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January 9, 2007

Chair and Honorable Commission Members
Sacramento Local Agency Formation Commission
1112 I Street, Suite 100
Sacramento, CA 95814

VIA U.S. MAIL

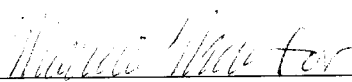
Re: Open Space and Agricultural Land Preservation Policy (L AFC 12-03)

Dear Chair and Honorable Commission Members:

Enclosed please find a legal opinion regarding the DRAFT Open Space and Agricultural Land Preservation Policy (L AFC 12-03). If you have any questions please do not hesitate to contact me.

Very truly yours,

MILLER, OWEN & TROST
A Professional Corporation

By: 
Nancy C. Miller

NCM:edf

Enclosure

cc: Cheryl Creson
Jim Estep
Larry Greene
Adam U. Lindgren
Kerry L. Miller
George Phillips
Thomas Reavey
Mike Savino
Gregory D. Thatcher

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MEMORANDUM

TO: Sacramento LAFCo Commissioners

FROM: Nancy C. Miller
Miller, Owen & Trost

DATE: January 8, 2007

RE: DRAFT Open Space and Agricultural Land Preservation Policy (LAFC 12-03)

This opinion is provided in response to letters received questioning LAFCo's authority to adopt the Draft Open Space and Agricultural Land Preservation Policy (LAFC 12-03).¹ It is my opinion that LAFCo has the authority to adopt the draft policies to preserve open space and other agricultural lands. However, I have made some suggested changes to address concerns raised. Further, in meetings with the commenters, it was agreed that if the Commission moves forward with the policies, we will continue to meet with the interested parties to attempt to reach consensus on the issues.

BACKGROUND

1. **November 2006 Workshop:** At the November 1, 2006, meeting, a workshop was scheduled to hear testimony regarding open space and agricultural needs. The Commission received legal opinions from interested parties including public agencies, some of which questioned LAFCo's authority to adopt open space and agricultural preservation policies. LAFCo postponed the workshop and requested that I meet with the various commenters and provide an opinion in response.

2. **Meeting with the Cities and Other Interested Parties:** I met with representatives from the County of Sacramento and the Cities of Sacramento, Folsom, Elk Grove, Galt, and Citrus Heights. I spoke with representatives from the City of Rancho Cordova and Galt, as well as counsel for the various environmental and developer groups that submitted comments. I conveyed my opinion that LAFCo has the express authority to develop policies to preserve open

¹ Letters were received from the County of Sacramento, City of Folsom, Sacramento Air Quality Management District, City of Rancho Cordova, City of Elk Grove, Law Office of Gregory D. Thatch on behalf of Reynan & Bardis, Law Office of George E. Phillips on behalf of the Ose Family, City of Rancho Cordova, SOS Cranes, and the Natomas Community Association.

space, prime agricultural land and other agricultural lands. The specific concerns raised evidenced the opportunity to modify the draft policies to clarify, modify, and/or remove some of the specific concerns raised that were not intended by the policies. The meetings were very positive and the participants were interested in being part of a working group on reviewing and commenting on the revised proposed open space and agricultural policies.

3. **December 6, 2006, Meeting:** The Commission determined that the workshop would be rescheduled to February 7, 2007, but no policies would be considered at that time.

LEGAL ANALYSIS

A. LAFCo has the express authority to impose conditions to preserve open space and agricultural lands.

1. LAFcos are statutorily created in every county in the state with the exclusive authority to create and change local governments as defined. (Gov. Code, § 56300 et. seq.) LAFco's exercise these unique powers through annexation (boundary changes), the setting of Spheres of Influence ("SOI") (the probable ultimate service and physical boundary of the public agency) and incorporation or new district formation. (Gov. Code, §§ 56073, 56375, subd. (a), 56100, 56113, 56434.) This authority is plenary and is constitutional. (*Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914-915; *Friends of Mount Diablo v. County of Contra Costa* (1977) 72 Cal.App.3d 1006, 1011; *Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648, 687-688.) LAFco's powers are formidable because it is the "sole and exclusive authority and procedure" for changes of organization and organization. (Gov. Code, § 56100; Cal. Municipal Law Handbook, § 1.2.10(G).)

LAFco also has express authority to impose conditions consistent with its statutory authority when reviewing an annexation application or in setting SOI boundaries. (Gov. Code, §§ 56375, 56886, 56885.5; *Fallbrook Sanitary District v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753, 765.) LAFco may impose conditions related to open space and agricultural lands because its statutory authority includes preservation of such lands. (Gov. Code, §§ 56300, subd. (a), 56301, 56668.) It should be noted that while comments by the County of Sacramento raised concerns regarding LAFco's ability to impose conditions, LAFco has no authority over County decisions regulating open space and agricultural preservation. Although the draft policy uses County language regarding open space, LAFco has no authority over County decisions except where District annexations concern unincorporated territory.

2. LAFco is statutorily required to maintain written policies and procedures that encourage and provide planned, well-ordered, and efficient urban development patterns with appropriate consideration of preserving open-space and prime agricultural lands. (Gov. Code, § 56300.) These policies and procedures are designed to give applicants guidance as to the information LAFco needs to make appropriate determinations concerning their application and to provide guidance as to the criteria that LAFco will utilize in approving, denying, amending or

conditionally approving applications for changes of organization. (Sacramento LAFCo, *Policies, Standards and Procedures for LAFCo*, adopted Sept. 5, 1990, amended 1993, p. I-1.) LAFCo adopted its Policies Standards and Procedures in 1990 and revised them in 1993.

