting local resources and conditions. Soil quality, residential development patterns, farming needs, drainage patterns and prevailing winds are just a few of the factors that should be taken into account. Once the agricultural zones are

FOR MORE INFORMATION

An excellent resource on these issues is *Can City and Farm Coexist? The Agricultural Buffer Experience in California,* published by the Great Valley Center. It is posted online at.

www.greatvalley.org

(click on ag programs, then click "buffer study").[10]

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[9] Natural Resources Conservation Service, *USDA Conservation Programs* (last visitedMar. 19, 2002) www.nrcs.usda.gov/NRCSProg.html.

[10] The actual link is www.greatvalley.org/programs/agprograms/pdf/buffer_study.pdf. The report is also available by contacting the Great Valley Center, 911 13th Street, Modesto, CA 95354, (209) 522-5103, e-mail info@greatvalley.org.

established, residents may choose to avoid purchasing homes that are adjacent to a higher-intensity agricultural zone, which permits spraying or animal cultivation.

SAMPLE AGRICULTURAL DISTRICT ZONES

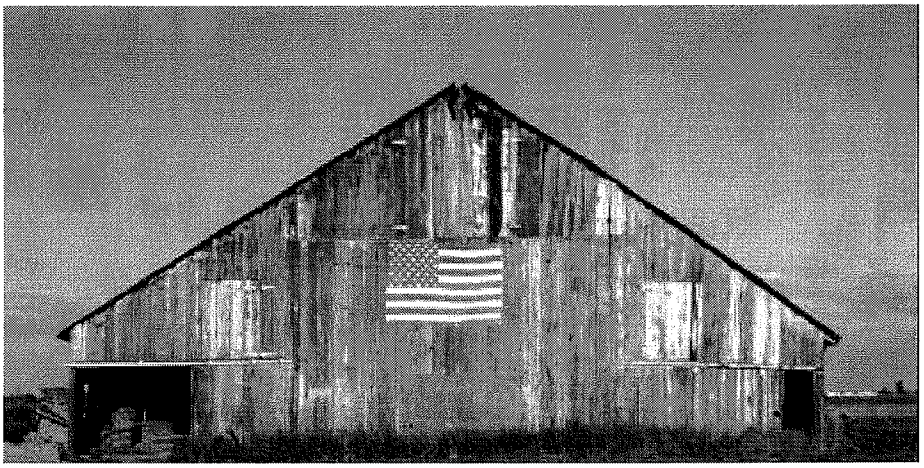
To create gradations in agricultural zoning, a local agency must identify different areas appropriate to different kinds of agricultural use.[11] This process includes taking inventory of specific features, such as drainage patterns and prevailing winds, to help identify the boundaries of various zones. A simplified sample appears below.

AGRICULTURAL ZONE	PERMITTED USES	CONDITIONAL USES	PROHIBITED USES
A2 **(low intensity: within 1,500 feet of residential areas)**	Low impact crops, organic farming, small livestock, hay and pasture	Greenhouses, poultry and processing plants	Intense livestock, dairies
A1 **(high intensity: more than 1,500 feet from residential areas)**	Most agricultural practices	Dairies and feedlot operations	Not applicable

[11] Minnesota Department of Agriculture, *Planning and Zoning for Animal Agriculture in Minnesota: A Handbook for Local Government* ch IV, 5-6 (June 1996).

Part V

PROGRAM IMPLEMENTATION



Farmland protection programs cannot be developed without taking a myriad other issues into account, such as the impact on housing, economic development opportunities and environmental concerns. Moreover, each community will have a unique set of factors, such as soil quality and local agricultural production, to take into account.

As a result, each local program will be unique. Nevertheless, most local agencies encounter many common issues, such as public involvement and project funding. A comprehensive plan takes a great deal of time and effort to simply develop, let alone implement. The most successful programs are usually the ones that incorporate consensus building techniques, good data and reliable sources of funding.

LAY OF THE LAND

Chance that a citizen trusts the local agency to do what is right in the land use context: 1 in 2 [4]

Percentage of Californians who claim to have "a lot" of personal experience in local land use decision-making: 6% [4]

Length of time that California has been the nation's top producing agricultural state: 53 years [1]

Total funding for conservation easements made available by Proposition 12: $25 million

Factor by which this exceeds previous funding levels: 4

Funding made available for agricultural preservation by Proposition 40: $75 million

Estimated total number of acres in conservation easements in California: 350,000

Estimated total number of agricultural acres enrolled in Williamson Act: 16 million

Percentage of agricultural land converted to urban uses between 1988 and 1998: 1.5% [1]

Number of farms in California in 1950: 144,000 [1]

Number of farms in California in 2000: 74,000 [1]

Percentage of these farms that are family or individually operated: 76% [3]

Percentage of market value attributable to the 5,000 largest farms: 75% [1]

Number of farms that have annual sales of less than $250,000: 62,000 [1]

California's contribution to total national cash receipts from agriculture: 13% [1]

Percentage of federal support programs benefiting agriculture in California: 3% [1]

Percentage of landowners in a national survey who said their property value had not been reduced by government environmental regulations: 70% [6]

Percentage claiming that they had experienced a large decrease in land value: 8% [6]

SOURCES: **(1)** Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • **(2)** Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) **(3)** California Farm Bureau Federation (www.cfbf.org) • **(4)** Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • **(5)** Kuminoff *et al, Issues Brief: Farmland Conversion: Perceptions and Realities,* Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • **(6)** American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

COLLECT HELPFUL AND ACCURATE LOCAL DATA

STRATEGY 21

Obtaining accurate data on local agriculture helps any farmland protection effort. While farming challenges can be similar across regions, local problems can be quite different. For example, farmland on the outskirts of the San Francisco Bay Area tends to be used for small vegetable or "truck" farms, farmers struggle with high land values and intense development pressure. On the other hand, Central Valley farmers with larger farms may experience less pressure to develop, but may still be willing to sell due to low commodity prices.

Strategies to protect farmland should be tailored to take such factors into account. Demographic and general economic trends should also be considered, along with the local agricultural economy's strengths and weaknesses. Potential threats to the long-term viability of agriculture in the region are another important consideration. Fortunately, there are a variety of sources available to help local agencies gather this information.

INVENTORY FARMLAND

Inventory Farmland 127

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Analyzing the Data 131

Most local agencies want to focus their efforts on protecting the highest-quality, most productive farmland. But where exactly are these areas? The California Department of Conservation provides two useful starting points for determining which lands are most threatened and most productive: the Farmland Mapping and Monitoring Program and the Land Evaluation and Site Assessment system.

FARMLAND MAPPING AND MONITORING PROGRAM

To help facilitate land use planning, the Farmland Mapping and Monitoring Program (FMMP) provides maps and statistical data on agricultural land resources.[1] These maps provide a visual representation of how quickly and where farmland is being developed in each community. Local agencies can also use these maps to explain their land use strategy to the public.

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[1] Farmland Mapping and Monitoring Program, *California Farmland Conversion Report 1996-98* (2000) (www.consrv.ca.gov/dlrp/FMMP/fmmp_98rpt.htm). *See* Cal. Gov't Code § 65570(b).

STATE DEPARTMENT OF CONSERVATION SOIL QUALITY CLASSIFICATIONS

Prime Farmland: This farmland has the best combination of physical and chemical features to sustain long-term production of agricultural crops. It has the soil quality, growing season and moisture supply needed to produce sustained high yields. The land must have been used for producing irrigated crops at some time during the four years prior to the mapping date.

Farmland of Statewide Importance: This farmland is similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to hold and retain moisture. The land must have been used for producing irrigated crops at some time during the four years prior to the mapping date.

Farmland of Local Importance: This is land of importance to the local agricultural economy, as determined by each county's board of supervisors and a local advisory committee.

Unique Farmland: This is farmland whose lesser quality soils are used for the production of the state's leading agricultural crops. It is usually irrigated, but may include non-irrigated orchards or vineyards. The land must have been farmed at some time during the four years prior to the mapping date.

Grazing Land: Land where existing vegetation is suited to livestock grazing.

Urban and Built-Up Land: This is land occupied by structures with a building density of at least one unit per 1.5 acres.

The FMMP classifies land's suitability for agricultural production based on the soil's physical and chemical composition and the actual land use. Two kinds of maps are compiled: Important Farmland Maps for areas that have modern soil surveys, and Interim Farmland Maps for areas lacking soil survey information. Although the maps do not cover the entire state, they do cover most of the significant agricultural areas. County maps can be ordered directly from the California Department of Conservation.[2]

Counties may also ask the state to track additional land by designating land as "Farmland of Local Importance." Counties may use this classification for land that does not meet the criteria of other classifications, but is currently in production or has production capability. To designate such land, the county develops its own definition for Farmland of Local Importance within its boundaries. Examples include:

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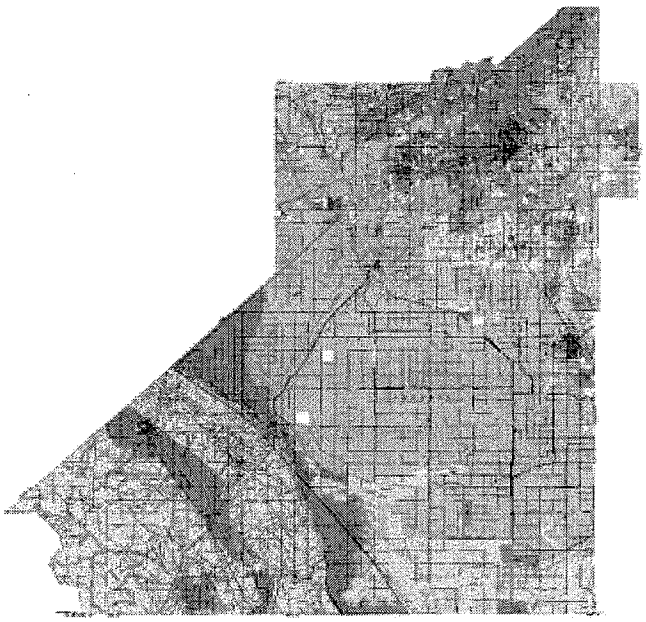
[2] To obtain maps, use the order form at www.consrv.ca.gov/dlrp/FMMP/pubs/Orderform1.pdf, or contact the Farmland Mapping and Monitoring Program at fmmp@consrv.ca.gov, (916) 324-0859.

- ***Fresno County*:** All farmable land within Fresno County that does not meet the definitions of Prime, Statewide or Unique is designated Farmland of Local Importance. This includes land that is or has been used for irrigated pasture, dry land farming, confined livestock and dairy, poultry, aquaculture and grazing.

- ***Imperial County:*** Non-irrigated and uncultivated land with Prime and Statewide soils is designated Farmland of Local Importance.

The Department of Conservation takes these definitions into account and maps land accordingly within each county.[3]

DEPARTMENT OF CONSERVATION MAPS



The Farmland Mapping and Monitoring Program provides colored maps, like this one above of Kings County, that tracks farmland and farmland conversion. The actual maps are in color. In this reproduction, the dark gray areas indicate areas of prime farmland. More information about the program is available by visiting the program's Web site: www.consrv.ca.gov/dlrp/FMMP/.

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[3] *See* Farmland Mapping and Monitoring Program, *Farmland of Local Importance Definitions* (last modified Feb. 25, 2002) www.consrv.ca.gov/dlrp/FMMP/fmmp_stats.htm.

LAND EVALUATION AND SITE ASSESSMENT

The Land Evaluation and Site Assessment (LESA) is a method of measuring the quality of specific farmland parcels.[4] LESA helps to determine which land should be protected and which are suitable for development. The model was originally designed to assist local agencies and individuals in evaluating the agricultural characteristics of specific sites, as indicated in the California Environmental Quality Act (CEQA) guidelines.

THE LESA GUIDEBOOK

The California Department of Conservation published a *Model Instruction Manual* for the LESA process, which provides step-by-step instructions on scoring and rating agricultural land. Forms are also included.

The manual is posted on the Web at:

www.consrv.ca.gov

(keyword search "lesa").

The LESA model is composed of six different factors that account for soil quality, size, water availability and location. Each factor is rated separately on a 100-point scale. The factors are then weighted and combined, resulting in a single numeric score. The project score becomes the basis for making a determination about a project's potential significance.

LESA can be a particularly effective tool for local decision-making because it combines objective and subjective criteria. The land evaluation component is based on scientific criteria, such as soil quality. The site assessment component, however, is more subjective. Some jurisdictions use LESA to determine where agriculture is likely to be viable in the future. Others use the scores to determine whether specific parcels should be included in an agricultural zone.

ECONOMIC AND DEMOGRAPHIC DATA

Economic and demographic data are also helpful in developing a farmland protection program. Such data often include the total value of the farm service economy (including processing and employment) and the value of agricultural production by each commodity. Other information that may also be useful includes:

- ***Minimum Farm Size***: The minimum parcel size necessary for an economically viable farming operation.
- ***Industry Trends:*** Factors that affect the production and marketing of various commodities, such as market access, competition, new technologies and potential niche markets.
- ***Land Use Patterns:*** The history and development of agriculture within the region, as well as the historical growth patterns of urban areas.

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[4] 7 C.F.R. § 658.4 (1994).

- ***Location of Existing Infrastructure:*** Physical features and infrastructure, such as road sewers and water lines, that have a critical impact on the productivity of agricultural land.

- ***Environmental Issues*:** Any special environmental issues, such as soil salinization, groundwater quality and quantity, air quality, agricultural wastes, etc.

- ***Other Issues of Local Importance:*** Individual communities often have unique issues.

Much of this information is readily available, and the local UC Cooperative Extension Service is a good place to start. In addition, developing new primary data through the use of surveys and interviews can help shape policy by providing additional information about local conditions.

ANALYZING THE DATA

After collecting comprehensive data, what should be done next? Reviewing the data may reveal certain trends in the development of agriculture in the community and threats to it. This information may point the way to preservation options that are more likely to fit the community's unique needs.

For example, in the City of Fresno, a soil quality is helping direct growth to the northwest portion of the city, which has a clay hardpan hinders drainage and makes farming difficult. As a result, the city is trying to encourage development in this area and away from the higher quality soils to the southwest. Analyzing quality local data can inform community-specific protection programs and improve their chances of success.

The following questions may be helpful to ask when discussing growth management policy options:

- Based on agricultural production value, which areas have the highest priority for protection? Which should have medium or low priority?

- Based on the threat of urban conversion, which areas have the highest priority for protection? Which should have medium or low priority?

- Does one crop have a specialized service industry within the region that provides additional jobs?

- Is there an area with a particularly committed group of landowners who would be willing to work together on a program?

- Are there areas of farmland that have already been "lost" due to surrounding development?
- Are there natural barriers that would make it easy to draw a line between agriculture and urban uses?

While this list is by no means all-inclusive, the goal is for local officials to use the data to develop an effective program that balances competing community needs.

RESOURCES FOR AGRICULTURAL DATA AND INFORMATION

The following organizations provide useful information for those interested in a farmland protection. Other resources include farmers involved in protection programs in other jurisdictions, and local surveys of residents and farmers. Links to these and other organizations are available at www.ilsg.org/farmland under the "Helpful Contact Information" heading.

- State Department of Conservation
- U.S. Department of Food and Agriculture
- Governor's Office of Planning and Research
- Local Farm Bureau
- County Agricultural Commissioner
- Resource Conservation District
- Agricultural Issues Center
- American Farmland Trust
- Local agricultural land trusts
- The Great Valley Center
- The Tri-Valley Business Council
- Agricultural Issues Center
- Other jurisdictions with successful programs
- UC Cooperative Extension Service
- Sustainable farming organizations

DEVELOP CONSENSUS

STRATEGY 22

Developing community consensus is a key component of any farmland protection program. There are some very effective participation tools for developing land use policy.[1] Many local agencies have created alternative forums, such as town hall meetings and even e-mail discussion groups, to reach more people in their communities. Citizen panels can also develop recommended actions. Offering a number of ways for residents to participate serves as a proactive strategy to address contentious issues before they become major problems — or even lawsuits.

Broad public involvement offers benefits that extend beyond farmland conservation and urban planning. It builds community. Citizens who make contributions to the process often report that they walk away with a feeling of pride and a stronger connection to the community.

ENCOURAGING PUBLIC INVOLVEMENT

As a general rule, public involvement should occur early and often. To be effective, public participation must be structured and meaningful. Endless meetings that lead nowhere can be a considerable drain on agency resources and community patience.

Encouraging Public Involvement 133

Stakeholder and Advisory Groups 135

Consensus-Building Processes 136

There are several inherent barriers to meaningful participation. Many people dismiss such planning as "mere politics." For others, the complexity of government structure and finance is overwhelming. Designing an inclusive process means taking these and other issues into account. Public participation strategies should address basic logistical questions and more subtle limitations to participation, such as:

- ***Outreach.*** Are notices posted where they are likely to be read? Are they published in languages other than English? Are there opportunities to reach a broader audience?
- ***Logistics.*** Are meetings always scheduled for the same time? Do they often extend late into the evening? Are they easily accessible by public transit? Are interpreters available?

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[1] Many land use decisions require a formal public hearing even after the most inclusive public participation process. For example, a public hearing must be held before a city or county can adopt a general plan or general plan amendment. *See* Cal. Gov't Code § 65351.

- ***Alternatives.*** Are there alternatives to participating in a meeting, such as submitting written comments?

- ***Efficiency.*** Do the meetings achieve their objectives? Does the public have opportunities to make meaningful contributions? Are the materials written clearly, using plain language that is easily understood?

The most important support for broad involvement may come from the local agency, which sets the tone for community dialogue. Officials and staff who welcome diverse public input are more likely to produce a farm preservation program that successfully meets the community's needs.

EIGHT CREATIVE WAYS TO ENCOURAGE PUBLIC INVOLVEMENT

1. ***Use Nontraditional Media.*** Write articles for publication in the newsletters and Web sites of local stakeholder groups. Highlight issues and identify ways that people can get involved. The local agency can also publish its own newsletter.
2. ***Use the Web.*** Post important documents and information on the agency's Web site. The City of Citrus Heights uses its Web site to keep people informed about community land use issues.[2]
3. ***Create a Task Force.*** Create a task force to discuss issues affecting agriculture and other related issues of common concern.
4. ***Use the Public Education and Government Channel.*** The local government access channel on cable television can do more than just broadcast meetings. For big projects, consider using it to broadcast information or visioning surveys, and invite the public to respond by submitting their response to a specific telephone number, e-mail account or in person at the next scheduled meeting.
5. ***Publish a Participation Guide Brochure.*** Help the public understand how local government works. Avoid jargon. A guide can share contact and meeting information to help bring individuals into the process. Post it on the Internet and make it available at meetings.
6. ***Hold Town Hall Meetings.*** Meet at a "neutral" site to seek input before considering a possibly controversial issue at a typical agency or council meeting. Invite key stakeholders to speak.
7. ***Speaker Series.*** Invite outside speakers to provide valuable information and perspectives. Presentations can be a one-time event, incorporated into planned programs or part of a series.
8. ***Develop a Self-Guided Auto Tour and Survey.*** A self-guided auto tour encourages residents to drive by proposed conservation areas. An accompanying survey about community needs and policy options can be made available by mail or on the Internet. Tabulate responses and use the data to support the local planning effort.

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[2] www.ci.citrus-heights.ca.us/planning.html.

POTENTIAL STAKEHOLDER CHECKLIST	
• Farmer–landowners	• Environmental organizations
• County Farm Bureau	• Agricultural tourism industry
• Farmers' market vendors	• Developers
• Farmworker groups	• Neighborhood groups
• Agricultural product associations	• Housing groups
• Irrigation districts	• County agricultural commissioner
• Local land trusts	• Resource conservation district

STAKEHOLDER AND ADVISORY GROUPS

A stakeholder is a person or group with a significant interest in a program or policy. A stakeholders' committee represents all the interests most likely to be affected by a proposal. Stakeholders' committees are an excellent source of technical expertise and can provide a necessary "reality check" when a proposal produces unintended consequences.[3]

Involving farmers in stakeholder groups is not always easy. Some farmers question the very premise that government should be "protecting" their land. As a result, local agencies should provide farmers (and all stakeholders) opportunities to have frank, open discussions about potential programs. Recognizing the legitimacy of their viewpoint will greatly encourage farmers' ongoing participation in any resulting program. It also helps to build the program's credibility in the farming community.