LAFCo's current policies promote open space, agricultural and prime agricultural conservation. The policies set forth criteria for "Agricultural Land Conservation." (Sacramento LAFCo, *Policies, Standards and Procedures for LAFCo*, adopted Sept. 5, 1990, § IV E; p. IV-5; Definitions; Agricultural Lands; para. i; Prime Agricultural Lands, para. ix, and Open Space, para. ix.) These policies provide that LAFCo will use its powers to conserve agricultural land and include the recommendation that the affected city develop specific policies to preserve open space and agricultural land. (Sacramento LAFCo, *Policies, Standards and Procedures for LAFCo*, adopted Sept. 5, 1990, § IV E; p. IV-6.)

LAFCo's *Policies, Standards and Procedures* further reflect its consideration of open space and prime agricultural land by indicating that LAFCo is "required to exercise its authority to guide development away from open space and prime agricultural land uses" (Sacramento LAFCo, *Policies, Standards and Procedures for LAFCo*, adopted Sept. 5, 1990, p. I-2.) Because the policies were last revised in 1993, revision to reflect the current statutory scheme is appropriate.

3. Statutory authority exists to adopt policies to preserve open space and agricultural land. LAFCo is expressly charged with conserving open space,² agricultural lands³ and prime agricultural lands⁴ under its governing statutes, the Cortese-Knox-Hertzberg Act. (Gov. Code, § 56000 et seq.) Under the Act, LAFCo's are charged with "discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies" (Gov. Code, § 56301; *Placer County Local Agency Formation Com'n v. Nevada County Local Agency Formation Com'n* (2006) 135 Cal.App.4th 793, 798.) Furthermore, when the Legislature described the purposes of the Commission, it stated that LAFCo was created to preserve open space and agricultural lands and is not restricted to only prime agricultural land. (Gov. Code, § 56300, subd. (a).)

² Open Space is defined as "any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560." (Gov. Code, § 56059.) Section 65560 lists "preservation of natural resources" and "agricultural lands and areas of economic importance for the production of food or fiber" among the types of land uses that qualify as an open-space use. (Gov. Code, § 65560, subd. (b)(1), (2).)

³ Government Code section 56016 states that agricultural lands "means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program."

⁴ Prime agricultural land "means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use" and that meets certain enumerated qualifications. (Gov. Code, § 56064.)

Some of the commenters argued that LAFCo's authority does not extend to *non*-prime agricultural lands.⁵ This is incorrect for several reasons. First, the definition of open space relied on in the policy, which is the same as that utilized by cities and the county when developing their local open space plan, includes "agricultural lands" as an open space use. (Gov. Code, §§ 56059, 65560, subd. (b)(2). As used in the open space definition, the term "agricultural lands" includes: "prime agricultural land, agricultural land of statewide importance, unique farmland, and farmland of local importance." (Gov. Code, §§ 65570, 65560.) These are the categories utilized in the policy.⁶ The draft policy is intended to be used in conjunction with a City's or County's open space plan, such as the Conservation Element of the applicable General Plan. Furthermore, the definitions used in the policy are consistent with federal guidelines and definitions. This is an effective means to determine orderly growth and those conditions under which agricultural land and open space may be converted to urban uses.

Statutory authority supporting adoption of the policy can also be found in the guidelines for consideration of a proposal for a change of organization or reorganization. Government Code section 56668 **requires** LAFCo to consider "[t]he effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016." (Gov. Code, § 56668, subd. (e).) Notably, this statute is not limited to consideration of prime agricultural land, but extends to agricultural lands as defined in section 56016.⁷ Cortese-Knox-Hertzberg further provides that: "In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determinations with respect to each of the following: (1) The present and planned land uses in the area, including agricultural and open-space lands." (Gov. Code, § 56425, subd. (e)(1).)

In 2003, the Legislature enacted statutes to address LAFCo's consideration of Agricultural Preserves. Government Code section 51296.3 prohibits LAFCo from approving "a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a city," except in certain circumstances. Government Code section 51296.4 states that a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a special district that provides or would provide sewers, nonagricultural water, or streets and roads, unless the facilities or services provided by the special district benefit land uses that are allowed under the contract and the landowner consents to the change of organization or reorganization." (Gov. Code, § 51296.4.) Finally, Government

⁵ In a letter dated October 24, 2006, from the Law Offices of Gregory D. Thatch, Reynan & Bardis argued that LAFCo's policy had to be limited to prime agricultural land. The County of Sacramento, in a letter dated October 31, 2006, offered the same argument.

⁶ This is also consistent with the Public Resources Code, which for environmental purposes and impacts defines agricultural lands in the same manner. (Pub. Res. Code, § 21060.1.)

⁷ In a letter dated October 24, 2006, from the Law Offices of Gregory D. Thatch, Reynan & Bardis argued that LAFCo's policy had to be limited to prime agricultural land. The County of Sacramento, in a letter dated October 31, 2006, offered the same argument.

Code section 56856.5 places restrictions on LAFCo's ability to approve or conditionally approve a proposal for annexation of land subject to a Williamson Act contract. (Gov. Code, § 56856.5.)

4. Case law supports the statutory authority of LAFCo to impose conditions to conserve open space and agricultural land. The California Supreme Court recognized the constitutional authority of the state to exclusively regulate local government entities through local agency formation commissions. (*Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914-915.) Courts have long recognized that LAFCos are "watchdogs, guarding 'against the wasteful duplication of services that results from indiscriminate formation of new local agencies or haphazard annexation of territory to existing local agencies.'" (*Placer County Local Agency Formation Com'n v. Nevada County Local Agency Formation Com'n* (2006) 135 Cal.App.4th 793, 798; *Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753, 759; *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 884; *Friends of Mount Diablo v. County of Contra Costa* (1977) 72 Cal.App.3d 1006, 1011; *Tillie Lewis Foods, Inc. v. City of Pittsburg* (1975) 52 Cal.App.3d 983, 1005.)