An alternative to a stakeholder process, which usually addresses a single issue, is to form an ongoing advisory committee. Advisory committees provide valuable perspectives on new issues as they arise. Solano County formed a 14-member committee composed of six members from the major commodity producers (grapes, nursery stock, fruit and nut trees, row crops, livestock and field crops), five at-large appointments and three members from agricultural processing operations.[4] The committee advises the board of supervisors on matters of "agricultural profitability and sustainability."

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[3] Stakeholder groups are usually subject to public meeting laws (Ralph M. Brown Act, *see* Cal. Gov't Code §§ 54950 and following) unless a majority of a legislative body attends the meetings. However, to be fully inclusive, the local agency may want to devise a strategy – including voluntary meeting law compliance – that will keep the public apprised of developments and encourage participation.

[4] *See* generally, www.solanocounty.com/em/planning

CONSENSUS-BUILDING PROCESSES

Consensus-building processes involve ongoing dialogue between members of the public, key stakeholder groups, technical professionals and local decision-makers. Such processes do not occur without a lot of effort. Sometimes, positions are staked out before the process begins. Sweeping statements like "The market will not support high-density homes" or "We are losing all of our farmland" are made without supporting data. An inclusive participation process, informed by reliable data, can effectively counterbalance this situation. The following guidelines are generally part of the process:

- ***Be Open-Minded.*** Most participants don't respond well when someone uses the process to legitimize a predetermined policy. If all participants are open to new ideas, the final product will be probably be quite different than anyone would have expected — and more effective.

- ***Develop Rules for Engagement.*** The participants should agree on rules and protocols for the group. Everyone participating should agree to be bound by the rules. It's critically important for the stakeholders to be involved in designing the process — involvement creates buy-in.

- ***Provide Reliable, Easily Understood Information.*** Include people who understand farming, housing and other growth-related issues and can speak to the probable impacts of various policy choices. Provide facts in an easy-to-understand format. Unveil "the numbers," then explain what they mean. For example, explaining how soil quality can influence farm profitability in dollars per acre may build support for developing less valuable — but perhaps more visible — locations.

- ***Consider Hiring a Facilitator***. Professional facilitators can keep a consensus-building process on track. Their focus on building a sound process — from creating a dialogue to developing assurances — can help the group reach its goals.

Finally, taking the time for everyone to understand opposing viewpoints can help when parties are locked in negotiating a stalemate. Though such a process usually requires a great deal of time, the results are often worth the effort. For example, an ongoing process in the City of Brentwood yielded a comprehensive plan that includes a mix of regulations and incentives to protect agricultural land (see "Brentwood Case Study" page 50).

UNDERSTAND THE TAKINGS ISSUE

STRATEGY 23

The "takings" issue comes up often enough in connection with farmland protection programs that it deserves some consideration here. The term derives from the Takings Clause of the Fifth Amendment of the U.S. Constitution, which states that public agencies may not take property for public use without paying just compensation.[1]

In many instances, the takings issue can be avoided by conducting stakeholder meetings and public forums to address the concerns of landowners before serious problems can occur. But a time may come when one or more landowners argue that a proposed regulation will amount to an unconstitutional "taking" of their property. In most cases, however, the local agency is on firm ground. The Takings Clause does not guarantee a landowner the most speculative or profitable use of land. Instead, it requires compensation when a regulation has approximately the same effect as a physical appropriation of property.

WHY MOST FARMLAND PROTECTION MEASURES ARE NOT TAKINGS

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Most farmland protection programs will not reach the level of a taking. There are several common misperceptions about what constitutes a taking. Some of this confusion comes from the fact that the courts have been unable to articulate a uniform standard for judging taking claims, opting instead for a case-by-case balancing approach. Thus, it may not always be clear whether a particular action rises to the level of a taking.

Two specific aspects of most farmland protection programs, however, make it difficult for landowners to bring successful takings challenges.

1. ***Farming is Economically Viable.*** Farmland protection programs guarantee that landowners retain an economically viable use: agriculture. As long as land can be put to productive use, it retains value and the regulation does not amount to a taking.

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[1] To the same effect is article 1, section 19 of the California Constitution: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid."

2. ***Conserving Farmland Advances an Important Government Interest.*** Public agencies are advancing an important governmental interest in protecting farmland. Regulations that advance such interests are on firmer legal ground than those that are more arbitrary in nature.[2]

These two characteristics are not guarantees. But in the overwhelming majority of cases, farmland protection programs that direct urban growth or contain the expansion of urban services not considered takings.

FOR MORE INFORMATION ABOUT TAKINGS

Visit the Institute for Local Self Government's Web site at: www.ilsg.org/clp.

Posted items include:

- More tips for avoiding takings
- Takings in plain English;
- Case summaries;
- Litigation updates; and
- A brief an ordinance bank.

PROACTIVE MEASURES TO AVOID TAKINGS

There are a few simple actions that a local agency can take to reduce the risk of litigation:

- ***Create Realistic Expectations***. An up-to-date and comprehensive general plan, supported by a master environmental document, lays a solid foundation for all land use regulation. These documents also create realistic expectations among landowners by describing the community's vision for development. Provided with this direction, landowners are more likely to propose new land uses that are consistent with the vision articulated in the general plan, which reduces the potential for litigation.

- ***Include Safety Valves/Variance Provisions***. Landowners must seek a variance, if one is offered, before going to court. So, a variance procedure that allows for exceptions in cases of extreme economic hardship ensures that the agency has the opportunity to modify its policies to avoid unfair results that might deny all economic use of land.

- ***Draft Sound Findings***. Providing a thorough explanation of the reasons for an agency's decision makes it less likely that a court will be inclined to second-guess the agency's judgment.[3]

- ***Be Alert to Risky Situations***. Some kinds of agency actions seem to attract more takings claims than others. For example, open space zoning, interference with vested rights, and transferable development rights that have no market value are examples of situations that could potentially result in a taking claim.

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[2] *Home Builders Association of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001) (finding in a parallel analysis, that local agency action to provide affordable housing substantially advanced a legitimate state purpose). The state legislature has similarly noted the importance of farmland protection. *See* e.g., Cal. Gov't Code § 51220.

[3] *Findings 101: Explaining a Public Agency Decision, Western City*, May 2000, at 13.

Finally, local agencies must consider the overall fairness of their actions. Courts often view their fundamental role as dispensing justice. A public agency will have an easier time in the courtroom if the regulation was adopted with significant public involvement and ample opportunities to avoid unjust results.

ADDRESSING SPECIFIC ARGUMENTS

Two types of challenges are most common: "diminution in value" and "condition on development" cases. Another type of takings challenge, based on delays in the planning process, is less common.

DECREASE IN PROPERTY VALUE

Most takings challenges are based on the claim that the regulation has diminished the value of land. Down zoning, for example, can significantly decrease the land's development value.[4] But the fact that land has a lower market value does not mean a taking has occurred. Landowners are not entitled to the most profitable use of their land. The Takings Clause merely provides that the property owner can put the property to an economically viable use.

When courts review such challenges, they examine the degree to which the regulation has diminished the value of land. In the rare circumstance that a regulation causes a total wipeout (a 100 percent decrease) of all value, the court will usually find that it is a taking.[5] Alternatively, when a severe diminishment of value — but not a total wipeout — has occurred, courts will usually look at three factors:[6]

- The severity of the loss in value;
- The investment-backed expectations of the property owner; and
- The character of the governmental regulation (whether the regulation compels a physical occupation of the land).

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[4] A down zone in itself does not "take" a property interest. A zoning designation does not confer a "right" to develop land. It is merely a planning designation that is subject to change.

[5] *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

[6] *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978). These factors are sometimes mischaracterized as a balancing test. However, nothing in the *Penn Central* decision indicates that the factors should be balanced against one another. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. ___ (2002), available online at www.ilsg.org, keyword search "Tahoe."

The most important factor is the extent to which the land's value has diminished. The decrease must be substantial. Courts have rejected takings claims even when the property's value diminished by 95 percent.[7]

Although these standards have rarely been applied to find a taking, their imprecise nature allow courts a degree of discretion when reviewing such claims. Thus, in situations where a court perceives that a landowner has been treated unfairly, the court may apply these factors to find a taking.[8] Accordingly, local agencies should carefully review any farmland protection program that decreases property value by more than 65 percent. This is not to say that a 65 percent reduction in value equates a taking, nor does the figure have any special legal significance, it is just that the nature of the regulation is more likely to be reviewed closely by a court if challenged.

DEVELOPMENT FEES AND CONDITIONS

The common practice of imposing conditions on development is also a source of challenges. Typical conditions include requiring the landowner to dedicate a portion of property for an agricultural buffer, purchase a conservation easement or pay a mitigation fee to offset the loss of farmland. Local agencies are again on solid footing here, particularly if they have adopted the condition of development by an *ordinance* that is applicable to a broad class of landowners.[9] Courts are more deferential to actions adopted by ordinance, looking only to see that the action reasonably furthers a legitimate governmental purpose — a relatively easy hurdle for the local agency to clear.

In contrast, conditions imposed in an ad hoc fashion on a project-by-project basis must meet a more stringent test. The agency must demonstrate that there is an essential nexus (a direct relationship) and rough proportionality between the condition imposed and the impact of the development.[10] This is also commonly referred to as the *Nollan-Dolan* standard, or heightened scrutiny. This is a tougher, but not impossible, obstacle for public agencies to overcome. The reason for the strict standard is that courts are concerned that local agencies might "leverage" their permit approval authority to obtain excessive conditions from a single property owner. Local agencies can avoid this standard by legislatively adopting conditions so that they apply to a broad class of landowners.

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[7] *Hadacheck v. Sebastian*, 239 U.S. 394 (1915).

[8] *See for example Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) (finding that inherent unfairness in five successive permit denials on a coastal property).

[9] *See San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

[10] *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

DEDICATIONS, FEES AND TAKINGS

As more local agencies rely on mitigation fees as a means of offsetting development, more developers are challenging such fees as a "taking." However, the fee will generally be upheld if the local agency takes the following precautions:

- ***Conduct an Optional Nexus Study.*** Although not mandatory, the agency may want to invest in a "nexus" study that quantifies the problem and establishes the relationship between new home development and the need for farmland protection.
- ***Adopt an Ordinance.*** Adopt a fee by legislative act that applies to a broad class of landowners, instead of imposing the fee on a case-by-case basis.
- ***Develop a Formula.*** Develop an implementation formula so that all landowners are treated similarly.
- ***Adopt Findings.*** When implementing the act, adopt findings that relate the action as a means of advancing the overall purpose of protecting farmland and the local agricultural economy. The findings can also cite conclusions in the nexus study (if conducted).
- ***Account for the Funds.*** Comply with the Mitigation Fee Act's provisions.[11]

DELAY CAUSED BY PLANNING PROCESSES

Finally, another type of claim sometimes arises based on any delay that can be attributed to the local agency in approving the development. These types of claims arise in two cases:

- ***Temporary Moratoria.*** A moratorium is a temporary halt on development in order to study a problem caused by development and adopt a permanent solution.[12] Such claims hardly ever amount to takings because state law provides a set of procedures and a maximum

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[11] Cal. Gov't Code §§ 66000 and following.

[12] *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S.___ (2002), available online at www.ilsg.org, keyword search "Tahoe."

time period of two years during which local agencies can implement moratoria. Thus, local agencies that follow these provisions almost always survive such a challenge.[13]

- ***Delay***. A delay claim arises when a landowner complains that the planning or permit process takes too long. In most cases, however, courts recognize that land use planning takes time and have been reluctant to find a taking on such grounds. Thus, regulations have been upheld even when they take a period of years to implement.[14]

To date, the only case that has been held to be a taking in California involved the court's conclusion that the public agency had unreasonably and incorrectly applied a state law.[15] In contrast, reasonable mistakes and delays by a public agency have been upheld.[16] Delays of 10 years or more in developing plans have also been upheld when a special permitting process is still made available to the landowner.[17] Consequently, if the public agency is acting reasonably in its permit approval process, the likelihood of a court finding a taking is slim.

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[13] Cal. Gov't Code § 65858.

[14] *Calprop Corp. v. City of San Diego*, 77 Cal. App. 4th 582 (2000).

[15] *Ali v. City of Los Angeles*, 77 Cal. App. 4th 246 (1999) (finding that city's wrongful denial of a demolition permit in violation of state law effected a temporary regulatory taking).

[16] *Landgate v. California Coastal Commission*, 17 Cal. 4th 1006 (1998).

[17] *Calprop Corp. v. City of San Diego*, 77 Cal. App. 4th 582 (2000).

SECURE FUNDING

STRATEGY 24

There are a significant number of financial resources available to local agencies to assist in their farmland protection efforts. Several philanthropic foundations have made farmland conservation a top priority. Land trusts also provide funds for farmland protection programs. Fees, assessments and other revenue-raising strategies can also support open space and agricultural preservation in many communities.

GRANTS AND FOUNDATION ASSISTANCE

Perhaps the most encouraging news for farmland protection programs is the current widespread interest in farmland preservation. This interest has translated into significant amounts of funding to supplement local farmland protection programs. While the initial financial obligation of protecting farmland falls on local agencies, a number of state and private programs allow these agencies to leverage their funds. Nevertheless, local agencies that apply for such funds should recognize that the application process is competitive and there is no guarantee of success. There is an art to writing successful grant proposals. Identifying funding opportunities and following through takes time.

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FEDERAL PROGRAMS

The Farmland Protection Program (FPP), which is part of the Farm Bill, includes money for purchasing conservation easements.[1] In the past, applying for funding was impractical for most agencies, due to low funding levels. In 1998, for example, Congress committed $17 million under this program for the purchase of easements nationwide.[2] Senate and House versions of the Farm Bill, which are being debated as this publication goes to press, indicate that federal funding may be slightly higher for this program in the future.

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[1] H.R. 2646, 107th Cong. § 253 (2001). This program is intended to supplement other sources. Participating state or local agencies must provide at least 50 percent of the funding for the easement.

[2] 63 Fed. Reg. 54 (1998). *See* U.S. Department of Agriculture, *Farmland Protection Program Request for Proposals (3/20/98)* (visited Mar. 29, 2002) www.nhq.nrcs.usda.gov/CCS/FB96OPA/FPPrfp2.html. At the time of this publication, Congress was in the process of negotiating a new farm bill. The version proposed in the Senate in includes a substantial increase in funding to this program. If passed, upwards of an addition $50 million may be available for the purchase of easements in California alone.

There are a number of other programs, such as the Conservation Reserve Program, the Wetlands Reserve Program and the Wildlife Habitat Incentives Programs, available to farmers who make environmental improvements to their land. Information on these and other programs can be found on the Natural Resources Conservation Service (NRCS) Web site (see "Contact Information," page 145). With some initiative, local agencies may be able to identify additional funding from USDA to initiate agricultural marketing programs.

STATE FUNDING

TOO GOOD TO BE TRUE?

Imagine a state program that provided local agencies with additional discretionary revenue for creating farmland protection areas. Does it sound too good to be true? It may not be. Some agencies may see an increase in local revenues when farmland is enrolled in farm security zones.

For more information, see Strategy 10.

Most state funding for farmland protection programs comes from the Department of Conservation.[3] In addition to managing the Williamson Act program (see Strategy 10), the department's California Farmland Conservancy Program (CFCP) provides grants to local governments and nonprofit organizations to protect agricultural lands at risk for conversion to non-agricultural uses. CFCP grants fund the following activities:

- Voluntary acquisition of conservation easements;
- Temporary purchase of agricultural lands pending placement of a conservation easement;
- Restoration and improvement of land already under easement; and
- Agricultural land conservation planning and policy projects.

Funds raised through bond measures will make CFCP a particularly rich source of support for the next few years. The passage of Proposition 12 in 2000 provided $25 million for CFCP grants.[4] In addition, the recent passage of Prop. 40 made another $75 million available over a five-year period for farmland preservation.[5] Specific allocation of these funds remains to be determined, but it is likely that the CFCP will administer a significant portion of these funds to purchase of conservation easements.

FOUNDATIONS AND LAND TRUSTS

Many philanthropic foundations and conservation organizations have focused on purchasing land or easements to secure long-term protection for

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[3] *See* Cal. Pub. Res. Code §§ 10200 and following; Cal. Rev. & Tax. Code §§ 421.5 and 422.5; Cal. Code Regs. title 14, §§ 3000 (1997) and following.

[4] Cal. Pub. Res. Code §§ 5096.310 and following.

[5] Cal. Pub. Res. Code §§ 5096.600 and following.

farmland and open space. In recent years, the David and Lucile Packard Foundation has led this effort through its Conserving California Landscapes Initiative, which contributed $275 million over five years to land preservation in the Mid- Coast, Central Valley and Sierra Nevada regions of the state. However, most of this program's funding has already been allocated.

The availability of funds from philanthropic foundations is often influenced by fluctuations in the stock market because tax law requires that they give away a fixed percentage of their assets each year and many of their assets are invested in the market. But even when the market is down, funding is usually available for important projects. The American Farmland Trust, for example, helps agencies throughout the state identify funding sources for key parcels of farmland. The California Rangeland Trust pursues funding for preservation of range and ranchlands. And regional land trusts, such as the Merced County Farmlands and Open Space Trust or the Monterey County Agricultural and Historical Land Conservancy, may also have access to resources that are not generally available to local agencies.

Local agencies should also explore opportunities for policy and planning grants. Local community foundations and other organizations may support development of a program to benefit local farmland conservation, particularly if their contribution can be leveraged to obtain additional funding. Foundations review a variety of factors, including interagency cooperation and opportunities for public participation, in determining whether to fund a program.

In one unique example, five cities and two counties in the San Francisco East Bay Area make annual contributions between $5,000 and $20,000 to a nonprofit, collaborative planning effort called the Tri-Valley Business Council. A major focus of the program is to protect the region's agriculture. In turn, the Tri-Valley Business Council has been able to use this support to obtain more than $500,000 in support from the James Irvine Foundation and federal agencies for implementing its agricultural preservation plan. More information about the program is available on the Council's Web site (www.tri-valley.org).

CONTACT INFORMATION

Department of Conservation
Farmland Conservancy Program
801 K Street, MS 13-71
Sacramento, CA 85814
(916) 324-0850
www.consrv.ca.gov/dlrp/CFCP

USDA Natural Resource Conservation Service
430 G Street, Suite 4165
Davis, CA 95616
(530) 792-5700
www.nrcs.usda.gov/programs

American Farmland Trust
California Regional Office
260 Russell Blvd., Suite D
Davis, CA 95616
(530) 753-1073
www.farmland.org

California Rangeland Trust
1221 H Street
Sacramento, CA 95814
(916) 444-2096
www.rangelandtrust.org

Conserving California Landscapes Initiative
Resources Legacy Fund
555 Capitol Mall, Suite 1550
Sacramento, CA 95814
(916) 442-5057
www.resourceslegacyfund.org

For More Information
visit www.ilsg.org/farmland.

LOCAL REVENUE SOURCES

Although public and private grants are an important source of support for agriculture and open space preservation programs, dedicated local funding sources are critical for long-term success. In many cases, public and private funders require local agencies to match grants with local resources. For

example, the federal Farmland Protection Program requires state and local agencies to provide at least 50 percent of the funds needed to purchase a conservation easement.[6] Local agencies may take advantage of a variety of potential revenue sources to fund agriculture and open space protection programs. Factors determining the best funding option include the type of agency implementing the program, the program objectives and the degree of public support for these objectives.

FEES ON DEVELOPMENT

Development fees can be charged by local agencies to fund land and easement acquisition programs. (Fee mitigation is described in more detail in Strategy 7.) Typically, a fee is imposed to offset the conversion of agricultural to urban use. The fee is determined by dividing the total cost of the acquisition program proportionately among all development. The fee revenue is then used to purchase title or an easement over farmland in a neighboring agricultural area. A number of agencies have successfully implemented fee programs. For example:

- ***The City of Carlsbad*** imposed a $5,000-per-acre fee for the conversion of 312 acres of coastal agricultural land. The city used the funds for erosion controls and easements on an adjoining 670 acres of farmland.

- ***The City of Davis*** requires proponents of projects that convert farmland to urban use to purchase a conservation easement on farmland of equivalent quality or pay an in-lieu fee.[7]

SALES TAX INCREASE

In cases where there is widespread political support for protecting agricultural lands, a sales tax increase may be an effective method for funding land acquisition programs. For example, Sonoma County voters approved a quarter-cent sales tax increase to fund the Sonoma County Agricultural Land Conservation District. The revenues from the tax exceed $10 million annually.[8] To date, Sonoma County has protected more than 28,000 acres with these funds.

Nevertheless, expressions of popular support for open space may not always translate into the votes to pay for it. In November 2000, a measure that would have authorized Placer County to increase its sales tax for open

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[6] Natural Resources Conservation Service, *Farmland Protection Program* (last visited April. 3, 2002) www.info.usda.gov/nrcs/fpcp/fpp.htm. *See* 16 U.S.C. § 3830 (1996).

[7] *Id.* at 3-12.

[8] Ryan McCarthy, *Sonoma Supervisor Boosts Placer Legacy*, *Sacramento Bee*, Nov. 14, 1999, at N7.

space (including farmland) acquisition received only 27 percent of the vote. Local agencies considering this option should take such possibilities into account. The percentage by which a local agency can increase its sales tax, however, is capped. Thus, if the local agency implements this option to protect farmland, it cannot raise the sales tax again to address a different funding need.

MELLO-ROOS COMMUNITY FACILITY TAXES

The Mello-Roos Community Facilities Act authorizes local agencies to impose a special tax to finance public facilities, infrastructure and public services. Such taxes can also be used for open space acquisition and maintenance through formation of community facilities districts.[10] The tax must be authorized by a two-thirds vote of the registered voters living within the district. If fewer than 12 voters live within the district, approval requires a two-thirds vote of the district's landowners.[11] The two-thirds

FIVE CRITERIA FOR EVALUATING REVENUE OPTIONS[9]

Each agency should conduct its own analysis to determine which, if any, local funding tools are appropriate. The following points may be helpful to consider when conducting the analysis:

- ***Total Revenue Generated.*** What is the total amount of revenue generated? Will it be sufficient to implement an effective program?
- ***Adoption Requirements.*** Revenue measures that require a vote of the people may be harder to implement than a mitigation fee program, which often can be adopted by ordinance.
- ***Revenue Stability.*** Will the revenue source be constant or fluctuate from year to year? A constant level of revenue, such as that generated by bonds and parcel taxes, is preferable.
- ***Administrative Cost.*** How much revenue will go to administrative costs? High administrative costs reduce the amount of money that can be committed to farmland protection.
- ***Regional Considerations.*** How does the option fit with the efforts of neighboring jurisdictions? Is it feasible to implement a countywide or regionwide funding strategy?

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[9] 1 Adopted from Bruce Randolph Anderson & Associates, *Implementation Study: Tri-City and County Cooperative Plan for Agriculture and Open Space Preservation* § 4 (2001)

[10] Cal. Gov't Code §§ 53311 and following. *See* Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (last modified Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html.

vote requirement generally limits the availability of Mello-Roos to large undeveloped parcels with less than 12 registered voters.

The City of Fairfield and County of Solano jointly formed a Mello-Roos district as part of an annexation proceeding to preserve a portion of the range and farmland included in the annexation area. District revenues paid for the land purchase, and now fund additional open space acquisitions. The revenues are passed through to the Solano County Farmlands and Open Space Foundation, a public benefit land trust created to administer these funds. The foundation oversees and manages more than 6,500 acres of farmland, ranchland, wetlands and open space countywide.[12]

ASSESSMENTS

Assessments, sometimes called benefit assessments or special assessments, are levied on real property to finance public improvements that specially benefit the assessed property. The area where the property is specifically benefited, and therefore assessed, is the assessment district. The public improvement financed by an assessment district will be of special benefit to the properties within the district, and of general benefit to properties outside the district. Only the portion of the cost of the improvement that is attributable to the special benefit may be raised through the assessment. Classes of properties pay different assessment amounts, calculated in proportion to the special benefit received.[13] The Open Space Maintenance Act, for example, authorizes local governments to levy special assessments to improve and maintain open spaces.[14]

Prior to Proposition 218, many local agencies created landscape and lighting districts to acquire land for open space and recreation on the basis that these amenities increased property values.[15] However, determining how property is specially benefited by open space has been a challenge since the adoption of Prop. 218.[16] A new assessment requires the approval of two-thirds of the property owners returning mailed ballots through an

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[11] Since the Mello-Roos taxes already require a two-thirds vote, they are not affected by the voter approval requirements of Proposition 218. However, as with all special taxes, Mello-Roos taxes are subject to reduction or repeal by initiative under Proposition 218.

[12] *See* Solano County Farmlands and Open Space Foundation Web site (visited Mar. 8, 2002) http://solanolandtrust.org/.

[13] Cal. Const. art. XIIID, § 2.

[14] Cal. Gov't Code §§ 50575 and following. The definition of "open space" is broad enough to include agricultural lands. *See* Cal. Gov't Code § 50580.

[15] Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html. The Landscape and Lighting Act of 1972 enables local agencies to acquire land for parks, recreation, and open space. Cal. Sts. & High. Code §§ 22500 and following.

[16] Cal. Const. art. XIIID, § 2.

assessment ballot proceeding. Voting is weighed in accordance with the amount of the assessment.[17] Local agencies implementing new assessments in pre-existing neighborhoods have to conduct a great deal of community outreach. Creating assessments in new developments is often easier, where the developer of a large tract agrees to create the assessment district before subdividing the property. Once created, the assessment applies to all new lots and homes built or created within the assessment district.

GENERAL OBLIGATION BONDS

General obligation bonds are "IOUs" issued by public entities to finance large public projects. In most circumstances, a specific revenue stream (such as a tax or assessment) must back a bond issue. The agency then uses this revenue stream to repay the bond amount over time, typically 20 to 30 years. General obligation bonds are backed by property tax. Increasing the property tax to repay the debt requires two-thirds voter approval.[18] Since investors perceive property taxes as being less risky than the security for other types of indebtedness, general obligation bonds may be issued at relatively low interest rates. Some examples of how general obligation bonds have been used to fund open space (although not yet farmland) acquisition include:[19]

- ***Redlands***. In 1987, Redlands passed a $7.6 million bond with 71 percent of the vote. Approximately half of the funds were designated for land acquisition for open space, trails and recreation facilities.

- ***Alameda County***. Voters approved an issue of $225 million to expand the East Bay Regional Park District's holdings.

Bonds enable programs to commit large sums to farmland protection while land is still available and relatively affordable. They also distribute the cost of the acquisition over time. On the other hand, increased interest costs raise the overall amount that the agency will pay for the acquisition.[20]

FOR MORE INFORMATION

Two League of California Cities publications may be of assistance in understanding and obtaining voter approval for revenue measures:

- Securing Voter Approval of Local Revenue Measures. Contact CityBooks at (916) 658-8257; and
- *The Proposition 218 Implementation Guide.* Available online at www.cacities.org (keyword search: "218").

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[17] A list of cities that have conducted assessment ballot proceedings is available online at www.cacities.org (search keyword "Proposition 218"). The ballots are weighted according to the dollar value of their proposed assessments (the equivalent of one vote per dollar). Thus, a landowner of a lot that has an assessed value of $50,000 must be weighted twice as heavily as the owner of a $25,000 lot.

[18] Cal. Const. art. XIIIA, § 1(b).

[19] Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* www.ceres.ca.gov/planning/open_space/financing.html.

[20] State law restricts the use of public funds to advocate for passage of a ballot measure. *See Stanson v. Mott*, 17 Cal. 3d 206 (1976); *Miller v. California Commission on the Status of Women*, 151 Cal. App. 3d 693 (1984). Such expenditures are reportable to the Fair Political Practices Commission. Cal. Gov't Code § 84203.5. *See also* Institute for Local Self Government, *Ballot Box Planning: Understanding Land Use Initiatives in California* ch. 7 (2001).

LEASE-PURCHASE AGREEMENTS

Lease-purchase agreements are another land acquisition tool. This arrangement works when local agencies might otherwise be prevented from incurring debt to purchase land.[21] Instead, the agency leases the land for a period of years with the option to purchase the land at the end of the lease.[22] The amount of the lease is equivalent to the principal and interest that would be paid if the transaction were financed as a loan. Certificates of participation (COPs) are a variation of this tool. This technique enables a group of investors, instead of a single purchaser, to purchase land and lease it to a public agency. The investors then transfer the right to receive payments to a trustee, who redistributes the lease payments on a proportional basis.[23]

Although this example is not an actual use within the context of farmland protection, the City of Carlsbad successfully entered into a COP arrangement to acquire and preserve the 52 acres of a eucalyptus grove originally planted to provide railroad ties.[24] When word of its pending development began circulating, preserving the grove became a hot political issue.[25] The city was able to use the COP arrangement to settle the matter.

The cities of Los Altos and Cupertino have also issued COPs for open space purposes. Both used their funds to acquire surplus school district lands to expand or develop local parks.[26] Lease-purchase arrangements are probably most appropriate when a public agency needs to act quickly to purchase a single, important parcel of farmland, and local agencies can lock in the land through the lease until the ownership is transferred. The level of paperwork and tracking, particularly for COP arrangements, usually precludes using lease-purchase agreements for a comprehensive farmland protection program.

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[21] *See* Cal. Const. art. XVI, § 18. Local agencies are constitutionally prohibited from borrowing an amount of money in excess for the amount that can be repaid in a year's time. Lease purchase, certificates of participation and other special fund mechanisms are exceptions to this rule.

[22] *See, City of Los Angeles v. Offner*, 19 Cal. 2d 483 (1942); *Dean v. Kuchel*, 35 Cal. 2d 444 (1950).

[23] Under a carefully crafted COP program, investors may be entitled to tax-free investment income (that is, the interest portions of the lease payments). Depending on the local agency's credit rating, this type of financing can therefore be accomplished at a relatively low interest rate. At times, COP financing can be complicated and costly because of the number of players and arrangements involved in making it possible. Also, a local agency must be careful that its actions relative to the acquired land do not invalidate the tax-exempt status of the lease-purchase arrangement. Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (last modified Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html.

[24] *Id.* Pat Storey, *Hosp Grove Once Thought Useless, N. County Times*, Mar. 26, 2001, www.nctimes.com/news/2001/20010326/z.html.

[25] *Id.*

[26] Governor's Office of Planning and Research, *supra, at note 25.*

LOCAL AGENCY FUNDING TOOLS			
	ADOPTION	ADVANTAGES	DISADVANTAGES
GENERAL FUND ALLOCATION	Legislative body authorizes expenditure from general revenues.	Requires approval only by governing body. Does not cost taxpayers extra money.	Competes with other budget priorities; no guarantee of ongoing funding.
DEVELOPMENT IMPACT FEES	Legislative body adopts a fee formula to be applied to projects that convert farmland to housing or commercial uses.	Easy to implement; helps offset negative impact of development; can raise substantial revenues.	Increases housing costs. Agency must track how fees are spent. Funding depends on number of permit applications.
GENERAL TAXES	Implemented upon a majority vote. Sometimes accompanied by an "advisory" measure.[27]	Can provide substantial long-term funding. Requires less administration than an assessment district. Agency retains discretion in how funds are spent.	Public may be skeptical of a tax increase, particularly when there is no guarantee that funds will be spent on protection measures.
SPECIAL TAXES	Requires a two-thirds majority vote. Revenues can be spent only for dedicated purposes.	Provides long-term funding for operations and maintenance. Potentially less overhead than an assessment district.	Obtaining a two-thirds majority vote is difficult.
GENERAL OBLIGATION BONDS	Sale of bonds secured by an increase in property tax or assessment. Requires a two-thirds majority vote if based on new taxes.	Provides funding up-front. Increased tax amount sunsets when bonds are paid off.	Not permanent; cannot be used for operation and maintenance. Subject to market and credit rating. High administrative costs.
MELLO-ROOS FINANCING	Requires two-thirds approval of owners of voting electorate in inhabited areas or two-thirds of the landowners in uninhabited areas.	Provides ongoing funding for acquisition, improvement and maintenance. Property need not be located within jurisdiction. Tax formula need not be based on special benefit to taxpayer.	Two-thirds vote requirement generally limits Mello-Roos to large undeveloped parcels with less than 12 registered voters.
ASSESSMENT DISTRICTS	Requires approval of the majority of affected property owners. Votes are weighted according to the dollar value of their proposed assessments.	Can provide ongoing funding for operation and maintenance. Benefit-based assessments may be viewed as the fairest method of funding.	Must identify benefit to assessed properties. Subject to majority protest and election requirements. Requires expensive annual engineer's report and more accounting than a special tax.

[27] *See Coleman v. County of Santa Clara*, 64 Cal. App. 4th 682 (1998). After the Passage of Proposition 218, however, some attorneys believe that courts may now treat such actions as a special tax requiring a 2/3-majority vote.

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Consolidated Irrigation District

August 23, 2010 Comments

Climate Change, the California Environmental Quality Act

Exhibit 5

AUG 23 2010

Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions
California Attorney General's Office

At any given time in this State, well over one hundred California cities and counties are updating their general plans. These are complex, comprehensive, long-term planning documents that can be years in the making. Their preparation requires local governments to balance diverse and sometimes competing interests and, at the same time, comply with the Planning and Zoning Law and the California Environmental Quality Act (CEQA).

Local governments have decades of experience in applying state planning law and excellent resources to assist them – such as the "General Plan Guidelines" issued by The Governor's Office of Planning and Research (OPR).[1] They are also practiced in assessing whether general plans may have significant localized environmental effects, such as degradation of air quality, reductions in the water supply, or growth inducing impacts. The impact of climate change, however, has only fairly recently shown up on the CEQA radar.

The fact that climate change presents a new challenge under CEQA has not stopped local governments from taking action. A substantial number of cities and counties already are addressing climate change in their general plan updates and accompanying CEQA documents. These agencies understand the substantial environmental and administrative benefits of a programmatic approach to climate change. Addressing the problem at the programmatic level allows local governments to consider the "big picture" and – provided it's done right – allows for the streamlined review of individual projects.[2]

Guidance addressing CEQA, climate change, and general planning is emerging, for example, in the pending CEQA Guideline amendments,[3] comments and settlements by the Attorney General, and in the public discourse, for example, the 2008 series on CEQA and Global Warming organized by the Local Government Commission and sponsored by the Attorney General. In addition, the Attorney General's staff has met informally with officials and planners from numerous jurisdictions to discuss CEQA requirements and to learn from those who are leading the fight against global warming at the local level.

Still, local governments and their planners have questions. In this document, we attempt to answer some of the most frequently asked of those questions. We hope this document will be useful, and we encourage cities and counties to contact us with any additional questions, concerns, or comments.

- **Can a lead agency find that a general plan update's climate change-related impacts are too speculative, and therefore avoid determining whether the project's impacts are significant?**

  No. There is nothing speculative about climate change. It's well understood that (1) greenhouse gas (GHG) emissions increase atmospheric concentrations of GHGs; (2) increased GHG concentrations in the atmosphere exacerbate global warming; (3) a project that adds to the atmospheric load of GHGs adds to the problem.

  Making the significance determination plays a critical role in the CEQA process.[4] Where a project may have a significant effect on the environment, the lead agency must prepare an Environmental Impact Report (EIR).[5] Moreover, a finding of significance triggers the obligation to consider alternatives and to impose feasible mitigation.[6] For any project under CEQA, including a general plan update, a lead agency therefore has a fundamental obligation to determine whether the environmental effects of the project, including the project's contribution to global warming, are significant.

- **In determining the significance of a general plan's climate change-related effects, must a lead agency estimate GHG emissions?**

  Yes. As OPR's Technical Advisory states:

  > Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.[7]

  In the context of a general plan update, relevant emissions include those from government operations, as well as from the local community as a whole. Emissions sources include, for example, transportation, industrial facilities and equipment, residential and commercial development, agriculture, and land conversion.

  There are a number of resources available to assist local agencies in estimating their current and projected GHG emissions. For example, the California Air Resources Board (ARB) recently issued protocols for estimating emissions from local government operations, and the agency's protocol for estimating community-wide emissions is forthcoming.[8] OPR's Technical Advisory contains a list of modeling tools to estimate GHG emissions. Other sources of helpful information include the white paper issued by the California Air Pollution Control Officers Association (CAPCOA), "CEQA and Climate Change"[9] and OPR's Technical Advisory,[10] both of which provide information on currently available models for calculating emissions. In addition, many cities and counties are working with the International Council for Local Environmental Initiatives

(ICLEI)[11] and tapping into the expertise of this State's many colleges and universities.[12]

- **For climate change, what are the relevant "existing environmental conditions"?**

  The CEQA Guidelines define a significant effect on the environment as "a substantial adverse change in the physical conditions which exist in the area affected by the proposed project."[13]

  For local or regional air pollutants, existing physical conditions are often described in terms of air quality (how much pollutant is in the ambient air averaged over a given period of time), which is fairly directly tied to current emission levels in the relevant "area affected." The "area affected," in turn, often is defined by natural features that hold or trap the pollutant until it escapes or breaks down. So, for example, for particulate matter, a lead agency may describe existing physical conditions by discussing annual average PM10 levels, and high PM10 levels averaged over a 24-hour period, detected at various points in the air basin in the preceding years.

  With GHGs, we're dealing with a global pollutant. The "area affected" is both the atmosphere and every place that is affected by climate change, including not just the area immediately around the project, but the region and the State (and indeed the planet). The existing "physical conditions" that we care about are the current atmospheric concentrations of GHGs and the existing climate that reflects those concentrations.

  Unlike more localized, ambient air pollutants which dissipate or break down over a relatively short period of time (hours, days or weeks), GHGs accumulate in the atmosphere, persisting for decades and in some cases millennia. The overwhelming scientific consensus is that in order to avoid disruptive and potentially catastrophic climate change, then it's not enough simply to stabilize our annual GHG emissions. The science tells us that we must immediately and substantially reduce these emissions.

- **If a lead agency agrees to comply with AB 32 regulations when they become operative (in 2012), can the agency determine that the GHG-related impacts of its general plan will be less than significant?**

  No. CEQA is not a mechanism merely to ensure compliance with other laws, and, in addition, it does not allow agencies to defer mitigation to a later date. CEQA requires lead agencies to consider the significant environmental effects of their actions and to mitigate them today, if feasible.

  The decisions that we make today do matter. Putting off the problem will only increase the costs of any solution. Moreover, delay may put a solution out of reach at any price. The experts tell us that the later we put off taking real action

to reduce our GHG emissions, the less likely we will be able to stabilize atmospheric concentrations at a level that will avoid dangerous climate change.

- **Since climate change is a global phenomenon, how can a lead agency determine whether the GHG emissions associated with its general plan are significant?**

  The question for the lead agency is whether the GHG emissions from the project – the general plan update – are considerable when viewed in connection with the GHG emissions from past projects, other current projects, and probable future projects.[14] The effects of GHG emissions from past projects and from current projects to date are reflected in current atmospheric concentrations of GHGs and current climate, and the effects of future emissions of GHGs, whether from current projects or existing projects, can be predicted based on models showing future atmospheric GHG concentrations under different emissions scenarios, and different resulting climate effects.

  A single local agency can't, of course, solve the climate problem. But that agency can do its fair share, making sure that the GHG emissions from projects in its jurisdiction and subject to its general plan are on an emissions trajectory that, if adopted on a larger scale, is consistent with avoiding dangerous climate change.

  Governor Schwarzenegger's Executive Order S-3-05, which commits California to reducing its GHG emissions to 1990 levels by 2020 and to eighty percent below 1990 levels by 2050, is grounded in the science that tells us what we must do to achieve our long-term climate stabilization objective. The Global Warming Solutions Act of 2006 (AB 32), which codifies the 2020 target and tasks ARB with developing a plan to achieve this target, is a necessary step toward stabilization.[15] Accordingly, the targets set in AB 32 and Executive Order S-3-05 can inform the CEQA analysis .

  One reasonable option for the lead agency is to create community-wide GHG emissions targets for the years governed by the general plan. The community-wide targets should align with an emissions trajectory that reflects aggressive GHG mitigation in the near term and California's interim (2020) [16] and long-term (2050) GHG emissions limits set forth in AB 32 and the Executive Order.