Courts have also recognized LAFCo's power to impose conditions on its approval of proposals. In *Fallbrook Sanitary District v. San Diego Local Agency Formation Commission*, the Court noted that Government Code "[s]ection 56375, subdivision (a), gives those commissions the following powers: "To review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization" (*Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753, 759.) The Court found that this conditioning power was appropriate and LAFCo could make any additions or deletions to a proposal as long as such additions or deletions did not materially alter the general nature of the proposal. (*Id.* at p. 765; Cal. Municipal Law Handbook, § 1.2.10(G)(3)(a).) Finally, the court ruled that authority to impose conditions is to be broadly construed. (*Id.* at p. 758.)

The reasons for creation of LAFCos have also been noted by courts: "(1) to facilitate orderly growth and development by determining logical local agency boundaries; (2) to preserve prime agricultural lands by guiding development away from presently undeveloped prime agricultural preserves; and (3) to discourage urban sprawl and encourage the preservation of open space by promoting development of vacant land within cities before annexation of vacant land adjacent to cities." (*Placer County Local Agency Formation Com'n v. Nevada County Local Agency Formation Com'n* (2006) 135 Cal.App.4th 793, 798.) Sacramento LAFCo currently seeks to further these goals by adopting a policy and conditions for analysis of open space, agricultural land and prime agricultural land in its consideration of applications.

5. The draft polices do not violate the California Constitution and are advisory not mandatory. LAFCo has the authority to "review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission." (Gov. Code, § 56375.) While LAFCo's power to impose conditions is broad, it is

prohibited from imposing any conditions that would directly regulate “land use density or intensity, property development, or subdivision requirements.” (Gov. Code, §§ 56375, 56886.) However, as outlined in detail above, the Cortese-Knox-Hertzberg Act provides LAFCo the authority to consider open space, agricultural land and prime agricultural lands preservation when considering applications.

Some commenters argued that the policies would require imposition of conditions in violation of the California Constitution. However, the policies offered are not mandatory and do not directly regulate land use, land use density or intensity, or subdivision requirements. The policies suggest that a city provide clear guidelines that show how it will preserve existing open space and agricultural resources when a current proposal affects such resources.

Through its express power to approve, disapprove, and add conditions to proposals, LAFCo may impose conditions on an annexation or SOI requiring or recommending preservation. (Gov. Code, §§ 56300, 56301, 56375, 56377, 56425, 56668; Op. Atty. Gen., No. 80-610.) The requirement to demonstrate mitigation for the loss of or impacts to agricultural land is not a direct regulation of land use, land use density or intensity, or subdivision requirements. Instead, the requirement is a method for LAFCo to ensure that it has met its statutory duty to preserve such lands by advising cities to address the issue with mitigation measures. LAFCo requires a standard by which it may determine the appropriateness of converting existing agricultural lands to urban uses while preserving existing open space and other agricultural lands. (Gov. Cod, §§ 56300, 56301.) LAFCo is not requiring any change in land use or directing a city to rezone property, but is instead including standards and measures to conserve existing open space and agricultural lands.

This type of measure has been imposed in prior LAFCo matters. Specifically, when approving a SOI amendment in Folsom, the Commission imposed a condition to conserve open space lands. (LAFC-4-97, adopted June 6, 2001.) It is true that LAFCo cannot directly regulate land use, but it can apply its policies and impose conditions to ensure that open space and prime agricultural lands are preserved. (Gov. Code, §§ 56300, 56301, 56375, 56377, 56425, 56668; Op. Atty. Gen., No. 80-610; *Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com.* (1989) 208 Cal.App.3d 753; *Placer County Local Agency Formation Com'n v. Nevada County Local Agency Formation Com'n* (2006) 135 Cal.App.4th 793.)

Finally, it should be noted that the proposed policies are not mandatory but advisory. There is some confusion among the commenters on this issue. It is my recommendation to clarify that the policies are advisory not mandatory. In addition, clarification is necessary for the provision recognizing that individual circumstances may warrant a deviation from the general policy standards. Finally, the policies as drafted apply to annexations only. Because the

Commission sets the SOI for each City and district and such boundaries are the first step prior to annexation, the policies should be expanded to apply to SOI proceedings as well.⁸

6. This opinion is supported by other LAFCOs that have adopted or are in the process of adopting similar open space and agricultural preservation policies. The LAFCOs of both Yolo County and Santa Clara County are considering or have adopted mitigation standards to conserve open space and agricultural lands. Copies of the proposed policies are attached hereto as Attachments A and B. During the process of drafting policies, Yolo County and Santa Clara County LAFCo produced legal opinions concluding that LAFCo has the authority to adopt such policies and standards. Copies of the legal opinions are also attached hereto as Attachments C and D. Santa Clara LAFCo concluded that it had such authority based on the same statutes discussed here, including Government Code sections 56301, 56668 and 56325. Yolo LAFCo similarly provided an opinion confirming the authority of LAFCo to impose conservation and agricultural easements. Further, the LAFCo's of both San Luis Obispo County and Monterey County are in the early stage of developing similar open space and agricultural preservation policies.

B. California Environmental Quality Act Compliance

It is unclear whether the California Environmental Quality Act ("CEQA") is applicable to the adoption of the draft policies. The first step to determine whether adoption of the policy is a "discretionary project" under CEQA is to consider the definition of a project. (Public Res Code §21080; see *City of Livermore v. LAFCo of Alameda County* (1986) 184 Cal.App.3d 531.) The CEQA Guidelines broadly define a "project" as:

(a)...the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities... enactment and amendment of zoning ordinances, and the adoption of amendment of local General Plans or elements thereof . . .

(b) Project does not include: . . .

(3) Continuing administrative or maintenance activities, such as general policy and procedure making

(Cal. Admin Code, tit. 14, § 15378.) Since, subdivision (b)(3) expressly states that policy making is one of the activities that is not a project under CEQA, it is possible that CEQA does not apply to the adoption of the Open Space and Agricultural Land Preservation Policy.

⁸ In an incorporation proceeding, such policy may be applied through mitigation measures created during the environmental review process, applied through terms and conditions, or through modification of boundaries.

However, since I recommend applying the policy to both SOI and annexation proposals, the prudent approach would be to conduct a CEQA analysis. The comments received relied upon a case where the court did determine that SOI policies were subject to CEQA review. (*City of Livermore v. LAFCo of Alameda County* (1986) 184 Cal.App.3d 531.)

C. Conclusions

It is my opinion that the draft policies are consistent with LAFCo authority. The most controversial portion of the draft policies is the agricultural mitigation standards. Such standards are meant to be advisory only. The definition of agricultural lands under the draft policies mirrors the State's definition of important farmland to be conserved through statewide policies. (Gov. Code, § 65560, 65570; Pub. Res. Code, § 21060.1.) This is a statewide definition used by local governments and the State to define the type of agricultural resources the State deems worthy of protection and conservation. They are also consistent with federal guidelines and definitions. The Commission may want to revisit these draft policies with a working group comprised of interested parties to create a policy that is mutually agreeable and meets the needs of our region. Alternatively, the Commission may wish to maintain its current policies and address open space and agricultural land preservation on a case by case basis.

Yolo County Local Agency Formation Commission

Agricultural Conservation Policy 1-23-06



Sunflower Field, Yolo County, California

LAFCO

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COUNTY OF YOLO
LOCAL AGENCY FORMATION COMMISSION
AGRICULTURAL CONSERVATION POLICY
(Adopted by Minute Order 94-4 Amended by Minute Orders 2002-25,
2003-03, 2003-41, 2005-05, 2005-56, and 2006-02)

I Legislative Mandate

A. California Government Code §56377 mandates LAFCO consider the following factors:

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

a. Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

b. Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing sphere of influence of the local agency.

B. Given the direction outlined by the California Legislature in Government Code section 56377, the Yolo County LAFCO adopts the following policies in respect to the conversion of agricultural land to urban uses. This policy is meant to apply both to city and special district changes of organization when urban development is the ultimate goal.

II. Policy Statement

A. Agriculture is a vital and essential part of the Yolo County economy and environment. Agriculture shapes the way Yolo County residents and visitors view themselves and the quality of their lives. Accordingly, boundary changes for urban development should only be proposed, evaluated, and approved in a manner which, to the fullest extent feasible, is consistent with the continuing growth and vitality of agriculture within the county.

III. Policy Guidelines

- A. To promote the policy statement, proposals shall be reviewed based on the following considerations:
 - 1. Existing developed areas should be maintained and renewed.
 - 2. Vacant land within developed areas should be developed before agricultural land is annexed for non-agricultural purposes.
 - 3. Land substantially surrounded by existing agency boundaries should be annexed before other lands.
 - 4. Urban development should be restricted in agricultural areas. For example, agricultural land should not be annexed for non-agricultural purposes when feasible alternatives exist.
 - 5. The continued productivity and viability of agricultural land surrounding existing communities should be promoted, by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses.
 - 6. Development near agricultural land should not adversely affect the economic viability or constrain the lawful, responsible practices of the agricultural operations.
- B. In considering the completeness and appropriateness of any proposal, the Executive Officer and this Commission may require proponents and other interested parties to provide such information and analysis as, in their judgment, will assist in an informed and reasoned evaluation of the proposal in accordance with this policy.
- C. No change of organization shall be approved unless it is consistent with the Spheres of Influence of all affected agencies.
- D. Where feasible, non-prime land should be annexed before prime land.
- E. A land's current zoning, pre-zoning or land use designation is one of the factors the Commission will consider in determining whether mitigation will be required for the loss of agricultural land. A land's zoning, pre-zoning or designation in the city's or County's general plan does not automatically exempt it from mitigation.
- F. The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their general plan and sphere of influence areas and that encourage protection of prime agricultural land in a manner that is consistent with this Policy.
- G. The Commission encourages the maintenance of agricultural inter-city buffers between the cities. The Commission encourages the cities and the County to formalize and strengthen existing, but non-binding, agreements maintaining agricultural buffers

- H. The Commission encourages local agencies to identify the loss of prime agricultural land as early in their processes as possible, and to work with applicants to initiate and execute plans to mitigate for that loss, in a manner that is consistent with this Policy, as soon as feasible. Local agencies may also adopt their own agricultural conservation policies, consistent with this Policy, in order to better meet their own circumstances and processes.
- I. Unless otherwise provided in this Policy, the provisions of this Policy shall apply to all proposals requiring approval by the Yolo County Local Agency Formation Commission, including but not limited to, any proposal for approval of a change of organization, reorganization, or out-of-agency service agreement.
- J. This Policy applies to proposals of both public agencies and private parties. However, the Commission recognizes that there are significant differences between public agencies and private parties. In light of those differences, in some circumstances it may not be appropriate to require mitigation for the loss of prime agricultural land as would otherwise be required by this Policy.