  To illustrate, we can imagine a hypothetical city that has grown in a manner roughly proportional to the state and is updating its general plan through 2035. The city had emissions of 1,000,000 million metric tons (MMT) in 1990 and 1,150,000 MMT in 2008. The city could set an emission reduction target for 2014 of 1,075,000 MMT, for 2020 of 1,000,000 MMT, and for 2035 of 600,000 MMT, with appropriate emission benchmarks in between. Under these circumstances, the city could in its discretion determine that an alternative that achieves these targets would have less than significant climate change impacts.

- **Is a lead agency required to disclose and analyze the full development allowed under the general plan?**

  Yes. The lead agency must disclose and analyze the full extent of the development allowed by the proposed amended general plan,[17] including associated GHG emissions.

  This doesn't mean that the lead agency shouldn't discuss the range of development that is likely to occur as a practical matter, noting, for example, the probable effect of market forces. But the lead agency can't rely on the fact that full build out may not occur, or that its timing is uncertain, to avoid its obligation to disclose the impacts of the development that the general plan would permit. Any other approach would seriously underestimate the potential impact of the general plan update and is inconsistent with CEQA's purposes.

- **What types of alternatives should the lead agency consider?**

  A city or county should, if feasible, evaluate at least one alternative that would ensure that the community contributes to a lower-carbon future. Such an alternative might include one or more of the following options:

  - higher density development that focuses growth within existing urban areas;
  - policies and programs to facilitate and increase biking, walking, and public transportation and reduce vehicle miles traveled;
  - the creation of "complete neighborhoods" where local services, schools, and parks are within walking distance of residences;
  - incentives for mixed-use development;
  - in rural communities, creation of regional service centers to reduce vehicle miles traveled;
  - energy efficiency and renewable energy financing (see, e.g., AB 811)[18]
  - policies for preservation of agricultural and forested land serving as carbon sinks;
  - requirements and ordinances that mandate energy and water conservation and green building practices; and
  - requirements for carbon and nitrogen-efficient agricultural practices.

  Each local government must use its own good judgment to select the suite of measures that best serves that community.

- **Can a lead agency rely on policies and measures that simply "encourage" GHG efficiency and emissions reductions?**

  No. Mitigation measures must be "fully enforceable."[19] Adequate mitigation does not, for example, merely "encourage" or "support" carpools and transit options, green building practices, and development in urban centers. While a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.

There are many concrete mitigation measures appropriate for inclusion in a general plan and EIR that can be enforced as conditions of approval or through ordinances. Examples are described in a variety of sources, including the CAPCOA's white paper,[20] OPR's Technical Advisory,[21] and the mitigation list on the Attorney General's website.[22] Lead agencies should also consider consulting with other cities and counties that have recently completed general plan updates or are working on Climate Action Plans.[23]

- **Is a "Climate Action Plan" reasonable mitigation?**

  Yes. To allow for streamlined review of subsequent individual projects, we recommend that the Climate Action Plan include the following elements: an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target.[24]

  If a city or county intends to rely on a Climate Action Plan as a centerpiece of its mitigation strategy, it should prepare the Climate Action Plan at the same time as its general plan update and EIR. This is consistent with CEQA's mandate that a lead agency must conduct environmental review at the earliest stages in the planning process and that it not defer mitigation. In addition, we strongly urge agencies to incorporate any Climate Action Plans into their general plans to ensure that their provisions are applied to every relevant project.

- **Is a lead agency also required to analyze how future climate change may affect development under the general plan?**

  Yes. CEQA requires a lead agency to consider the effects of bringing people and development into an area that may present hazards. The CEQA Guidelines note the very relevant example that "an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision."[25]

  Lead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming, e.g.: coastal areas that may be subject to increased erosion, sea level rise, or flooding; areas adjacent to forested lands that may be at increased risk from wildfire; or communities that may suffer public health impacts caused or exacerbated by projected extreme heat events and increased temperatures. General plan policies should reflect these risks and minimize the hazards for current and future development.

Endnotes

[1]For a discussion of requirements under general planning law, see OPR's General Plan Guidelines (2003). OPR is in the process of updating these Guidelines. For more information, visit OPR's website at http://www.opr.ca.gov/index.php?a=planning/gpg.html.

[2]The Resources Agency has noted the environmental and administrative advantages of addressing GHG emissions at the programmatic level. See Draft Initial Statement of Reasons for Regulatory Action at pp. 17 and 46, available at http://ceres.ca.gov/ceqa/docs/Initial_Statement_of_Reasons.pdf.

[3] Pursuant to Health and Safety Code section 21083.05 (SB 97), OPR issued its Preliminary Draft CEQA Guidelines Amendments on January 8, 2009 and tranferred recommended amendments to the Natural Resources Agency on April 13, 2009. On July 3, 2009, the Natural Resources Agency (Resources) commenced the Administrative Procedure Act rulemaking process for certifying and adopting these amendments pursuant to Public Resources Code section 21083.05. Resources must certify and adopt guideline amendments by January 1, 2010. For the current status of this process, visit the Natural Resources Agency's website at http://ceres.ca.gov/ceqa/guidelines/.

[4]Cal. Code Regs., tit. 14 (hereinafter "CEQA Guidelines"), § 15064, subd. (a).

[5]CEQA Guidelines, § 15064, subd. (f)(1).

[6]CEQA Guidelines, § 15021, subd. (a).

[7]OPR, CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 2008), available at http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf.

[8] ARB's protocols for estimating the emissions from local government operations are available at http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm.

[9] CAPCOA, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) (hereinafter, "CAPCOA white paper"), available at http://www.capcoa.org/CEQA/CAPCOA%20White%20Paper.pdf#page=83.

[10] http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf#page=15.

[11] http://www.iclei-usa.org

[12] For example, U.C. Davis has made its modeling tool, UPlan, available at http://ice.ucdavis.edu/doc/uplan; San Diego School of Law's Energy Policy Initiatives Center has prepared a GHG emissions inventory report for San Diego County http://www.sandiego.edu/EPIC/news/frontnews.php?id=31; and Cal Poly, San Luis Obispo City and Regional Planning Department is in the process of preparing a Climate Action Plan for the City of Benicia, see http://www.beniciaclimateactionplan.com/files/about.html.

[13]CEQA Guidelines, § 15002, subd. (g).

[14] CEQA Guidelines, § 15064(h)(1).

[15]See ARB, Scoping Plan at pp. 117-120, available at http://www.arb.ca.gov/cc/scopingplan/document/psp.pdf. (ARB approved the Proposed Scoping Plan on December 11, 2008.)

[16]In the Scoping Plan, ARB encourages local governments to adopt emissions reduction goals for 2020 "that parallel the State commitment to reduce greenhouse gas emissions by approximately 15 percent from current levels . . . ." Scoping Plan at p. 27; see *id.* at Appendix C, p. C-50. For the State, 15 percent below current levels is approximately equivalent to 1990 levels. *Id.* at p. ES-1. Where a city or county has grown roughly at the same rate as the State, its own 1990 emissions may be an appropriate 2020 benchmark. Moreover, since AB 32's 2020 target represents the State's *maximum* GHG emissions for 2020 (see Health & Safety Code, § 38505, subd. (n)), and since the 2050 target will require substantial changes in our carbon efficiency, local governments may consider whether they can set an even more aggressive target for 2020. See Scoping Plan, Appendix C, p. C-50 [noting that local governments that "meet or exceed" the equivalent of a 15 percent reduction in GHG emissions by 2020 should be recognized].

[17] *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 [EIR must consider future development permitted by general plan amendment]; see also CEQA Guidelines, §§ 15126 [impact from all phases of the project], 15358, subd. (a) [direct and indirect impacts].

[18] See the City of Palm Desert's Energy Independence Loan Program at http://www.ab811.org.

[19] Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15091, subd. (d); see also *Federation of Hillside and Canyon Assocs.* (2000) 83 Cal.App.4th 1252, 1261 [general plan EIR defective where there was no substantial evidence that mitigation measures would "actually be implemented"].

[20]CAPCOA white paper at pp. 79-87 and Appendix B-1.

[21]OPR Technical Advisory, Attachment 3.

[22]See http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf [list of potential mitigation for projects]; http://ag.ca.gov/globalwarming/pdf/GP_policies.pdf [list of example policies and measures for general plans]; http://ag.ca.gov/globalwarming/pdf/green_building.pdf [list of local green building ordinances].

[23]See http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf.

[24]See Scoping Plan, Appendix C, at p. C-49.

[25]CEQA Guidelines, § 15126.2, subd. (a).

Consolidated Irrigation District

August 23, 2010 Comments

Comment Letter from Summers Engineering, Inc.

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AUG 23 2010

August 23, 2010

Phil Desatoff
Consolidated Irrigation District
PO Box 209
Selma, CA 93662-0209

SUBJECT: Selma General Plan Environmental Impact Report (EIR)

Dear Phil:

We have reviewed the City of Selma's responses to the District's comments on their General Plan Draft EIR. Our review focused on the City's responses to our comments regarding stormwater and groundwater impacts, which were summarized in a letter to you dated October 29, 2009. Attached are our qualifications for reviewing the subject EIR.

Regarding stormwater drainage into CID's canal system, the City responded that all future development will include its own storm water disposal facilities and no new connections to CID's system will be proposed. Additionally, a phased program will be implemented to construct new stormwater disposal facilities for existing developed areas, which will allow the City to incrementally abandon its existing connections to CID's system. These responses, which are indexed in the EIR as Response 16.13 and Appendix C, generally conform to the current District policy regarding stormwater in Selma. We reiterate our recommendation that the District review the City's stormwater master plan to verify that the proposed facilities are sufficient to capture all stormwater without overflow into District facilities.

Regarding groundwater impacts, the City's response essentially dismissed our overall commentary that their analysis is flawed and inconsistent with other groundwater studies that have been done. Following are additional comments we have on the City's responses. For convenience we have included the original comments from our October 2009 letter, followed by the City's responses and our additional comments to their responses. Each comment is indexed to correspond with the EIR.

Comment 16.12
Summers Engineering, Inc. (SEI) Oct '09
With regard to groundwater impacts from urban development, CID has commissioned a number of engineering studies that clearly indicate the conversion of agricultural land irrigated with imported surface water to urban use supported exclusively by pumped

groundwater results in increased groundwater deficits. The findings of the subject DEIR contradict CID's studies and other recent groundwater studies that have been prepared by third party agencies such as the Upper Kings Basin Water Forum. Our comments on the subject DEIR identify a number of discrepancies that were used in the City's analysis of groundwater impacts and the subsequent finding of a less than significant impact. If the City endeavors to proceed with the future development outlined in its General Plan update without continued CEQA challenges from CID, it is imperative that the Plan be amended to adequately address these issues.

Selma Response

Comment noted. The Plan-specific study addressing this issue (Groundwater Conditions in the City of Selma General Plan Update 2035 Area, Prepared by Kenneth D. Schmidt and Associates, June, 2009 included in the Draft EIR as Appendix H and Appendix B hereto) documents the inaccuracy of the commenter's general opinion or the inapplicability of that opinion to this project. (It should be noted that, incorporating data provided by this commenter, Consolidated Irrigation District, and by California Water Service Company, the Schmidt report has been minimally modified. Such modifications have not changed the thrust of the report's analysis or its conclusions. The modified report is included in Appendix B of this Final EIR; any numeric modifications have been reflected in the EIR text and in the responses to comments. Schmidt report modifications are underlined for ease in noting their location.) The Draft EIR's discussion and conclusion with respect to groundwater impacts are supported by the data and analysis in that study.

Additional SEI Comment Aug '10

The City's response continues to cite conclusions from the Schmidt report which are based on completely erroneous and unsupported assumptions. Revisions to the Schmidt report indicate the planned urban development will result in an even greater annual groundwater deficit than was estimated in the initial report (19,000 ac-ft vs. 15,000 ac-ft). The Schmidt report assumes that this deficit will be mitigated by CID continuing to deliver imported Kings River water to the Plan Area and by the application of treated wastewater on the Plan Area. Yet the General Plan has no provisions for either of these mitigation measures being implemented. Subsequent comments in this letter will show the EIR's discussion and conclusion regarding groundwater impacts are not consistent with the Schmidt report.

Comment 16.14

SEI Oct '09

Table ES-1, p. ES-36, p. 3-139

Groundwater impacts were found to be less than significant with the mitigation of recharge basin construction and importation of Kings River water. Mitigation Measure 3.8.3.3 indicates CID will develop, own and operate recharge facilities on behalf of cosponsors or the City will own and operate the facilities. Since the City has thus far elected not to actively participate in negotiations with CID for the funding and construction of new recharge facilities, we assume the City plans to implement the mitigation measure by owning and operating its own facilities. However, there are no

provisions in the DEIR for the City to acquire land for the recharge basins, acquire surface water supplies to percolate in the basins, or deliver surface water supplies to the City. Without addressing these key elements of the mitigation measure there cannot be a finding of a less than significant impact with mitigation.

Selma Response
The comment is incorrect. Groundwater impacts of the project were found to be less than significant prior to mitigation of additional recharge basin construction and importation of Kings River water, or water from other sources. There is no CEQA requirement that the Draft EIR incorporate a detailed implementation plan and program for a clearly feasible, voluntary, alternative and not-required mitigation measure. However, the Appendix C letter (see Response to Comment 16.13) to CID describes the City's proposed program for implementation of such a plan.

Additional SEI Comment Aug '10
There will clearly be a significant impact to groundwater without mitigation. The Schmidt report prepared on behalf of the City states

> "If all of [the wastewater] was exported out of the Plan Area, there would be an average water deficit of about 19,000 acre-feet per year in the Plan Area."

There are no provisions in the City's General Plan to stop exporting wastewater out of the Plan Area. The proposals (regarding groundwater recharge) made by the City in the Appendix C letter to CID would involve major policy changes by both the City and CID, and would still require that CID transport imported water supplies to the City. Given the City's past reluctance to negotiate such an agreement with CID, these proposals are unrealistic, if not infeasible.

Comment 16.15
SEI Oct '09
The Initial Study concluded that groundwater depletion may be potentially significant, but Table ES-1 indicates the impact is less than significant. This finding was based solely on the 2009 Kenneth Schmidt report that is attached to the DEIR as Appendix H. Although the Schmidt report makes certain conclusions about the consumptive groundwater use of irrigated agriculture versus urban land use, which we will clarify in subsequent comments, it also notes that there will be a 15,000 acre-foot groundwater deficit in the General Plan Area without mitigation. The mitigation measures described in the Schmidt report are for CID to continue delivering imported surface water to the Plan Area (after urban development), or for the City to percolate its wastewater within the Plan Area. These mitigation measures are unlikely at best and are definitely not included as part of the General Plan. Therefore, the DEIR makes an erroneous finding of a less than significant impact based on mitigation measures that will not be implemented.

Selma Response
It is the function of an EIR to obtain data and analysis which addresses subject areas deemed potentially significant in an Initial Study to make a finding regarding significance. In order to do so the City employed, through its EIR consultant, an eminent authority on San Joaquin groundwater and its usage. The EIR finding is based on the information and conclusions provided by that expert and on other supporting, Plan-area-specific studies such as that provided by California Water Service Company in its analysis of consumptive use for a Specific Plan project (the Rockwell Pond Specific Plan) in the Plan Area (see response to CID Comment 19.2).

The commenter has misinterpreted the Schmidt report's data and conclusions. Although groundwater in the Plan Area would be negatively impacted by urban development without recharge mitigation, groundwater in the total basin would still be benefited. Similarly, groundwater in the Consolidated Irrigation District, assuming that the District will not allow surface water rights no longer used in the Plan Area to be sold out of the District, would be benefited.

The benefits to groundwater from urban development will be further increased with the 20 percent diminishment of per capita urban water use mandated by Senate Bill 7.

Additional SEI Comment Aug '10
We can see no misinterpretation in our reading of Schmidt's report, where it states that without mitigation "there would be an average water deficit of about 19,000 acre-feet per year in the Plan Area." The City's response (see underlined text) contradicts the statements made in Response 16.14, which say the "impacts were found to be less than significant prior to mitigation". The General Plan EIR is intended to address impacts in the Plan Area, and it is clear from our analysis and the analysis of the City's own expert that there will be negative impacts to groundwater from the planned development. The City's response expands the analysis beyond the Plan Area and makes assumptions about groundwater management activities outside the Plan Area, which it has no jurisdiction over.

Comment 16.17
Most of the corrections made to the EIR text for this comment are noted and accepted, but the following items are still stated incorrectly.

- The *Urban Impacts White Paper* cited was not a draft document.
- The acreage of current agricultural operations in CID is not 86,000 acres, it is considerably greater.
- Total water use throughout CID is not 49,400 acre-feet per year, it is considerably more.

Frankly, these last two errors indicate a general lack of understanding of the subject matter by the author of the City's responses.

Comment 16.18
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.19
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.20
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.21
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.22
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.23
The corrections made to the EIR text for this comment are noted and accepted.

Comment 16.24
SEI Oct '09
The DEIR and Schmidt report indicate that Selma wastewater flow for 2008 was 3,000 acre-feet, but a figure of 2,600 acre-feet is used in the subsequent water budget calculations. CID's records from the Selma-Kingsburg-Fowler Sanitation District (SKF) indicate the 2008 wastewater influent from Selma was actually 2,069 acre-feet, which is significantly less than either figure cited in the DEIR.

Selma Response
In both cited cases the figure used was cited as approximate: 2,600 acre feet approximate dry weather flow, 3000 acre feet as approximate total annual flow. At 100 gallons per capita per day, and with a population estimated to be 23,328 in 2008, a calculated annual discharge would be 2,613 acre feet, not including inflow (storm drainage from illicit or older-neighborhood connections and manhole leakage). The 2,069 acre foot figure is unrealistically low; it is believed that CID's secondary-source records are inaccurate.

Additional SEI Comment Aug '10
The urban wastewater that is assumed to partially offset groundwater overdraft is a significant percentage of the overall water budget presented in the City's analysis, so it is important to be as precise as possible. Using approximations is understandable when actual data is not available. However, in this case the City used loose approximations that were 25% to 45% higher than the actual record data that was available. If the data appeared to be an anomaly, good engineering practice would be to compare it to other years versus using the City's calculated value that is based on assumptions. We disagree that the actual data provided by SKF is unrealistically low or inaccurate.

Comment 16.27
SEI Oct '09
Urban Water Budget
The Schmidt report uses 2006 pumping records and 2008 wastewater effluent records. If wastewater is assumed to be approximately proportional to pumping, then records of each from the same year should be used. CID's records indicate Selma's pumping in 2008 was about 7,400 acre-feet versus 6,300 acre-feet in 2006.

As noted previously, 2008 wastewater influent from Selma was 2,069 acre-feet versus 2,600 acre-feet used in the Schmidt report for water budget calculations.

The volume of water lost to evaporation is underestimated at 7% (200 / 2,600). It should be at least 15%, including evaporation during urban usage, evaporation from the wastewater ponds, and evaporation during sludge drying by SKF.

Only a portion of the wastewater that percolates in SKF's ponds is beneficial to CID. About 80% leaves the District because the SKF ponds are located near the southerly boundary of the District and the groundwater flow is northeast to southwest.

The Schmidt report assumes a 60% efficiency for urban irrigation. While it may be true that urban landscaping evapotranspiration (ET) is as low as 60% of the water that is applied, the other 40% does not go to deep percolation. Instead it runs across sidewalks and into gutters where it evaporates at a high rate. For the purpose of the water budget only about 10% to15% should be included as deep percolation.

The Schmidt report estimates that recharge from stormwater is only 100 acre-feet per year. Annual precipitation in Selma is approximately 11 inches. Some of the precipitation is lost to evaporation, but at least 50% drains into City stormwater basins or CID's canals and percolates to groundwater.

The existing acreage in Selma used in the Schmidt report is 2,400 acres, but the acreage within the city limits listed on p. 2-5 of the DEIR is approximately 3,300 acres. Table 2-1 indicates that about 2,500 acres have urban land use, so the figure in the Schmidt report is probably reasonable for water budget calculations. We would recommend that this point be clarified in the DEIR.