A fundamental difference is that public agencies are generally responsible to the electorate, while private parties are not. Public agencies are also generally required to provide Constitutionally or statutorily (or both) mandated services. In addition, a public agency is generally required, by law or policy considerations, to locate its facilities within its boundaries, while a private party has no such constraints.

Public agencies are also generally subject to Constitutional or statutory constraints (or both) on their ability to raise revenues. Public agencies often experience increases in demand for services that are not (and often cannot) be accompanied by equivalent increases in revenues. In light of these and other fiscal constraints that are currently imposed upon public agencies, a mitigation requirement could result in an additional cost to a public agency that it is unable to recoup by increasing its revenues, which in turn could impair the agency's ability to provide its Constitutionally and statutorily mandated services.

In addition, unlike private parties, public agencies are often exempt from the land use controls and regulations of other public agencies, despite the fact that the activities of the former occur within the boundaries of the latter. Although a public agency might request input from other local agencies, it is not necessarily bound by or required to follow their local planning requirements. As a result, a public agency's development or construction activities may not be subject to the same degree of control as a private party, and it might not learn of a mitigation requirement until after it has completed significant portions of the planning processes that are required by law.

Based upon the foregoing factors, the Commission concludes that, in the case of proposals that are undertaken exclusively for the benefit of a public agency, the Commission should review the applicability of the mitigation requirements set forth in this Policy on a case-by-case basis to determine the appropriateness of requiring mitigation in any particular case.

IV. Policy Standards and Implementation

- A. Detachment of prime agricultural lands and other open space lands shall be encouraged if consistent with the sphere of influence for that agency.
- B. Annexation of prime agricultural lands shall not be approved unless the following factors have been considered:
 - 1. There is insufficient marketable, viable, less prime land available in the subject jurisdiction for the proposed land use.
 - 2. The adoption and implementation of effective measures to mitigate the loss of agricultural lands, and to preserve adjoining lands for agricultural use to prevent their premature conversion to other uses. Such measures may include, but need not be limited to: the acquisition and dedication of farmland, development rights, open space and conservation easements to permanently protect adjacent and other agricultural lands within the county; participation in other development programs (such as transfer or purchase of development rights); payments to responsible, recognized government and non-profit organizations for such purposes; the establishment of open space and similar buffers to shield agricultural operations from the effects of development.
- C. Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:
 - 1. The area is within the annexing agency's sphere of influence.
 - 2. The Commission makes findings required by Government Code Section 56856.5.
 - 3. The parcel is included in an approved city specific plan.
 - 4. The soil is not categorized as prime.
 - 5. Mitigation for the loss of agricultural land has been secured at least at a 1:1 ratio of agricultural easements for the land lost.
 - 6. There is a pending, or approved, rescission for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
 - 7. The property has been non-renewed if still awaiting rescission approval.

- D. Less prime agricultural land generally should be annexed and developed before prime land is considered for boundary changes. The relative importance of different parcels of prime agricultural land shall be evaluated based upon the following (in a descending order of importance):
 - 1. Soil classification shall be given the utmost consideration, with Class I or II soil receiving the most significance, followed by the Storie Index Rating.
 - 2. Consideration shall also be given to the land's economic viability for continued agricultural use.

- E. LAFCO will approve a change of organization which will result in the conversion of prime agricultural land in open space use to other uses only if the LAFCO finds that the proposal will lead to planned, orderly, and efficient development. The following factors shall be considered:
 - 1. Contiguity of the subject land to developed urban areas.
 - 2. Receipt of all other discretionary approvals for changes of boundary, such as rezoning, environmental review, and service plans as required by the Executive Officer before action by LAFCO. If not feasible before LAFCO acts, the proposal can be made contingent upon receipt of such discretionary approvals within not more than one (1) year following LAFCO action.
 - 3. Consistency with existing planning documents of the affected local agencies, including a service plan of the annexing agency or affected agencies.
 - 4. Likelihood that all or a substantial portion of the subject land will develop within a reasonable period of time for the project's size and complexity.
 - 5. The availability of less prime land within the sphere of influence of the annexing agency that can be developed, and is planned and accessible, for the same or a substantially similar use.
 - 6. The proposal's effect on the physical and economic viability of other agricultural operations. In making this determination, LAFCO will consider the following factors:
 - a. The agricultural significance of the subject and adjacent areas relative to other agricultural lands in the region.
 - b. The existing use of the subject and adjacent areas.
 - c. Whether public facilities related to the proposal would be sized or situated so as to facilitate the conversion of adjacent or nearby agricultural land, or will be extended through or adjacent to, any other agricultural lands which lie between the project site and existing facilities.

- d. Whether natural or man-made barriers serve to buffer adjacent or nearby agricultural land from the effects of the proposed development.
- e. Provisions of the General Plan's open space and land use elements, applicable growth management policies, or other statutory provisions designed to protect agriculture. Such provisions may include, but not be limited to, designating land for agriculture or other open space uses on that jurisdiction's general plan, adopted growth management plan, or applicable specific plan; adopting an agricultural element to its general plan; and acquiring conservation easements on prime agricultural land to permanently protect the agricultural uses of the property.
- f. The establishment of measures to ensure that the new property owners shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with the agricultural zone in accordance with the Right to Farm Ordinance adopted by the Yolo County Board of Supervisors.

F. Agricultural Mitigation

- 1. Except as expressly noted in subsection 8 below, annexation of prime agricultural lands shall not be approved unless one of the following mitigations has been instituted, at not less than a 1:1 replacement ratio:
 - a. The acquisition and dedication of farmland, development rights, and agricultural conservation easements to permanently protect adjacent and other agricultural lands within the County.
 - b. The payment of fees that are sufficient to fully fund the acquisition and maintenance of such farmland, development rights or easements. The per acre fees shall be specified by a Fee Schedule or Methodology, which may be periodically updated at the discretion of the Commission (Refer to the Yolo County LAFCO "Payment In Lieu Fee Methodology").
 - c. Any such measures must preserve prime agricultural property of reasonably equivalent quality and character that would otherwise be threatened, in the reasonably foreseeable future, by development and/or other urban uses.
- 2. The loss of fewer than twenty (20) acres of prime agricultural land generally shall be mitigated by the payment of in lieu fees as mitigation rather than the dedication of agricultural conservation easements. The loss of twenty (20) acres or more of prime agricultural land generally may be mitigated either with the payment

of in lieu fees or the dedication of agricultural conservation easements. In all cases, the Commission reserves the right to review such mitigation on a case-by-case basis.

3. If an applicant provides agricultural easements to satisfy this requirement, the easements must conform to the following characteristics:
 - a. The land used to mitigate the loss of prime agricultural land must also be prime agricultural land as defined in this Policy and the Cortese-Knox-Hertzberg Act (Government Code 56000 et. seq.).
 - b. In addition, it must also be of reasonably equivalent quality and character as the mitigated land as measured using both of the following methodologies:
 - (i). Average Storie Index – The USDA calculation methodology will be used to calculate the average Storie Index score. The mitigating land's average Storie Index score shall be no more than 10% less than the mitigated land's average Storie Index score.
 - (ii). Land Equivalency and Site Assessment ("LESA") Model – The LESA calculation shall be in accordance with the methodology adopted by this Commission. The mitigating land's LESA score shall be no more than 10% below the mitigated land's LESA score
4. As a general rule, the Commission will not accept, as mitigation required by this Policy, an agricultural conservation easement or property that is "stacked" or otherwise combined with easements or property acquired for habitat conservation purposes, nor for any other purposes that are incompatible with the maintenance and preservation of economically sound and viable agricultural activities and operations. The Commission retains the discretion to make exceptions on a case-by-case basis, based upon the following criteria:
 - a. Whether the applicant made a good-faith effort to mitigate separately for the loss of habitat in accordance with the Yolo County Habitat/Natural Community Conservation Plan process but such efforts were infeasible, and
 - b. Whether the proposed "stacked" mitigation for the loss of prime agricultural land and habitat involves one of the following, whichever results in the greatest acreage of preserved land:
 - (i). Mitigation at a ratio of no less than 2:1 for the loss of prime agricultural soils; or

- (ii). Mitigation at a ratio of no less than 1:1 for the loss of all agricultural lands in the proposal area; or
 - (iii). The property subject to the agricultural conservation easement is larger than the proposal area, meets the conditions specified in this Policy, and encompasses a complete field, legal parcel, or farm line.
- 5. The presence of a home on land that is subject to an agricultural conservation easement is generally incompatible with the maintenance and preservation of economically sound and viable agricultural activities and operations on that land. The presence or introduction of a home may diminish the value of the agriculture conservation easement as mitigation for the loss of prime agricultural land. Consequently, an agricultural conservation easement will generally not be accepted as mitigation for the loss of prime agricultural land if the easement permits the presence of a home, except an existing home that has been present on the proposed easement for at least twenty-five (25) years, or construction of a comparable replacement for such a home.

Exceptions to this section of the Policy may be granted by the Commission on a case-by-case basis if the homesite is less than two acres and if the applicant can provide sufficient evidence that a homesite on the agriculture conservation easement is necessary to further the goals of maintaining and preserving economically sound and viable agricultural activities and operations on that easement.

- 6. LAFCO favors the use of a local non-profit agricultural conservation entity or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder.

The Commission will use the following criteria when approving the non-profit agricultural conservation entity for these purposes:

- a. Whether the entity is a non-profit organization that is either based locally or is a regional branch of a national non-profit organization whose principal purpose is holding and administering agricultural conservation easements for the purposes of conserving and maintaining lands in agricultural production;
- b. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
- c. Whether the entity has a history of holding and administering easements in Yolo County for the foregoing purposes;

- d. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards; and
- e. Any other information that the Commission finds relevant under the circumstances.

A local public agency may be an easement co-holder if that agency was the lead agency during the environmental review process.

LAFCO also favors that applicants transfer the easement rights or in lieu fees directly to the recognized non-profit agricultural conservation entity in accordance with that entity's procedures.

The Commission retains the discretion to determine whether the agricultural conservation entity identified by the applicant and the local lead agency has met the criteria delineated above.

- 7. The Commission prefers that mitigation measures consistent with this Policy be in place at the time that a proposal is filed with the Commission. The loss of prime agricultural land may be mitigated before LAFCO action by the annexing city, or the County of Yolo in the case of a district annexation, provided that such mitigation is consistent with this Policy. LAFCO will use the following criteria in evaluating such mitigation:
 - a. Whether the loss of prime agricultural land was identified during the project's or proposal's review process, including but not necessarily limited to review pursuant to the California Environmental Quality Act;
 - b. Whether the approval of the environmental documents included a legally binding and enforceable requirement that the applicant mitigate the loss of prime agricultural land in a manner consistent with this Policy; and
 - c. Whether, as part of the LAFCO application, an adopted ordinance or resolution was submitted confirming that mitigation has occurred, or requiring the applicant to have the mitigation measure in place before the issuance of either a grading permit, a building permit or final map approval for the site.
- 8. As noted in III(J) of this Policy, the Commission has concluded that, in the case of proposals that are undertaken exclusively for the benefit of a public agency, the Commission should review the applicability of the mitigation requirements set forth in this Policy on a case-by-case basis to determine the appropriateness of requiring mitigation in any particular case.