With the above adjustments, the urban water budget from the Schmidt report should be revised as follows (values rounded to nearest 100 acre-feet):

(1)	Pumping	7,400 a-f / yr	
(2)	Wastewater	2,100 a-f / yr	
(3)	Outdoor usage	5,300 a-f / yr	(1) – (2)
(4)	Outdoor consumption	4,500 a-f / yr	(3) x 85%
(5)	Evaporation	300 a-f / yr	(2) x 15%
(6)	Wastewater lost from CID	1,400 a-f / yr	[(2) – (5)] x 80%
(7)	Stormwater recharge	1,100 a-f / yr	2400ac x 0.92ft/yr x 50%

(8)	*Urban consumptive use*	*5,100 a-f / yr* *= 2.13 a-f / ac*	*(4) + (5) + (6) – (7)* *(8) / 2400ac*

In making its finding of a less than significant impact, the City might have also considered the consumptive use values determined by Cal Water in their recent Water Supply Assessment Reports for urban development in Selma. Cal Water's estimates were approximately 1.6 to 1.9 acre-feet per acre, which is consistent with the studies we have done for the District, and considerably higher than the value of 1.0 acre-feet per acre indicated in the Schmidt report.

Selma Response

It is of interest to note that the urban water budget calculations provided by the commenter, modified to consider data input considered accurate by the City (wastewater, 2,800 acre feet per year, outdoor usage recharge at 60% rather than 15% and 0 "loss" from wastewater) would result in a consumptive use of 1.1 acre feet per acre from the Plan Area, and 0.5 acre feet per acre from the groundwater basin. The corresponding consumptive use of groundwater from full agricultural development of the Plan Area would be approximately (3.2 x .25) 0.8 acre feet per acre, comparable to the 0.5 acre feet per acre for urban development. (Reference July 5, 2007 Memorandum from Matt Zidar, Rime, to CID General Manager Mark Gilkey, Table 3 and page 9.) Also, see response to Comment 16.17, which includes text revised in the DEIR.

The text of the DEIR has been revised (page 3-137) as follows:

> *Information on SKFCSD effluent ponds evaporation and percolation is submitted by the SKFCSD to the Regional Water Quality Control Board on an annual basis. Of the City of Selma contribution to wastewater effluent from the SKFCSD Waste Water Treatment Facility (WWTF), an estimated 200 acre-feet per year (rounded), has been lost to pond evaporation. Thus the total consumptive use for the City of Selma was about 2,400 acre-feet per year, or about 1.0 acre-foot per acre per year. Recharge of storm water in the City hasn't been exactly determined, but is estimated to be less than 100 acre-feet per year.*

Additional SEI Comment Aug '10

The City's response indicates the author's general lack of understanding the subject matter and/or carelessness in citing the Schmidt report's conclusions. The water budget "considered accurate" by the City is only a portion of the total urban water budget presented in the revised Schmidt report. Schmidt's consumptive use figure of 1.1 acre-feet per acre is actually his estimate of groundwater consumed by outdoor usage only. Schmidt's report (p. 22) concludes that total urban consumption is 1.2 acre-feet per acre. As we have noted in our prior comments, we disagree with a number of Schmidt's assumptions about evaporation, deep percolation, and the benefit to groundwater provided by wastewater that is exported from the Plan Area. A 60% factor to calculate the consumption of water used outdoors is unrealistic and completely ignores the evaporation that occurs. The urban consumptive use figure of 1.0 acre-feet per acre used in the City's response makes no accounting of the indoor water usage

that is collected as wastewater and exported out of the Plan Area. When the author says "0 'loss' from wastewater" this implies that 100% of the wastewater in the Plan Area goes back to groundwater with no losses from evaporation or any acknowledgement of the fact that 100% of Selma's wastewater is exported miles south and down-gradient of the Plan Area. Aside from our differences with the Schmidt report, the City's response inexplicably uses a different consumptive use figure altogether, even though it has supposedly based its findings on the Schmidt report.

The remaining statements in this response are incoherent. The other figures for urban consumptive use of 0.5 acre-feet per acre and ag consumptive use of 0.8 acre-feet per acre "from the groundwater basin" are meaningless in the context of a Plan Area EIR. Furthermore, we could not find anything in the referenced Wrime memo that related to these statements.

The proposed text revision to the EIR for this comment is incorrect and misleading since it is based on only a partial water budget. Also, the values used to calculate the consumptive use are different than those used in the revised Schmidt report. An accurate estimate of urban consumptive use would be approximately 2.1 acre-feet per acre versus 1.0 acre-feet per acre.

The revised EIR text stating that recharge from urban stormwater has been estimated at less than 100 acre-feet is different than the revised Schmidt report, which estimates it to be less than 1,000 acre-feet (p. 22).

Comment 16.28
SEI Oct '09
The Schmidt report assumes the existing average annual recharge that is occurring through CID ponds within the Plan Area is 10,000 acre-feet. There is no apparent explanation for this assumption. The Schmidt report estimates that 500 acres of CID ponds are located within the Plan Area. If the average annual recharge from all of CID's ponds and canal seepage is 51,000 acre-feet and the total area of ponds in the District is 1300 acres, then the proportional recharge within the Plan Area should be about 20,000 acre-feet (51,000 x 500 / 1300).

The Schmidt report concludes that agricultural consumptive use is 2.1 acre-feet per acre, or about twice as much as urban consumptive use. However, there is no accounting in the water budget calculations for the benefit to groundwater provided by CID importing Kings River water into the Plan Area for irrigation and intentional recharge. Using the same 60% irrigation efficiency used in the Schmidt report would result in nearly 40% of all agricultural irrigation going to deep percolation, which is about 14,000 acre-feet for the Plan Area. When this is included in the rural water budget together with the 10,000 acre-feet of direct recharge estimated by Schmidt, it shows that CID and its growers are adding more imported surface water to groundwater supplies in the Plan Area than they are pumping (24,000 acre-feet of recharge versus 20,000 acre-feet of pumping). This might also explain why Selma's wells have experienced a moderately lower rate of water level decline than other areas of the District.

The Schmidt report also ignores the benefits of precipitation in the Rural Water Budget. Agricultural land has a distinct advantage over urban land in terms of its ability to percolate rainfall because nearly all of the ground surface in agricultural areas is highly permeable, while much of the ground surface in urban areas is impermeable (i.e. roofs, streets, sidewalks). Accounting for a small amount of crop ET during rainy months, it is estimated that about 0.7 acre-feet per acre (8" out of 11" annually) goes to deep percolation from rainfall on agricultural land in the Selma area. Precipitation is a significant factor in the Rural Water Budget and should be included in the DEIR analysis.

Selma Response

The revised calculation of 20,000 acre feet of CID recharge within the Plan Area is noted and incorporated in the Draft EIR, as is the benefit to groundwater from agricultural irrigation in the area and the benefit therefrom to area groundwater. The text of the Draft EIR (page 3-138) has been revised as follows:

> *Based on the Plan Update land use diagram, about 14,700 acres of land would ultimately be urban (excludes CID canals and recharge ponds). California Water Service (2006) has estimated the water requirement for a projected 2035 population of 70,000 based on historical demand, would be about 20,000 acre-feet per year. If groundwater pumpage alone is used to supply the urban demand for the 2035 population, the increased pumpage would be about 8,000 acre-feet per year compared to existing conditions for a total urban consumptive use of about 15,000 acre-feet per year. The amount of wastewater generated in the Plan Area would be about 8,000 acre feet per year. If all of this was exported out of the Plan Area, there would be an average water deficit of about 7,000 acre-feet per year in the Plan Area. If the canal water formerly used for irrigation in the Plan Area (15,000 acre-feet per year) were used or recharged in the Plan Area under full development, then the deficit would be eliminated. If the 5,000 acre-feet of additional wastewater was used or percolated in the Plan Area, this would reduce the deficit significantly.*

Similarly, much of the information in the Conclusion reiterated the above text, and has therefore been deleted. The text of the Draft EIR (pages 3-138 & 3-139) has been revised as follows:

> *The groundwater analysis based on the Plan Update supports a finding of less than significant impact. Implementation of the following mitigation measure will further reduce the impact.*

It should be noted, however, that landscape irrigation in urban areas and wastewater discharges therefrom similarly achieve groundwater basin recharge although not necessarily at the upgradient locations of agricultural irrigation. Similarly, urban area precipitation is probably just as effective as agricultural area precipitation in achieving

recharge benefits (with similar evapotranspiration rates) although once again at, in part, downgradient input.

It is, once again, critical to differentiate between urbanization impact evaluation of the groundwater underlying the Plan Area, that underlying the CID and that underlying the groundwater basin boundaries. It is conceivable that despite the sharply reduced annual water demand per acre upon conversion of agricultural urban use (Schmidt) (ibid, Table 3, Rime, 3.2 to 1.8 acre feet per acre) and the State-mandated reduction in such use, there may be some minimal, but not significant, impact on in-Plan Area water levels. Assuming that CID will not permit sale of in-Plan Area water rights out of the District, there will be a positive impact on District groundwater. There will be a positive impact on the groundwater basin.

Additional SEI Comment Aug '10

The City's response and proposed EIR text are rife with errors, misstatements, and inconsistencies with the Schmidt report to which it claims to have based its findings. The Schmidt report has not been revised to include deep percolation from irrigation in the rural water budget as stated by the City. Following are other discrepancies noted.

- Schmidt (p. 23) implies the consumptive use of crops is the same as the net consumptive use by agriculture, which is incorrect. The net consumptive use of agriculture would be:

20,000 a-f	groundwater pumped
- 14,000 a-f	deep perc from irrigation (0.4 x 35,000)
- 6,600 a-f	precip recharge (0.67 x 9,900)
= -600 a-f	

  which is a slight contribution to groundwater. This does not include the contribution to groundwater provided by direct recharge in the District's ponds, which would be another 0.2 acre-feet per acre (31,000 ac-ft / 145,000 ac).

- The last line on page 23 of the Schmidt report is correct insofar as all pumping and groundwater outflow to the west have outpaced CID surface water imports, but it neglects to note that about 25,000 acre-feet per year is urban pumping.
- Schmidt (p. 25) says the future urban water requirement is estimated at 27,600 acre-feet per year.
  EIR text says the future urban water requirement would be about 20,000 acre-feet per year.
  SEI: These estimates which are cited from California Water Service are based on per capita water demands, not what will actually be pumped from groundwater. Based on existing pumping within the city limits, future pumping will be about 34,000 acre-feet ([7,100 + 500] x 14,700 / 3,300), less any future conservation that is achieved.

- Schmidt (p. 25) says increased pumpage would be about 7,000 acre-feet per year.
  EIR text says increased pumpage would be about 8,000 acre-feet per year.
- Schmidt (p. 25) says future urban consumptive use of Plan Area will be about 18,000 acre-feet per year.
  EIR text says future total urban consumptive use will be about 15,000 acre-feet per year.
  SEI: We believe an accurate estimate of future urban consumptive use is about 29,000 acre-feet per year.
- Schmidt (p. 25) says future consumptive use of the Plan Area will be about 10,000 acre-feet per year less than the current consumptive use.
  EIR text repeats the prior line and appears to be a typographical error.
  SEI: The future consumptive use of the plan area will be significantly greater than the current consumptive use, which actually provides a contribution to groundwater when all sources of recharge are considered.
- Schmidt (p. 25) says the amount of wastewater generated in the Plan Area would be about 13,000 acre-feet per year.
  EIR text says the amount of wastewater generated in the Plan Area would be about 8,000 acre-feet per year.
  SEI: Based on the existing water budget, we estimate the amount of wastewater generated by the Plan Area will be 10,000 acre-feet per year (34,000 x 2,100 / 7,100).
- Schmidt (p. 25) says if all the wastewater was exported out of the Plan Area, there would be a 19,000 acre-foot per year water deficit.
  EIR text says if all the wastewater was exported out of the Plan Area, there would be a water deficit of about 7,000 acre-feet per year.
  SEI: The General Plan does not propose changes to the disposal of wastewater such as percolating treated wastewater on the Plan Area. Therefore, the wastewater will be exported out of the Plan Area and there will be a significant groundwater deficit compared to current conditions.
- Schmidt (p. 25) says if the canal water formerly used for irrigation on the Plan Area were used or recharged in the future Plan Area, the deficit would be only about 4,000 acre-feet per year.
  EIR text says if the canal water formerly used for irrigation on the Plan Area were used or recharged in the future Plan Area, the deficit would be eliminated.
  SEI: Surface water supplies currently imported for irrigation will not be delivered to the future Plan Area unless an agreement for such is reached between CID and the City, and the projected water deficit will not be reduced or eliminated.

The current rural water budget for the Plan Area shows that CID and its growers are recharging more groundwater than is being consumed. If the Plan Area is converted to urban land use supported exclusively by pumped groundwater there will be a deficit. Going from a net gain of groundwater to a deficit is a negative impact.

In the second to last paragraph, the response indicates that precipitation in urban areas is probably just as effective for groundwater recharge as it is in rural areas. This is

patently untrue and again indicates a lack of basic understanding by the response author.

The conclusions made in the final paragraph of the City's response are false. Without the continued importation of Kings River water to the Plan Area, there will be an impact to groundwater underlying the Plan Area, underlying CID, and underlying the groundwater basin.

Comment 16.29

SEI Oct '09

The average rates of groundwater level decline in Selma are comparable to the rest of the District. A significant portion of CID's recharge ponds are located immediately adjacent to the City and have a direct impact on groundwater levels under the City. So it cannot be concluded that lower rates of groundwater decline in City wells is an indication that the City's overdraft is insignificant or that agricultural is causing the overdraft. This logic would imply that the City is hydraulically isolated from the rest of the District.

Selma Response

The average rates of groundwater level decline in the Selma Plan Area are slightly less than in the rest of the District. The EIR does not draw such conclusions regarding groundwater level decline or increase relationship to a determination of project significance.

Additional SEI Comment Aug '10

The EIR makes a misleading conclusion that overdraft in the Plan Area will only be 800 acre-feet per year, and it should be struck from the text. The figure is inconsistent with the City's own water budget.

Comment 16.30

SEI Oct '09

Impacts of Development of Plan Area on Groundwater

The future urban water demand of 27,600 acre-feet estimated for the Plan Area would be about 1.9 acre-feet per acre (27,600 acre-feet / 14,700 acres). However, based on Selma's actual pumping records for 2008, the future water demand would be about 45,300 acre-feet (14,700 acres x 7,400 acre-feet / 2,400 acres). Although it is possible that future water demands may be somewhat less due to conservation measures in new urban developments, it is not reasonable to assume a nearly 40% reduction from existing per acre water demands.

The total urban consumptive use figure of 15,000 acre-feet for the Plan Area is based on unrealistic urban water budget calculations from p. 3-137. Using a more reasonable figure of say 2.0 acre-feet per acre would result in urban consumptive use of 29,400 acre-feet (14,700 acres x 2.0 acre-feet per acre) for the Plan Area, and the consumptive use of the future versus existing Plan Area would be about the same (29,400 acre-feet for urban versus 28,000 acre-feet for ag). However, the agricultural consumptive use

calculation does not account for the Kings River water that is currently imported for agricultural irrigation and the 40% of all applied irrigation (surface water and pumped water) that is not used by the crops and goes to deep percolation. Nor does it recognize the contribution to groundwater from precipitation on agricultural land. To make a meaningful analysis of groundwater impacts, all sources of groundwater extraction and recharge must be included.

We disagree with the urban water budget presented in the DEIR, but even using this budget the report still concludes that there will be a deficit of 15,000 acre-feet per year unless imported surface water is delivered for recharge in the Plan Area or wastewater is not exported. Since neither of these options is being proposed as part of the General Plan, nor is either option likely to happen, the only possible conclusion is that there will be a 15,000 acre-foot per year groundwater deficit at urban build out. When all sources of recharge are included in the rural water budget, there would actually be a net gain in groundwater storage for the Plan Area. Therefore, the conclusion that future urban groundwater consumption will be less than the existing agricultural groundwater consumption and the finding of a less than significant impact are erroneous.

Following are simplified water budgets for the Plan Area based on the Schmidt report, but including the omitted contributions to groundwater we have identified. These water budgets clearly demonstrate that groundwater overdraft will increase with urban development, and that a finding of a less than significant impact is not supported.

Development Condition	Imported Water to GW (ac-ft)	GW Pumping (ac-ft)	Balance (ac-ft)
Existing (ag)	14,000 irrigation 10,000 recharge	20,000 irrigation 7,400 urban	
	+24,000 total	-27,400 total	-3,400
Future (urban)	0 irrigation 10,000 recharge	0 irrigation 27,600 urban	
	+10,000 total	-27,600 total	-17,600

If the correct proportional value of CID recharge in the Plan Area (20,000 acre-feet versus 10,000 acre-feet), and an urban pumping value based on 2008 pumping records (45,300 acre-feet versus 27,600 acre-feet) were used in the budgets, the difference would be even greater (+6600 acre-feet for the existing conditions and -25,300 acre-feet for the future conditions).

Selma Response

Before responding to the commenter's water budget conclusions it is necessary to provide corrective background and data:

- *The project being evaluated in the Draft EIR is a 2035 population of 70,000, with its accompanying institutional, commercial and industrial land uses, located within a 14,700 acre planning area – not urban development of the Planning Area.*

- *The earlier-estimated 27,000 acre feet of pumped water supply needed for a 2030 urban development threshold for the City of Selma (California Water Service Company, 2006 Urban Water Management Plan) has been modified by that company to a 2035 demand of 20,000 acre feet based on average historical water demand. Even that demand estimate does not take into account the now State-mandated 20% reduction in urban per capita water usage.*

- *The, accuracy of the Schmidt report consumptive use calculations has been addressed in the response to Comment 16.27.*

Most critically, even absent corrective water budget inputs, the suggested budget ignores the critical differences in the groundwater impact areas to be analyzed: that is, the least meaningful, the Planning Area (the area presumably of major concern to the commenting agency, the Consolidated Irrigation District) and the most environmentally pertinent, the groundwater basin. Please refer to the Response to Comment 16.27 for its concluding discussion regarding these groundwater impact areas and the project impacts significance with respect to each area.

Additional SEI Comment Aug '10

Based on current urban pumping per capita, the future urban pumping estimate of 20,000 acre-feet per year would be reasonable for a population of 70,000. However, the groundwater budget must also account for the institutional, industrial, and commercial water users that the City has identified in the Plan Area. These users will not have zero water demand and will typically only use groundwater. Based on the current pumping that occurs within the city limits, future pumping for the Plan Area would be about 34,000 acre-feet. If the City can identify specific water demands for the land that is not developed in the Plan Area in 2035, then those demands should be included in the budget, not just simply omitted.

The City's responses to Comment 16.27 were shown not to have considered the entire analysis presented by Schmidt and were otherwise incoherent.

The last paragraph of the response implies again that the EIR should assess impacts on the entirety of CID or the groundwater basin instead of the just Plan Area. We do not believe this meets the requirements of CEQA. Without continued importation of surface water for irrigation, there will be a significant impact on groundwater supplies underlying the Plan Area, CID, and the groundwater basin.

Comment 16.31

SEI Oct '09

P. 3-139 The Upper Kings Basin Integrated Regional Water Management Plan (IRWMP) included the development of a Kings Basin groundwater model by an independent engineering consultant. The City of Selma was a sponsor of the IRWMP and mitigation measure 3.8.3.3 of the DEIR indicates Selma will adhere to the mitigation measures of the IRWMP. However, the analysis of groundwater impacts presented in the DEIR is in direct conflict with the IRWMP groundwater model. Selma's analysis concludes that future urban growth will result in a smaller groundwater deficit than with the current agricultural land use, and that groundwater levels under Selma will decline more slowly than surrounding agricultural areas. This implies that a groundwater mound or at least a plateau in the gradient will form below Selma as urban growth progresses. The IRWMP groundwater model indicates there will be a groundwater depression under Selma unless additional supplies are imported for groundwater recharge. The DEIR states that programs will be implemented, but provides no specific details for the future programs and fails to answer key questions of where the imported water will come from and how it will be delivered.

DEIR mitigation measure 3.8.3.3 is to adhere to the mitigation measures of the IRWMP, which include development of recharge facilities and importation of additional water supplies. CID has been negotiating with the five cities in the District to adopt a Cooperative Agreement that would help fund and implement these IRWMP objectives, but heretofore Selma has elected not to participate in these negotiations. Therefore, Mitigation Measure 3.8.3.3 is not consistent with current City policies.

Selma Response

The Draft EIR's evaluation of General Plan implementation supports a finding that the project will have a less than significant impact upon groundwater. The Draft EIR draws no conclusions regarding groundwater mounding, plateaus or depressions under the City of Selma nor does it conclude that groundwater levels under the City will continue to decline more slowly than (in) surrounding agricultural areas.

The subject mitigation measure leaves open the question of City participation in a cooperative agreement with CID or other cities. It also provides an alternative which the City may elect to pursue.

Additional SEI Comment Aug '10

We concede part of the City's response that they have not drawn any conclusions regarding future groundwater contours under Selma. Our comment was intended to note the contradiction between the IRWMP which shows a lowering of groundwater

levels from urban development, and the City's analysis which says urban development will actually lessen groundwater overdraft. We do not believe the City's letter to CID (Appendix C) constitutes mitigation of the impacts there will be to groundwater. Continued good faith negotiations with CID to develop additional groundwater recharge projects would be more consistent with the IRWMP objectives than the City's current approach.

Very truly yours,

Scott Jacobson

SLJ/sj

SUMMERS ENGINEERING, INC.

GENERAL QUALIFICATIONS AND IN-HOUSE RESOURCES TO PERFORM WORK

Summers Engineering, Inc. (SEI) provides consulting services to numerous California irrigation and water districts. The consulting services involve the design of canals, drains, wells, concrete structures, siphons, and pipeline transmission facilities. Many of the consulting services have involved various canal seepage and groundwater investigations. These investigations have included monitoring well installations, calculations of groundwater storage, estimates of safe groundwater yield, and estimates of regional groundwater flow.

Water supply studies for irrigation districts have required in-field percolation or infiltration tests to estimate actual water losses from existing open canal systems. The construction of evaporation ponds and other storage ponds have also required in-field seepage tests to estimate the long term percolation/infiltration rate. SEI has analyzed and reviewed existing well data and hydrogeologic data for various areas and has the capability of calculating the anticipated drawdown for wells once an aquifer's characteristics are known. SEI has supervised pump tests on wells to determine site specific aquifer characteristics and using this information has made calculations to estimate the resulting impact to groundwater levels and to recommend optimum well spacing.

Numerous feasibility analyses and cost estimates for projects comparable to the construction tasks envisioned have been prepared. The construction cost estimates have been the basis for selling bonds or obtaining certificates of participation for financing project construction.

SEI has AUTOCAD capability and experienced engineers and draftsmen are available to design and prepare all the required maps and construction drawings.

Attached is a resume of Summers Engineering, Inc. summarizing the history of the engineering firm.

SEI
Summers Engineering, Inc
Since 1962

887 North Irwin Street
P. O. Box 1122
Hanford, CA 93232
559-582-9237

COMPANY PROFILE

The civil engineering firm of Summers Engineering, Inc., was established in April 1962. Principal work has consisted of feasibility studies, drainage studies, water supply studies, groundwater investigations, environmental impact studies, contract negotiations for water supply and loans, the design, preparation of specifications and supervision of construction of wells, canals, drains, pipelines, pumping plants and municipal facilities. Other work has consisted of the design of small airports, roadways, and small building design and site planning.

Summers Engineering provides consulting services to:

- Numerous water agencies on the feasibility, financial analysis, and design of irrigation and drainage works and rehabilitation of existing facilities.
- Several municipalities to provide general engineering services including the design of water treatment plants, water transmission facilities, storage tanks and the design review and field inspection for drainage, sewer, and water facilities for proposed developments.
- Numerous irrigation and water districts on drainage and groundwater investigations.
- Federal agencies on water resources matters.

The firm consists of five registered civil engineers, technicians, draftsmen, and clerical staff.

SEI has AutoCAD and ArcView capability and experienced engineers and draftsmen are available to design and prepare all the required maps and construction drawings.

Summers Engineering, Inc.
List of Similar Projects

1. **Solano Irrigation District – A.B. 3030 Groundwater Management Plan**

   Prepared the original plan which was approved by the District in 1995. Currently preparing an upgrade to the plan to meet the requirements of S.B. 1938.

2. **Solano Irrigation District – An Updated Plan for the Improvement of the Irrigation Distribution Works**

   This report was an update to a report entitled "*A Plan for the Improvement of the Irrigation Distribution Works*" dated 1985. The original report summarized the various irrigation facilities within the distribution system needing rehabilitation or improvement to provide more dependable service. The update reanalyzed the facilities recommended for improvement, provided a recommended priority for replacement, and included estimates of cost for all of the proposed improvement/replacements projects. This report provided the basis for the District's rehabilitation and betterment program over the last 12 years.

3. **Solano Water Authority – North Central Solano County Groundwater Resources Report**

   Concerns were raised regarding the availability of groundwater resources during the environmental review process for some proposed developments. This report was a comprehensive discussion on groundwater resources describing the existing geologic and hydrogeologic information for the North Central Solano County area.

4. **Solano Irrigation District – Water Conservation Plan**

   Preparation of the District's USBR Water Conservation Plan.

5. **Solano County Water Agency – Putah South Canal Rehabilitation and Betterment Master Plan**

   The purpose of this report was to identify and recommend specific projects for rehabilitating and improving the Solano Project facilities.

6. **Westlands Water District – Water Supply Management Recharge/Storage Options**

   This report summarized potential options for groundwater recharge and identified possible recharge sites within the District.

7. **Grassland Basin Drainers – San Joaquin River Water Quality Improvement Project – Project Description**

   Report summarizes the Grassland Bypass Project and the current successes to date, and then describes a proposed water quality improvement project (now being implemented) to

address the San Joaquin River drainage reduction requirements and still maintain the viability of agriculture within the Grasslands Drainage Area.

8. **Solano County Water Agency – Maine Prairie Water District Solano Project Entitlement Exchange Options**

   The purpose of this report was to review water management options within the Maine Prairie Water District and the Solano Irrigation District and make recommendations on what projects could be implemented to further improve water management and make water available for Solano Project entitlement exchanges.

9. **Solano Irrigation District – 5 Year Water Management Plan Revision**

   This report included the preparation of the 5 Year Update for the USBR of the District's Water Management Plan.

10. **Maine Prairie Water District – 5 Year Water Management Plan Revision**

    This report included the preparation of the 5 Year Update for the USBR of the District's Water Management Plan.

11. **Solano Project Rehabilitation And Betterment Master Plan Update**

    This report was an update to the Solano Project Putah South Canal Rehabilitation and Betterment Report Master Plan prepared in 1999. The previous report identified and recommended specific projects for rehabilitating and improving the Solano Project Putah South Canal facilities. Additional review of all Solano Project facilities determined there was a need to prepare an update report summarizing all proposed improvement and maintenance projects, including a 5-year construction priority for implementation of the projects.

RESUME

SCOTT L. JACOBSON

Registered Civil Engineer — California No. 51586

Education: Colorado State University, 1989, B.S.C.E.

Position: Staff Engineer, Summers Engineering, Inc.

Scott L. Jacobson is a Staff Engineer for Summers Engineering, Inc., in Hanford California. Summers Engineering, Inc., specializes in water resources engineering with an emphasis on municipal water supply, irrigation, and drainage projects. Mr. Jacobson has worked for Summers Engineering, Inc. since 1990 in the field of water resources engineering in the San Joaquin Valley and other areas in California.

Responsibilities:

Mr. Jacobson's work experience has included hydraulic design, pipeline design, hydrologic analysis, structural design, drainage system design, groundwater investigations, preparation of specifications, contract administration, construction supervision, construction inspection and the preparation of various feasibility reports and cost estimates.

Work Experience:

Mr. Jacobson helped design and supervise the construction of pumping plants off the California Aqueduct. These projects included a 3,625 HP addition to an existing turnout and pumping plant and an all new 1,200 HP installation with an 8,500 foot 42" diameter steel pipeline. Recently Mr. Jacobson designed and supervised the automation of four existing check structures on San Luis Water District's Third Lift Canal.

Other work has included hydraulic analyses for several canal automation projects, the design of several pump station rehabilitation projects and gravity pipelines replacing canals, a feasibility study and pilot test for a district-wide turnout metering project, a feasibility study for expanding an existing irrigation pipeline distribution system in Coachella Valley, and a feasibility study for the rehabilitation of a 300 cfs, 19 mile long canal system.

Mr. Jacobson is experienced with AutoCAD, computer modeling, and has performed field surveys using a total station.

SECTION

3

CITY OF SELMA
MINUTES OF PLANNING COMMISSION MEETING
August 23, 2010

ITEM 1. - FLAG SALUTE: Commissioner Pendegraft

ITEM 2. – ROLL CALL:

The Planning Commission met at the John B. Howard Community Center at 7:00 p.m. Present were Commissioners Ivory, Kessler, Wingfield, Linhoff, Allen, Serimian and Chairman Pendegraft. Staff present was: D-B Heusser- City Manager, Mike Slater- City Attorney, and Bryant Hemby- Assistant Planner

ITEM 3. – ORAL COMMUNICATIONS: Mr. Hal Lore, of Lore Engineering, representinting Jasbinder Singh and Sagnita Kaur the owners of 11609 S. Highland Avenue (APN: 385-220-23), stepped to the podium to discuss the proposed General Plan Update. Mr. Lore was advised that the General Plan Update is on the agenda and will be discussed later in the meeting.

ITEM 4. – FOR APPROVAL:

Approval of the July 26, 2010, Planning Commission meeting minutes was motioned by Commissioner Kessler, seconded by Commissioner Wingfield, and passed with all in favor.

ITEM 5. PUBLIC HEARING ITEMS:

Submittal No. 2007-0055: General Plan Update and Environmental Impact Report

Applicant:	City of Selma, 1710 Tucker Street, Selma, CA 93662
Location:	City-wide
Proposal:	The proposed project includes an update of the City of Selma's General Plan and related implementing actions. The Planning Area is comprised of approximately 31 square miles in and around the City of Selma, and contains a mixture of residential, agricultural, commercial, public and industrial land uses. The General Plan will include Safety, Open Space, Conservation and Recreation, Circulation, Land Use, Noise, and Public Services and Facilities Elements. The Plan includes Goals, Objectives, and Policies and Standards to guide future growth and development.

Mr. Heusser gave the Commission an overview of the General Plan process and were we are in the. He discussed the changes to the General Plan that were brought before the Commission at their last meeting on July 26, 2010.

Staff was directed by the Commission to consider the impacts to the Environment Impact Report and the proposed General Plan which might occur if these changes were approved. Mr. Heusser went through each request individually and discussed what impact if any might occur.

The first request was made by Mr. Velazquez owner of 2036 S. Highland Avenue, which is located on the northeast corner of Highland Avenue and Highway 43. Mr. Velazquez would like his 1.15 acre parcel, be re-designated Community Commercial from Medium Low Density Residential. Mr. Heusser stated staff can support this request. The existing commercial land use was incorporated in the studies for the General Plan Update.

The second request was made by Mr. Miramontes owner of 1601-1631 Whitson Street, which is located on the southwest corner of Whitson Street and McCall Avenue. Mr. Miramontes would like his .34 acre parcel, be re-designated Service Commercial from High Density Residential. Mr. Heusser stated staff can support this request. The existing commercial land use was incorporated in the studies for the General Plan Update.

The third request was made by Mr. Gomez, owner of 2180 Nebraska Avenue, which is located north of Nebraska Avenue, between Bauder and Wilson Streets. Mr. Gomez would like his .72 acre parcel, be re-designated Medium Low Density Residential. Mr. Heusser stated staff cannot support this request. Some of staff's concerned with this request were, the possible inability to provide onsite parking and the impact of a commercial use might have on surrounding parcels. Staff could support a higher residential land use to Medium High Density if zoning requirement could be met. This support can only come after further studies are made that were not completed with this General Plan Update.

The fourth request was made by Mr. Ward, owner of 1939 Whitson Street, which is located west of Whitson Street between Second and First Streets. Mr. Ward would like his .66 acre parcel, be re-designated Service Commercial from Community Commercial. Mr. Heusser stated staff can support this request. The existing commercial land use was incorporated in the studies for the General Plan Update.

The fifth request was made by Mr. Emmitt, owner of approximately 32.25 acres located north of Dinuba between Shaft and Thompson avenues. Mr. Emmitt would like his 15 acres parcel, be up zoned from single family R-1 to Multi-Family R-3. Mr. Heusser stated staff was unable to support this request at this time because of the impact of the project would involve a recirculation of the completed EIR. Staff may be able to support a greater residential designation, only after further studies are made that were not completed with this General Plan Update.

The sixth request was made by Mr. Maxwell representing Bratten Inc., who requested that approximately 20 acre parcel located west of Highland Avenue between Saginaw and Nebraska Avenue. Mr. Maxwell would like this acreage re-designated Community Commercial and High Residential from Residential Reserve. Mr. Heusser stated staff was unable to support this request because of the impact of the project would involve a recirculation of the completed EIR.

Chairman Pendegraft had questions regarding the Recreation Commission recommendation and resolution. Chairman Pendegraft was unclear if the schools property was used or not in the Open Space calculation. Mr. Heusser explained that school acreage was not being used for this calculation. Also there are only two of the current ponding basins being used in Open Space calculation.

Chairman Pendegraft also wanted clarification on the size of Sport Parks. The policy now is a minim 20 area parcel but the Recreation Commission wants this acreage raised to a minimum of 40 acres.

Commissioner Kessler also wanted clarification on the issue of School acreage being used as part of Selma's Open Space and Recreation acreage. Mr. Heusser reassures her that school acreage was not being used.

Chairman Pendegraft asked what the goals of the Commission tonight. Mr. Heusser explained the three options before the Commission. Planning Commission has several options: 1) They can approve the proposed plan and send it to the City Council for their consideration with the recommendation of approval; 2) They can make changes to the proposal as presented and then approve sending it to the City Council with the changes; 3) They can deny the proposed plan and send it back to staff for additional work.

Chairman Pendegraft asked the commission if there were any further questions for the consultants.

Mr. McDonald addressed the Commission regarding the letters that were received from Consolidated Irrigated District. He stated there were a large amount of material to review and addressed. Mr. McDonald gave an over view of the contents of the letter and how there seems to be a conflict between experts.

Mr. McDonald felt the Commission should open the public portion of the hearing to give the public to speak. Once the public hearing is concluded he could answer any questions at that time.

Chairman Pendegraft opened the public hearing

Mr. Larry Raven, _____ Fresno, came to the podium and asked questions regarding his rezoning request. Mr. Raven asked who is staff that made these recommendations to the Planning Commission. Mr. Heusser stated that Staff comprised of members from the Quad Kopf staff, himself and the planning staff.

Mr. Phil Deoff, General Manager for Consolidated Irrigation District, presented two letter and exhibits to the Commission to be entered into the record. Mr. Defoff read the list of exhibits

Provided written dist enginner, attachment. 1990 census, city county changes, court case, south county citzen, cal dep climate changes, farmland protection,

Db on list letter that we do have on engineering ..

Mr. Dof stated that the prevesurwe comments still are inact., EIR deferring or referring to thing beyond the documents needs mitigating measures. Went there mititigating measure were not in the documents. If you go to the bottom line plan 19800 water deffes CID has water, or SKF water in retained in the city.

Inconsisted in reports which need to be addressed.

Comnmission Allen asked staff if we were working on these thing. Mr. Hessue stated yes wea are workting on them. We are currently working on keeping storm water in the area.

Is this a neccwssy items. Comments he just made are they neccessy

Mr. ___ QUda went over the comments regardingexperts and ground water, report we believed the comments do support Mr. Schmit report.

cid – went through the ground water and surface water under existing conditions ground water will drop as soon as the city expands.

Linghoff ask what should the CID be doin city be doing to assist CID with this problem. No diversion of waste water
cid like to buildt more rechargeing basin. Tring to get the city to assistant Kingsburg pays per acrea 130.00 100. Pot to building facity 30 to maintain CID.

DB correct CID that the city is working with other cities in how we deal with water.

Comm. Linhoff, asked questions on water conservations. Mr. Heru advised the commission that the gP mandated a 20% reduction in water consumption.

Penf – question on groundwater mitigation measuer under ground city shall maintina CID how will city get the water here and no recharge basin in the map.

Law are the exihibit in support of the comments submitted.

Kazarian step forward and ask if the acrage please read the approval. Travis Crawford show the commission and audience the area which was to be is. Approxily 200 acrea. Dewolf manning highland .

Maxwell, ask mr huessue question in the futures they did talk to traffic consultant wanted to know if a sub study be done at this time and be considered at CC. The site is in excrow H traffic is only one issued. H reinterated that this zoing was asked for by you regarding the studies. A change at this time on something that was consisted years ago. Now can not be

change. Traffic is one of the issued. Travis even if a sub traffic was submitted a parcal circuatation of that protion.
Lore enging wanted to talk
Mr. Singh 11609 Highland, multi family want a high density zoning from r-1-7. Chairman Pendegrafgt We have the information

Pete E submitted a letter regarding his comments at the last meeting. He wanted to expand the SOI is speficily like to see. His letter speak ¼ to ½ 8323 e sagn and 8343 saginaw expand the SOI. Dewolf seems as a nature SOi increase. This would allow for more influence by the city on this area. He feels the city needs to be more aggressive.

A motion for approval of resolution was made by Commissioner Kessler and seconded by Commissioner Linhoff. Resolution 2010-0010, recommending the Selma General Plan Update and the Environmental Impact Report to the City Council passed with Commissioners Allen, Ivory, Linhoff, Kessler, and Pendegraft for, and Commissioner Wingfield against. Having a personal and monetary interest in the decision, Commissioners Serimian excused himself from voting. Mr. Chairman Pendegraft informed the audience of the Planning Commission decision to recommend approval of the General Plan Update to the Selma City Council.

ITEM 6. – OTHER ITEMS:

None:

ITEM 7. – PLANNING DIRECTORS REPORT:

None

ITEM 8. – ADJOURNMENT:

At 8:46 p.m., Commissioner Allen moved and Commissioner Kessler seconded the motion to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,
Bryant Hemby, Assistant Planner
Interim Secretary to the Planning Commission

DBH/bh

RESOLUTION NUMBER: 2010-0010
NEXT RESOLUTION NUMBER: 2010-0011

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RESOLUTION NO. 10-001

A RESOLUTION OF THE CITY OF SELMA RECREATION AND COMMUNITY SERVICES COMMISSION RECOMMENDING APPROVAL OF THE OPEN SPACE, CONSERVATION AND RECREATION ELEMENT OF THE CITY OF SELMA 2035 GENERAL PLAN UPDATE TO THE CITY OF SELMA PLANNING COMMISSION AND CITY OF SELMA CITY COUNCIL

WHEREAS, on Wednesday, July 14, 2010, the City of Selma Recreation and Community Services Commission conducted a public hearing to review the open space, conservation and recreation element of the City of Selma 2035 General Plan Update; and

WHEREAS, the City of Selma Recreation and Community Services Commission having reviewed the open space, conservation and recreation element of the Cit of Selma 2035 General Plan Update, the City of Selma Staff Report recommending that the Commission recommend approval of the open space, conservation, and recreation element by the Planning Commission and City Council, an overview presented by the Project Consultant, Quad Knopf, and all other information presented at the public hearing, that the Recreation and Community Services Commission recommends that the Planning Commission and City Council adopt the open space, conservation, and recreation element of the City of Selma 2035 General Plan Update.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the above recitals are true and correct.

2. That the City of Selma Recreation and Community Services Commission hereby recommends that the Planning Commission and City Council approve the open space, conservation, and recreation element of the City of Selma 2035 General Plan Update.

3. That the Recreation and Community Services Commission presents the following comments related to the open space, conservation, and recreation element of the City of Selma 2035 General Plan Update to the Planning Commission and City Council:

a. That the Commission finds that Policy No. 5.6.25 is of particular importance to the Commission and that the Commission recommends that when the stated goal of maintaining park acreage at a ratio of 5.0 acres per 1,000 people is

reviewed it be evaluated in a manner that ensures only accessible and usable acreage is considered.

b. That the Commission recommends that any development of a youth athletic complex/facilities or community athletic complex/facilities be not less than 40 acres in size.