In making such a determination, the Commission will consider all relevant information that is brought to its attention, including but not limited to the following factors:

- a. Whether the public agency had any significant, practical option in locating its project, including locating the project on non-prime or less prime agricultural land.
- b. Whether the public agency is subject to or exempt from the land use regulations of another public agency.
- c. Whether the public agency identified the loss of agricultural land as an environmental impact during the project's review, including but not limited to California Environmental Quality Act review, and, if so, whether it adopted a "Statement of Overriding Considerations" for that impact.
- d. When the public agency learned of the agricultural conservation mitigation requirements of the Commission's Policy or that of another public agency (whether or not it was subject to that agency's land use control).
- e. Whether the public agency could reasonably have allocated or obtained sufficient revenues to provide for some or all of the mitigation required by this Policy if it had learned of that requirement before submitting its proposal to this Commission.
- f. Whether the public good served by the public agency's proposal clearly outweighs the purposes served by this Policy and its mitigation requirements.
- g. Whether the proposal is necessary to meet the immediate needs of the public agency.

If the Commission determines that it is not appropriate to require mitigation for the loss of agricultural land resulting from a public agency's proposal, or to require less mitigation than otherwise prescribed by this Policy, it shall adopt findings, and a statement of overriding considerations if applicable, supporting that determination.

V. **DEFINITIONS** - Except where noted, the following definitions are not defined in the California Government Code Sections 56000 et seq.

AFFECTED LOCAL AGENCY - any agency which contains, or would contain, or whose sphere of influence contains, any territory within any proposal or study to be reviewed by LAFCO (Government Code Section 56014).

AGRICULTURAL LAND - areas within which the primary zoning or general plan designation is AG, AP, or AE, or any other agricultural zone.

FEASIBLE - capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, legal, social, and technological factors (Government Code Section 56038.5).

INFILL LAND - property surrounded, or substantially surrounded, by urban uses or incorporated or special district boundaries.

PRIME AGRICULTURAL LAND - "land, whether a single parcel or contiguous parcels, which has not been developed for a use other than an agricultural use and which meets any of the following qualifications:

- a. Land that qualifies, if irrigated, for rating as Class I or Class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is currently irrigated, provided that irrigation is feasible.
- b. Land that qualifies for rating 80 - 100 Storie Index rating.
- c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December, 1935.
- d. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
- e. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred (\$400) per acre for three of the previous five calendar years.

(Government Code Section 56064)

URBAN DEVELOPMENT - a change of organization that contemplates or is likely to lead to the conversion of land from agricultural use to a primarily nonagricultural related use, generally resulting in the need for services such as sewer, water, fire protection, schools, drainage systems, and police protection.

COUNTY OF YOLO
LOCAL AGENCY FORMATION COMMISSION
AGRICULTURAL CONSERVATION POLICY
PAYMENT IN LIEU FEE METHODOLOGY

In lieu of the dedication of agricultural conservation easements that would otherwise be required by the Agricultural Conservation Policy, the Commission may permit the payment of fees as set forth in this Schedule to fully fund the acquisition and maintenance of farmland, development rights or agricultural conservation easements.

Per Acre Mitigation Fee

No less than 35% of the average per acre price for full and unencumbered fee title price in the last five (5) unimproved land purchases plus a five percent (5%) endowment of the cost of the easement, and the payment of the estimated transaction costs associated with acquiring an easement. The purchases must be within the general vicinity of the annexing entity and of a size equal to or greater than the total acreage of prime soils within the subject territory.

Payment of the In Lieu Fee is to be made directly to an agricultural conservation entity that meets the criteria set forth in Section IV(F)(6) of the Yolo County Local Agency Formation Commission's Agricultural Conservation Policy. The agricultural conservation entity receiving these funds must present to the Commission a letter stating its intention to use these funds for the acquisition of farmland, development rights or agricultural conservation easements in Yolo County whose prime soils are reasonably equivalent to the proposal area's soils and that the location of the easements will be within the general vicinity of the annexing entity and in an area within the County of Yolo that would otherwise be threatened, in the reasonably foreseeable future, by development and/or other urban uses.

Prepared by Yolo County LAFCO Staff
Updated by Yolo County LAFCO – January 23, 2006

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LAFCO'S AGRICULTURAL MITIGATION POLICIES

LAFCO's mission is to discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies. LAFCO's current policies discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's current policies require an explanation for why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing agricultural mitigation for LAFCO proposals involving agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate.

General Policies

1. LAFCO's Agricultural Mitigation Policy establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural lands.
2. LAFCO requires adequate and appropriate agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands. Prime agricultural lands are as defined in Policy #75. The Commission may allow variations from the minimum criteria and standards established herein, when the applicant can clearly demonstrate that the proposed mitigation will provide equivalent or higher protection of agricultural lands.
3. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural citywide agricultural mitigation policies and programs that are consistent with this Policy.
4. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with this Policy.
5. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

6. LAFCO will review these Policies as necessary, and determine if revisions are necessary to clarify and address issues in order to better achieve the stated intent.