****

The foregoing Resolution was adopted at a regular meeting of the Recreation and Community Services Commission of the City of Selma held on the 14th day of July 2010, by the following vote, to wit:

AYES: Oceguera, Kessler, Haro, Cazares, Teixeira and Garcia

NOES:

ABSTAIN:

ABSENT: Rivera

Chairperson Santiago Oceguera

ATTEST:

Mikal Kirchner
Secretary to the City of Selma Recreation
and Community Services Commission

APPROVED AS TO FORM:

Neal E. Costanzo, City Attorney

SELMA PLANNING COMMISSION
STAFF REPORT
Meeting Date: August 23, 2010

TO: Selma Planning Commission
FROM: Community Development Department
SUBJECT: Submittal No. 2007-0055: Selma's General Plan Update, EIR

Summary and Purpose

The purpose of this agenda item is to continue the public hearing considering Submittal No. 2007-0055, the City of Selma's 2035 General Plan Update, and Environmental Impact Report.

Application Information

1.	Applicant:	City of Selma
2.	Project Location:	City-wide
3.	Applicant's Proposal:	The proposed project includes an update of the City of Selma's General Plan and related implementing actions. The planning area is comprised of approximately 31 square miles and contains a mixture of residential, agricultural, commercial, public and industrial land uses. The General Plan will include Safety, Open Space, Conservation and Recreation, Circulation, Land Use, Noise, and Public Services and Facilities Elements. The Plan includes Goals, Objectives, and Policies and Standards to guide future growth and development.

Background

The Selma Planning Commission heard this item at their July 26, 2010 meeting.

Selma's General Plan was last updated in 1997. California State Law requires Cities and Counties to adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries that, in the agency's judgment, may have a bearing on its planning.

Discussion

The City of Selma has conducted several workshops regarding the General Plan update and on July 26, 2010, the Planning Commission held and continued the public hearing on this item. Because of the Environmental Assessment and public participation process, the General Plan update is being heard a second time by the Planning Commission. After this second hearing by the Planning Commission has several options: 1) They can approve the proposed plan and send it to the City Council for their consideration with the recommendation of approval (see attached resolution); 2) They can make changes to the proposal as presented and then approve

sending it to the City Council with the changes; 3) They can deny the proposed plan and send it back to staff for additional work.

During the first public hearing on July 26, 2010, several property owners came forward and requested a change to their land use designation. Three property owners re-designation request that were not at the meeting, were considered by the Planning Commission.

Staff and Quad Knopf were directed by the Planning Commission to evaluate each request and bring recommendations back to them at the August 23 meeting. Staff met with Quad Knopf to discuss the impact the land use re-designations might have on the environmental assessment process of the General Plan.

1. Mr. Velazquez owner of 2036 S. Highland Avenue, which is located on the northeast corner of Highland Avenue and Highway 43, requested his 1.15 acre parcel be re-designated Community Commercial from Medium Low Density Residential.

   Staff can support this request. The parcel is currently within the City Limits and the existing commercial businesses (restaurant), was incorporated in the studies for the General Plan Update. There is commercial land use designation to the south and the land use designation request will be consistent with surrounding zoning.

2. Mr. Miramontes owner of 1601-1631 Whitson Street, which is located on the southwest corner of Whitson Street and McCall Avenue, requested that his .34 acre parcel be, re-designated Service Commercial from High Density Residential.

   Staff supports this request. The parcel is currently within the City Limits and the existing commercial businesses (auto repair & accounting office), were incorporated in the studies for the General Plan Update. The parcel has commercial uses to the north and east of it now, and is fronting a main street. The land use designation request will be consistent with surrounding zoning.

3. Mr. Gomez, owner of 2180 Nebraska Avenue, which is located north of Nebraska Avenue, between Bauder and Wilson Streets, requested his .72 acre parcel be re-designated Medium Low Density Residential.

   Staff cannot support this request. The parcel is within the city limits; however it is completely surrounded by residential land uses and a school. One constraint for this parcel could be the requirement to provide onsite parking for a commercial venture. Staff could support a higher residential land use to Medium High Density if zoning requirement could be met. This support can only come after further studies are made that were not completed with this General Plan Update.

4. Mr. Ward, owner of 1939 Whitson Street, which is located west of Whitson Street between Second and First Streets, requested his .66 acre parcel be re-designated Service Commercial from Community Commercial.

Staff supports this request. The parcel is currently within the City Limits and the existing commercial businesses (auto repair & offices), were incorporated in the studies for the General Plan Update. There are commercial uses to the north and east of this project.

5. Mr. Emmitt, owner of approximately 32.25 acres located north of Dinuba Avenue between Shaft and Thompson Avenues, requested 15 acres is up zoned from single family R-1 to Multi-Family R-3. The parcel is currently within the city limits.

   Staff is unable to support this request at this time. Staff may be able to support a greater residential designation only after further studies are made that were not completed with this General Plan Update.

6. Mr. Maxwell requested that approximately 20 acre parcel located west of Highland Avenue between Saginaw and Nebraska Avenues, be re-designated Community Commercial and High Residential.

   Staff cannot support this request at this time, because of the higher density and possible impacts this change may cause. The parcel is not currently within the Selma City Limits. This proposal could be supported at a later date only after further studies are completed that were not done during this General Plan Update.

7. Mr. Raven, owner of approximately 13 acres, located north of Dinuba between Duke and McCall Avenues, be re-designated neighborhood commercial and High Residential.

   Staff cannot support this request at this time, because of the possible impacts this change may cause in regards to traffic and other environmental concerns. The parcel is not currently within the Selma City Limits. This proposal could be supported at a later date only after further studies are completed that were not done during this General Plan Update.

8. Mr. Balakian, the owner of approximately 27 acres, located north of Dinuba Avenue on the east and west side of McCall Avenue. Mr. Balakian wants these parcel re-designated Community Commercial fronting McCall Avenue and a higher residential use to a portion of one parcel.

   Staff cannot support this request at this time, because of the possible impacts this change may cause in regards to traffic and other environmental concerns. The parcel is not currently within the Selma City Limits. This proposal could be supported at a later date only after further studies are completed that were not done during this General Plan Update.

9. Mr. Kazarian, owner of 1.75 acres, located north of Dinuba Avenue and east of Leonard Avenue request that it be included in the Selma Study Area for this General Plan Update. Mr. Kazarian feels the Study area boundary would be more beneficial to the city to include the area just adjacent to Manning Avenue for future growth.

Staff supports this request. The acreage of the proposal is similar in size as the area studied in the EIR and the designation requested conforms to current land uses.

Staff has received two new requests (see below) for re-designation. They have been reviewed by staff and staff support proposed changes. All the requests are within the city limits of Selma. These changes have a direct effect on one or more of the already proposed changes.

1. Richard & Linda Riedel, owner of 1919 Whitson Street, is requesting their parcel be re-designated Service Commercial.

2. Mary Piona, owner of 2048 Highland Avenue, is requesting her parcel be re-designated Community Commercial.

Environmental (CEQA)

An Environmental Impact Report has been prepared and is online for review.

Notice of Public Hearing

Published one time in the Selma Enterprise on August 11, 2010.

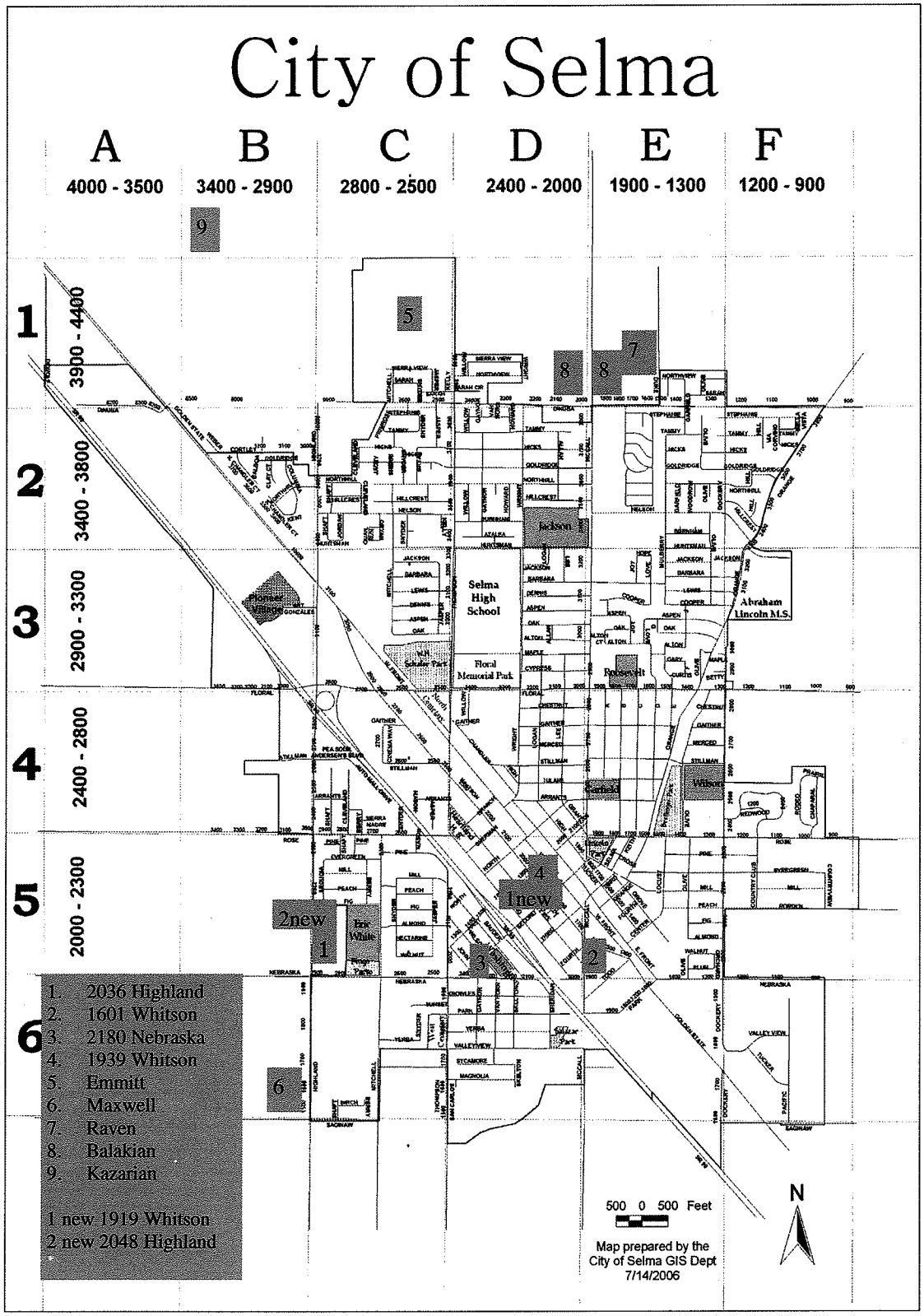
Bryant Hemby — 20 August 2010
Bryant Hemby, Assistant Planner — Date

D-B Heusser — 20 August 2010
D-B Heusser, City Manager — Date

Attachments

1. Map of requested Land Use Changes. .....
2. Resolution recommending approval of the Selma General Plan to the City Council .....

City of Selma



RESOLUTION NO. 10-_____

A RESOLUTION OF THE SELMA PLANNING COMMISSION RECOMMENDING ADOPTION OF GENERAL PLAN UPDATE 2035, WITH AMENDMENTS AND CERTIFICATION OF ENVIRONMENTAL IMPACT REPORT FOR SUBMITTAL NO. 2007-0055

WHEREAS, on July 26, 2010, and August 23, 2010, the Planning Commission of the City of Selma, at regularly scheduled meetings, considered Submittal No. 2007-0055, the City of Selma General Plan Update 2035 and the City of Selma General Plan Update 2035 Final Environmental Impact Report; and

WHEREAS, the City of Selma General Plan Update 2035 is a Comprehensive update of the land use, circulation, open space, conservation and recreation, safety, noise, and public services and facilities elements of the Selma General Plan; and

WHEREAS, a City of Selma General Plan Update 2035 Draft Environmental Impact Report (DEIR) and Final Environmental Impact Report (FEIR) were prepared for the City of Selma General Plan Update 2035 in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission has reviewed the staff report and heard testimony relative to the City of Selma General Plan Update 2035 at noticed public hearings held on July 26, 2010, and August 23, 2010; and

WHEREAS, the Planning Commission has considered the recommendation and comments of the City of Selma Recreation and Community Services Commission recommending approval of the open space, conservation and recreation element of the Comprehensive General Plan Update which was adopted by the City of Selma Recreation and Community Services Commission after a noticed public hearing on July 14, 2010, and delivered to the Planning Commission at the public hearing on July 26, 2010; and

WHEREAS, the Planning Commission has considered the DEIR and FEIR and the public comments thereon; and

WHEREAS, the Planning Commission, having engaged in public discussions relative to changes requested by property owners, recommends that the City Council of the City of Selma approve the City of Selma General Plan Update 2035 with the amendments listed in Exhibit 1, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED by the City of Selma Planning Commission as follows:

1. The above facts are true and correct;

2. The Planning Commission recommends that the City of Selma City Council adopt the City of Selma General Plan Update 2035 with the amendments listed in Exhibit 1; and

3. Based on substantial evidence provided in the Environmental Impact Report and the whole record before the Planning Commission to the Selma General Plan Update 2035, and after due consideration of public comments related thereto, the Planning Commission recommends that the City Council certify and adopt the Environmental Impact Report for the said General Plan Update.

* * * * * * * * * * * * *

I, BRYANT HEMBY, Acting Secretary of the City of Selma Planning Commission, do hereby certify that the foregoing Resolution was adopted at a regularly scheduled meeting of the Planning Commission of the City of Selma on the ____ day of _____ 2010, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
John Pendegraft, President
City of Selma Planning Commission

ATTEST:

_____
Bryant Hemby, Acting Secretary
City of Selma Planning Commission

APPROVED AS TO FORM:

_____
Neal E. Costanzo, City Attorney

CITY OF SELMA
MINUTES OF PLANNING COMMISSION MEETING
July 26, 2010

ITEM 1. - FLAG SALUTE: Commissioner Linhoff

ITEM 2. – ROLL CALL:

The Planning Commission met at the John B. Howard Community Center at 7:00 p.m. Present were Commissioners Ivory, Kessler, Wingfield, Linhoff and Chairman Pendegraft. Commissioners Allen and Serimian were absent. Staff present was: D-B Heusser- City Manager, Mike Slater- City Attorney, and Bryant Hemby- Assistant Planner

ITEM 3. – ORAL COMMUNICATIONS: Mr. Andrew Kazarian, representing Circle K Ranch, 8640 E. Manning, Selma, CA. 93662, stepped to the podium to discuss the proposed General Plan Update. Mr. Kazarian was advised that the General Plan Update is on the agenda and will be discussed later in the meeting.

ITEM 4. – FOR APPROVAL:

Approval of the June 8, 2010, Planning Commission meeting minutes was motioned by Commissioner Linhoff, seconded by Commissioner Wingfield, and passed with all in favor.

ITEM 5. PUBLIC HEARING ITEMS:

Submittal No. 2007-0055: General Plan Update and Environmental Impact Report

Applicant:	City of Selma, 1710 Tucker Street, Selma, CA 93662
Location:	City-wide
Proposal:	The proposed project includes an update of the City of Selma's General Plan and related implementing actions. The Planning Area is comprised of approximately 31 square miles in and around the City of Selma, and contains a mixture of residential, agricultural, commercial, public and industrial land uses. The General Plan will include Safety, Open Space, Conservation and Recreation, Circulation, Land Use, Noise, and Public Services and Facilities Elements. The Plan includes Goals, Objectives, and Policies and Standards to guide future growth and development.

Mr. Heusser gave a brief description of the proposed General Plan and Elements involved for certification by the State of California. Mr. Heusser advised the Commission and the audience that the Public Review and Comment period for this General Plan Update will remain open through the August 23, Planning Commission meeting.

Mr. Josh McDonald, Project Manager for Quad Knopf, stepped forward and introduced Mr. Travis Crawford Senior Planner, and Mr. Harry Tow, Senior Principal Planner of Quad Knopf.

Mr. McDonald then reviewed the process and stated that Government Code section 65300 requires Cities and Counties to update their General Plans every 10 years. He reported that this General Plan Update includes revisions to Selma's policies and standards for the Land Use, Circulation, Open Space, Noise, Public Services and Facilities, Recreation and Safety Elements. He also stated that the Housing Element will be updated at a later.

He reported that the update included changes to City's General Plan Policies and Goals. Some of the major themes and goals presented to the Commission were:

- Retention of the small town atmosphere
- Consistency between the various elements and State Law
- Encouragement of economic development and retention of local jobs
- Plan for the future residential and commercial growth

There being no questions regarding the proceedings, Chairman Pendegraft then opened the public hearing.

The following individuals spoke to the Planning Commission regarding their parcels of interest.

Mr. Sal Gonzales, of The Cube LLC, 1718 Tulare Suite 117, Fresno, CA, and representing Mr. Paul Dictos and Mr. Abraham Saghdejian, who own property at 8052 E. Nebraska Avenue, (APN: 385-042-15) stepped to the podium. He reported that their parcel consists of 20 acres and is located on the northeastern corner of Nebraska and DeWolf Avenues. He reported that his clients are in support of the proposed General Plan Update and that they agree with the City's strategy of not taking a Sphere of Influence update forward at this time. He also stated that his clients are in support of 3 to 5 units per acre but does not support the Ranchette land use designation of one unit per 20 acres.

Mr. Ronny Balakian, 25 Loma Vista, Walnut Creek, CA, and Trustee for, 9912 & 9885 McCall Avenue, spoke to the commission regarding the two parcels that he would like to see re-designated.

- The first parcel is located at 9912 S. McCall Avenue, Selma, CA (APN: 358-021-17). This 6.53-acre parcel is located on the northeast corner of McCall and Dinuba Avenues and is currently proposed to be designation High Density Residential but Mr. Balakian is requesting a Service Commercial designation.

- The second parcel is located at 9885 S. McCall Avenue, Selma, CA (APN 358-120-34). This 20-acre parcel is located on the northwest corner of McCall and Dinuba Avenues. The parcel is currently proposed to be designated Medium High Density Residential. Mr. Balakian is requesting changing the 15 easterly acres along McCall

Avenue to Service Commercial and the remainder 5-acres to Medium High Density Residential designation.

Mr. Larry Raven, 3504 E Huntington Blvd., Fresno, CA, the legal owner of 10158 Dinuba Avenue, Selma, CA (APN 358-021-18) also spoke to the Commission. This 13.40-acre parcel is located on the northwest corner of Duke and Dinuba Avenues. The parcel is currently designated Medium and Medium High Density Residential. The owner is requesting the 6-acres fronting Dinuba Avenue be designated Neighborhood Commercial and the remaining 7.4-acres be designated High Density Residential or Neighborhood Commercial.

Mr. Andrew Kazarian, 1181 E. Woodhaven Lane, Fresno, CA, representing Circle K Ranch, 8640 Manning Avenue, also spoke to the Commission. He reported that his property is located north of Manning Avenue, east of Leonard Avenue. Mr. Kazarian presented the Commission with a copy of the letter which had already been included in their packages regarding his proposal. Mr. Kazarian reiterated his desire to have his parcel included into the City of Selma's Sphere of Influence and Planned Study Area.

Mr. Kazarian requested the city adjust the proposed study area to include his parcel. This adjustment could be done by moving it from north of Parlier between Del Rey and Bethel Avenues to north of Manning Avenue, between DeWolf and Highland Avenues.

Mr. Charlie Maxwell, 418 Clovis Ave., Clovis CA., representing Bratton Investments, Inc., spoke to the Commission regarding, (APN: 385-072-08). This 38.31 acre parcel is located on the northwest corner of Saginaw and Highland Avenues and is currently designated Residential Reserve. Mr. Maxwell is requesting the parcel be split into three different land use designations.

He requested that the 13.52 acres fronting Highland Avenue, be designated Community commercial and that the remainder of the acreage (25.52 acres) be split equally with the southern 12.77 acres along Saginaw Avenue be designated High Density, and the northern 12.77 acres Community Commercial.

Mr. Pendegraft then asked about the single family resident in the middle of the map. Mr. Maxwell stated when the commercial development begins the single-family structure would be removed.

Mr. Osbalbo Acevev, speaking on behalf of Candido Velazquez, the legal owner of 2036 Highland Avenue (APN 388-030-22) spoke to the Commission. He reported that the 1.15 acre parcel is located on the northeast corner of Highland and Nebraska Avenues and is currently designated Medium Low Density Residential. Mr. Acevev stated that the property owner is requesting a Community Commercial designation because there is an existing restaurant on the parcel.

Ms Hernandez, speaking on behalf of Rosaura Miramontes, the legal owner of 1601 – 1631 Whitson Street(APNs: 388-191-, 20 & 21) stepped forward to ask that the .34 acre parcel,

located on the southeast corner of Whitson Street and McCall Avenue, currently zoned High Density Residential be re-zoned Service Commercial.

Mr. Jeremy Gomez, speaking on behalf of his father Luis Gomez, the legal owner of 2180 Nebraska Avenue (APN 388-153-01), located north of Nebraska Avenue between Bauder and Wilson Streets, stepped forward to ask that the property currently zoned Medium Low Density Residential be re-zoned Community Commercial.

Mr. Dirk Poeschel, 928 Van Ness Avenue, Suite 200, Fresno, CA., representing Ms Mary Hokokian, 12406 S. Golden State Blvd. (APN 393-073-20) stepped forward to let the Commission know that his clients are supportive of the General Plan Map but are concerned, because of future growth, about access to their 20 acre parcel, located on the northeast corner of Golden State Blvd. and Mountain View Avenues. Mr. Poeschel requested that policies be placed into the circulatory Element requiring that future development allow access to this property to prevent land locked parcels.

Mr. Al Kazarian, 8640 E. Manning addressed the Commission regarding the circulatory problems on the Manning Avenue. He would like to see a connecting street from Manning Avenue to Dinuba Avenue.

Mr. Pete Esraelian, 2135 Huntsman Avenue, stepped to the podium to let the Commission know that he is concerned about the planning area boundary and the Sphere of Influence. Mr. Esraelian stated that he feels the city should expand the existing sphere so the City can have control of this area. He stated that he is also concerned that the study did not include the Selma Golf Course in the proposed growth area. He also stated that he feels Stillman Street should be extended from Highland Avenue to DeWolf Avenue. He also spoke for Larry O'Brien, who owns property west of DeWolf and south of Floral Avenue, regarding proposed parks in the area.

There being no further testimony, Chairman Pendegraft continued the public hearing to the August 23, 2010, Planning Commission meeting.

ITEM 6. – OTHER ITEMS:

None:

ITEM 7. – PLANNING DIRECTORS REPORT:

None

ITEM 8. – ADJOURNMENT:

At 8:46 p.m., Commissioner Kessler moved and Commissioner Linhoff seconded the motion to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,

Bryant Hemby, Assistant Planner
Interim Secretary to the Planning Commission

DBH/bh

RESOLUTION NUMBER:
NEXT RESOLUTION NUMBER: 2010-0010

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SELMA PLANNING COMMISSION
STAFF REPORT
Meeting Date: July 26, 2010

TO: Selma Planning Commission
FROM: Community Development Department
SUBJECT: Submittal No. 2007-0055: Selma's General Plan Update, EIR

Summary and Purpose

The purpose of this agenda item is to conduct a public hearing to consider Submittal No. 2007-0055, 2035 General Plan Update, and Environmental Impact Report.

Application Information

1.	Applicant:	City of Selma
2.	Project Location:	City-wide
3.	Applicant's Proposal:	The proposed project includes an update of the City of Selma's General Plan and related implementing actions. The Planning Area is comprised of approximately 31 square miles in and around the City of Selma, and contains a mixture of residential, agricultural, commercial, public and industrial land uses. The General Plan will include Safety, Open Space, Conservation and Recreation, Circulation, Land Use, Noise, and Public Services and Facilities Elements. The Plan includes Goals, Objectives, and Policies and Standards to guide future growth and development.

Background

Selma last updated its General Plan in 1997 but only the Circulation and Land Use Elements were updated. This update will address six of the seven required elements, Land Use, Noise, Circulation, Open Space, Recreation and Conservation. The Housing Element will be considered at a later date.

The City has conducted several workshops with the General Public, Planning Commission and City Council since 2007.

Discussion

Because of the extent of the Environmental Assessment, public participation and noticing requirements, this 2035 General Plan Update will remain open for comments until the August 23, 2010 Planning Commission meeting.

Attached are letters from current land owners which were received after the formal public input period. These letters are requesting that the Planning Commission consider either a zone change or sphere of influence adjustment for their properties.

Environmental (CEQA)

An Environmental Impact Report has been prepared and is attached.

Notice of Public Hearing

Published one time in the Selma Enterprise on June 30, 2010.

Bryant Hemby
Assistant Planner

7/22/2010
Date

DB Heusser
City Manager

22 July 2010
Date

Attachments

1. Existing General Plan Map/Proposed General Plan Map..... 3
2. Letters from Property owners (Rezone – Sphere Request)..... 4-34

Exhibits ***(Separate Document)***

A. Final Environmental Report

MEMORANDUM

TO: Recreation Commission
FROM: City of Selma Planning Department
SUBJECT: Selma's 2035 General Plan Update
DATE: June 16, 2010

This cover letter and a copy of the proposed Recreation Element of the 2035 General Plan Update, is being provided to you for review and comment. Staff will come before you next month with the formal staff report and recommendations.

The General Plan is used to direct future growth in a desirable pattern. Features of this plan will include the creation of a realistic development strategy and related implementation techniques. The element will identify areas for future park sites, expansion areas in the short and long term and areas where expansion is not anticipated.

The Open Space, Conservation and Recreation Elements will include an inventory of open space in and around the City. It will also identify the sites that the City desires to retain as open space. The City will use the recommendations of the Recreation Commission to develop policies for the protection and management of open space for recreation, and for resource production and preservation purposes and to acquire and maintain open space.

As you review the Recreation Element please make notes as to any recommendations and suggestions you may have and bring them with you to the July 14th special meeting for discussion with staff and the consultants who are preparing the General Plan Update.

Bryant Hemby
Assistant Planner

6/16/2010
Date

D-B Heusser
City Manager

16 June 2010
Date

5.0 OPEN SPACE, CONSERVATION AND RECREATION ELEMENT

5.1 Introduction



Some of the most valuable assets of Selma include its agricultural land, parks, historical and architectural resources. The Open Space, Conservation and Recreation Element focuses on the protection and enhancement of open space, natural and recreational resources to ensure a high quality living environment in Selma.

5.2 Purpose of the Open Space, Conservation and Recreation Element

The Open Space, Conservation and Recreation Element meets the state requirements for Conservation and Open Space Elements as defined in Sections 65302(d) and 65301(e) of the Government Code. According to these requirements, the Conservation Element must contain goals and policies to protect and maintain natural resources such as water, soils, wildlife, and minerals, and prevent wasteful resource exploitation, degradation, and destruction. The Open Space Element should contain goals and policies to manage open space areas, including undeveloped lands and outdoor recreation areas. Specifically, the Open Space Element must address several open space categories such as those used for the preservation of natural resources and managed production of resources, as well as open space maintained for public health and safety reasons. This last category of open space is addressed in the Safety Element. Because the subjects required to be addressed under the Conservation Element and Open Space Element overlap substantially, the two elements, and the Recreation Element have been combined.

5.3 Scope and Content of the Open Space, Conservation and Recreation Element

The Open Space, Conservation and Recreation Element include community policies to protect environmental, open space and recreational resources. Resources addressed in this element include: water resources; agricultural resources; cultural resources; ecological and biological resources; mineral resources; and parks and recreational facilities. Because everyday activities in Selma affect air quality outside City boundaries and regional activities affect air quality within Selma, regional air quality issues are also addressed in this element. The Open Space, Conservation and Recreation Element is comprised of four sections: the Introduction; Purpose of the Open Space, Conservation and Recreation Element; Scope and Content of the Open Space,

Conservation and Recreation Element; and the Goals, Objectives, and Policies and Standards. In the Goals, Objectives, and Policies and Standards section, community open space needs and resource management issues are identified and corresponding policies are established. The objectives, which are overall statements of the City desires, are comprised of broad statements of purpose and direction. The policies and standards serve as guidelines for planning and maintaining recreational facilities, enhancing the natural amenities of Selma and minimizing the environmental effects of planned development.

5.4 Open Space and Conservation

GOALS

Management of Resources

1. Protect the environment.

2. Provide for the usage of natural resources without causing their premature depletion.

3. Conserve prime agricultural land.

4 Preserve groundwater quality and encourage reduction of overdraft conditions.

5. Eliminate potential for soil erosion or degradation of its agricultural productivity.

Unique Resources

6. Protect any rare or endangered plant and animal species, found in the Selma area.

7. Identify and protect unique cultural and historical features of the community.

Environmental Hazards

8. Limit potential threats to human health and property, which may result from natural environmental hazards.

POLICIES AND STANDARDS

General

5.1 The City shall review the Conservation and Open Space Element regularly to ensure its compatibility with State guidelines and related plans developed by the Council of Fresno County Governments and Fresno County.

5.2 Encourage all construction wastes generated from new construction and demolition to be recycled.

5.3 Encourage reduction of the City's peak electrical load by 10% through energy efficiency, shifting the timing of energy demands, and conservation measures.

5.4 Add a weatherization/energy conservation component to City renovation and repair programs where applicable. Coordinate with development and implementation of a

homeowner weatherization program to aid seniors and low-income residents in insulating their homes.

5.5 Encourage the public health and environmental benefits of supporting locally grown and organic foods.

5.6 Continue to implement "user-friendly" recycling and composting programs in compliance with State mandates.

5.7 Maintain Rockwell Pond as both a resource management area (water recharge) and community open space.

Agriculture

5.8 Prime and uniquely productive agricultural land should be conserved through orderly expansion of the City.

5.9 To protect human health and safety from potential impacts due to agricultural spraying, dust, and traffic congestion, the City will encourage lower density development adjacent to land planned for long-term agricultural uses.

5.10 Agricultural lands which currently produce, or have the potential to produce, specialty crops for which the area is uniquely suited, should be protected from encroachment by urban uses.

5.11 Maintain a 20-acre minimum parcel size for agriculturally designated parcels to encourage viable agricultural operation and to prevent parcelization into rural residential or ranchette developments.

5.12 Work with regional partners/organizations to develop an agricultural land conservancy program. Encourage the application of new agricultural land preservation and conservancy programs outside of the City's SOI.

Environmental Hazards

5.13 Require correction of local storm water ponding conditions prior to development in such areas, either through off-site improvements provided by land developers, or through community storm drain facility capital improvement projects.

5.14 Require soil studies in localized areas known to have expansive or unstable soils.

Natural Resources

5.15 Use conservation irrigation technology as well as a water efficient plant palette for all City-owned properties.

5.16 Areas with high erosion potential or soil instability which cannot be mitigated shall be designated for open space land uses.

5.17 Channel and slope modification shall be discouraged where they increase the rate of surface runoff and increase the potential for erosion.

5.18 The City shall endeavor to mitigate, to the extent feasible, activities which will exacerbate groundwater overdraft.

5.5 *Air Quality*

GOAL

To protect the health and welfare of Selma residents by promoting development that is compatible with air quality standards.

OBJECTIVES

A. Participate in the development of consistent and accurate procedures for evaluating the air quality impacts of new projects.

B. As part of the development review process, develop mitigation measures to minimize stationary and area source emissions.

C. Develop transportation systems that minimize vehicle delay and air pollution.

D. Develop consistent and accurate procedures for mitigating transportation emissions from new and existing projects.

E. Encourage alternative modes of transportation including pedestrian, bicycle, and transit usage.

F. Conserve energy and reduce air emissions by encouraging energy efficient building designs and transportation systems.

POLICIES AND STANDARDS

5.19 Coordinate with other local and regional jurisdictions, including the San Joaquin Valley Air Pollution Control District (SJVAPCD) and the California Air Resources Board (ARB), in the development of regional and county clean air plans and incorporate the relevant provisions of those plans into City planning and project review procedures. Also coordinate with the SJVAPCD and ARB in:

- Enforcing the provisions of the California and Federal Clean Air Acts, State and regional policies, and established standards for air quality;
- Utilizing clean fuel for city vehicle fleets, when feasible; and
- Developing consistent procedures for evaluating project-specific and cumulative air quality impacts of projects.

5.20 Require area and stationary source projects that generate significant amounts of air pollutants to incorporate air quality mitigation in their design, including:

- The use of best available and economically feasible control technology for stationary industrial sources;

- Discourage the use of wood burning heaters or pellet stoves in new residential units;
- The use of new and replacement fuel storage tanks at refueling stations that are clean fuel compatible, if technically and economically feasible; and
- The promotion of energy efficient designs, including provisions for solar access, building siting to maximize natural heating and cooling, and landscaping to aid passive cooling and to protect from winter winds.

5.21 Develop strategies to minimize the number and length of vehicle trips, which may include:

- Promoting commercial/industrial project proponent sponsorship of van pools or club buses;
- Encouraging commercial/industrial project day care and employee services at the employment site;
- Encouraging the provision of transit, especially for employment-intensive uses of 200 or more employees; and
- Providing expansion and improvement of public transportation services and facilities.

5.22 Encourage transportation alternatives to motor vehicles by developing infrastructure amenable to such alternatives by doing the following where feasible:

- Consider right-of-way requirements for bike usage in the planning of new arterial and collector streets and in street improvement projects;
- Require that new development be designed to promote pedestrian and bicycle access and circulation; and
- Provide safe and secure bicycle parking facilities at major activity centers, such as public facilities, employment sites, and shopping and office centers.

5.23 Encourage land use development to be located and designed to conserve air quality and minimize direct and indirect emissions of air contaminants by doing the following where feasible:

- Locate air pollution point sources, such as manufacturing and extracting facilities in areas designated for industrial development and separated from residential areas and sensitive receptors (e.g., homes, schools, and hospitals); establish buffer zones (e.g., setbacks, landscaping) within residential and other sensitive receptor uses to separate those uses from highways, arterials, hazardous material locations and other sources of air pollution or odor;

- Consider the jobs/housing/balance relationship (i.e., the proximity of industrial and commercial uses to major residential areas) when making land use decisions;

- Provide for mixed-use development through land use and zoning to reduce the length and frequency of vehicle trips;

- Accommodate a portion of the projected population and economic growth of the City in areas having the potential for revitalization;

- Locate public facilities (libraries, parks, schools, community centers, etc.) with consideration of transit and other transportation opportunities;

- Encourage small neighborhood-serving commercial uses within or adjacent to residential neighborhoods when such areas are aesthetically compatible with adjacent areas; do not create conflicts with neighborhoods schools; minimize traffic, noise, and lighting impacts; encourage and accommodate pedestrian and bicycle access; and, are occupied by commercial uses that have a neighborhood-scale market area rather than a community-wide market area; and

- Encourage a development pattern that is contiguous with existing developed areas of the City.

5.6 Recreation

GOALS

9. Preserve and protect unique or natural recreation resources.

10. Provide adequate public and private open space for existing and future residents.

11. Provide adequate and accessible open space and park facilities for active and passive recreation.

12. Private recreational open space, or dedications of equivalent land, or fees in lieu thereof, shall be required in conjunction with all residential developments to the maximum extent permissible by law.

POLICIES AND STANDARDS



5.24 Provide adequate park facilities distributed throughout the City to provide organized and informal recreation opportunities and open space for City residents. Table 5-1, to be used as a reference only, classifies various parks and greenways, provides a general description and includes suggested size and service area criteria.

5.25 The standard park acreage in Selma is 5.0 acres per 1,000 people. This acreage may include park-ponds (to the extent that they are accessible and usable recreational areas),

neighborhood parks, pocket parks, community parks and community recreational facilities. Priority should be given to development of property already owned by the City for park programs.

5.26 Location standards for parks and recreational open space specified in the Background Report of the General Plan, the Land Use Map, and Specific Plans, shall guide the location of future park and open space developments.

5.27 Neighborhood parks should be from 3 to 5 acres in size and centrally located within each ½ square mile of land. Such parks may be developed alone, in conjunction with school sites, or with ponding basins.

5.28 Community parks, providing a full range of passive and active recreational areas and facilities, will be from 20 acres and larger in size.

5.29 Developed public recreation land will be within walking distance of potential users. For purposes of this Element, an optimum walking distance for neighborhood parks is within ¼ mile.

5.30 Consider the recreational needs of all socio-economic and age groups within the City in accordance with the availability of financial and other resources for these purposes.

5.31 Seek available state and federal funds, and local grants for park improvements and recreational programs and land acquisition.

Table 5-1
Parks and Greenways Classifications

Classification	General Description	Size and Service Area Criteria
Neighborhood Park	Neighborhood parks are the basic units of the park system and serve a recreational and social purpose. Focus is on informal recreation.	Typically 5 acres or more; 8 to 10 acres preferred with 3 acres the desired minimum size. Service area is one-fourth to one-half mile uninterrupted by major roads and other physical barriers.
Community Park	Serves a broader purpose than neighborhood parks. Focus is on meeting community-based recreational needs, as well as preserving unique landscapes and open spaces.	Varies, depending on function. A minimum of 20 acres is preferred, with 40 or more acres optimal. Service area can be communitywide or several neighborhoods in given area of the community.
Large Urban Park	Large urban parks are generally associated with larger urban centers with large populations. Focus is on meeting wide-ranging community needs and preserving unique and sometimes extensive landscapes and open spaces.	Varies depending on circumstances. A typical minimum size is 50 acres (20.2 hectares), with hundreds of acres not uncommon, such as Central Park in New York City.
Youth Athletic Complex/Facility	Consolidates programmed youth athletic fields and associated facilities to fewer strategically located sites throughout the community. Also can provide some neighborhood use functions.	Varies, with 20 acres or more desirable, but not absolute. Optimal size is 40 to 80 acres (16.3 to 32.4 hectares).
Community Athletic Complex/Facility	Consolidates programmed adult and youth athletic fields and associated facilities to a limited number of sites. Tournament-level facilities are appropriate.	Varies, with 20 acres (8.1 hectares) or more desirable, but not absolute. Optimal size is 40 to 80 acres (16.2 to 32.4 hectares).
Greenway	Lands set aside for preserving natural resources, remnant landscapes, and open space, and providing visual aesthetics/buffering. Also provides passive-use opportunities. Ecological resource stewardship and wildlife protection are high priorities. Suitable for ecologically sensitive trail corridors.	Varies, depending on opportunity and general character of natural systems within the community.

Table 5-1
Parks and Greenways Classifications (continued)

Parkway	Linear park like transportation corridors between public parks, monuments, institutions, and sometimes business centers. Can be maintained green space or natural in character.	Varies.
Special Use	Covers a broad range of parks and recreation facilities oriented toward single-purpose uses, such as a nature center, historic sites, plazas, urban squares, aquatic centers, campgrounds, and golf courses.	Varies, depending on need.
Park-School	School sites that are used in concert with, or in lieu of, other types of parks to meet community park and recreation needs. School sites often provide the majority of indoor recreational facilities within a community.	Varies, depending on specific site opportunities.
Private Park/Recreation Facility	Parks and recreation facilities that are privately owned, yet contribute to the public park and recreation system.	Varies.
Regional Parks and Park Reserves	Larger-scale, regionally based parks and open spaces the focus on natural resource preservation and stewardship.	Typically a minimum of 500 acres (202.3 hectares) and up to several thousand acres or several hundred hectares. Service area is regional, which generally encompasses several cities.

5.32 Require the dedication of recreational open space land or the payment of fees in lieu thereof as a condition for approval of subdivisions of land. Funds collected shall be expended for the purposes of purchasing and/or developing land for recreational facilities or serve the subdivision. The amount of land or fee shall be commensurate with demand for recreational land and facilities generated by the subdivision.

5.33 Cooperate with the school district in developing recreational open space land and programs.

5.34 Develop new parks or recreational facilities at locations which complement existing and planned population centers and, where possible, complement existing school recreational facilities.