Definition of Prime Agricultural Lands

57. Prime agricultural land as referred to in this policy defined in the Cortese Knox Hertzberg Act means agricultural land that meets any of the following qualifications:

- a. ~~Lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" by the State Department of Conservation as shown on the "Important Farmland Map" dated 2004.~~
- a**b**. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- b**e**. Land that qualifies for rating 80 through 100 Storie Index Rating.
- c**e**. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.
- d**e**. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
- e**f**. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Mitigation Requirements

86. Proposals involving the conversion of prime agricultural lands shall not be approved unless one of the following mitigations is provided at a not less than 1:1 replacement ratio (1 acre preserved for every acre converted) along with the payment of necessary funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and promotion of agriculture on the mitigation lands:

- a. ~~F~~The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
 - b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.
 - c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund:
 1. The acquisition of agricultural lands or agricultural conservation easements for permanent protection, and
 2. The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of promoting agriculture on the mitigation lands.
97. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity must be located in Santa Clara County, must be lands deemed acceptable to the city and entity and must be consistent with this Policy.
108. ~~F~~the agricultural mitigation ~~must~~ should result in preservation of land that would result in the preservation of land that promote the definition or creation of a permanent urban/agricultural edge and must be:
- a. ~~Is Prime~~prime agricultural land ~~and~~ of equivalent quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and
 - b. ~~Is~~ Located within the city's sphere of influence in an area planned/envisioned for agriculture ~~that would otherwise be threatened/impacted in the reasonably foreseeable future by development, and~~
 - c. ~~Preferably will promote the definition or creation of a permanent urban/agricultural edge.~~
911. Because urban uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO ~~requires~~ encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to preserve adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Examples of Ssuch measures must include, but are not limited to:
- a. ~~The city requiring the e~~Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses

must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.

- b. ~~The city adopting~~ Adoption of measures such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.
- c. ~~The city developing programs~~ Development of programs to improve the community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land.
- d. ~~Other appropriate measures to satisfy the intent of this policy may also be adopted.~~

Agricultural Conservation Entity Qualifications

- 120. The agricultural conservation entity must be a city or a public or non-profit agency. The agricultural conservation entity must:
 - a. Be committed to preserving local agriculture and must have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,
 - b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and
 - c. Have adopted written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and be operating in compliance with those standards.

Plan For Mitigation

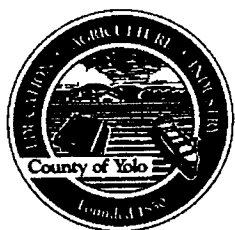
- 143. A Plan for Agricultural Mitigation that is consistent with this Policy must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO.
- 142. The Plan for Mitigation shall include all of the following:
 - a. An agreement between the property owner(s) and the city or between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the appropriate mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with this Policy. The agreement would be contingent on LAFCO approval. Upon

LAFCO's conditional approval of proposal, the agreement must be recorded with the County Recorders' Office against the property to be developed.

- b. Information on specific measures adopted by the city to demonstrate city's compliance with Policy #911.
- c. All other supporting documents and information to demonstrate compliance with this Policy. A checklist will be developed.

Timing and Fulfillment of Mitigation

- 153. LAFCO will require as a condition of approval that the agricultural lands or conservation easements be acquired and transferred or the in-lieu fees be paid within 2-3 years of the LAFCO's conditional approval. ~~This will provide the property owner with sufficient flexibility to meet the mitigation requirements while ensuring that agricultural mitigation is provided in a timely manner.~~
- 164. Upon fulfillment of the conditions of approval, LAFCO will issue a Certificate of Completion. The effective date of the boundary change will be the date of issuance of the Certificate of Completion.
- 175. If the conditions of approval are not met within 32 years, the conditional approval will expire applicant may apply to LAFCO for an extension, not exceeding 1 year. Any further consideration by LAFCO will require a new application.
- 186. The city will not be able to approve the related city-conducted annexation until the Certificate of Completion for an USA approval is issued.
- 197. ~~LAFCO will not accept other USA amendment proposals from the city until the agricultural mitigation is provided for the city's previous USA approvals.~~ LAFCO discourages submittal of additional USA amendment proposals involving agricultural lands if agricultural mitigation has not been completed for the city's previous approvals. Status of pending agricultural mitigation will be a factor that LAFCO will consider in the evaluation of proposals involving agricultural lands.



County of Yolo

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April 5, 1995

ELIZABETH A. STOLTZ
DEPUTY

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DEPUTY

Elizabeth Kemper, Executive Officer
Yolo County LAFCO
292 W. Beamer Street
Woodland, CA 95695

RE: Agricultural Conservation Easements

Dear Elizabeth:

SUMMARY

You have asked whether the Cortese-Knox Act authorizes a local agency formation commission ("LAFCO") to condition approval of a reorganization proposal upon the acquisition and dedication of an agricultural conservation easement to mitigate the loss of agricultural land, and if so, whether LAFCO may designate the grantee(s) of such easement.

For the reasons discussed hereinbelow, I conclude that the Cortese-Knox Act authorizes a LAFCO to condition approval of a reorganization proposal upon the acquisition and dedication of an agricultural conservation easement to mitigate the loss of agricultural land. I also conclude that a LAFCO may designate the grantee(s) of the easement when this condition is imposed.

BACKGROUND

The Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§56000 et seq.)¹ continues in existence a local agency formation commission in each county within the state (§§56300 et seq). A LAFCO's powers and duties include responsibility "to review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for

¹ All statutory references are to the Government Code unless otherwise indicated.

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changes of organization or reorganization." (§56375(a))²

The Yolo County LAFCO has adopted an Agricultural Conservation Policy (Yolo County LAFCO Minute Order 94-4). This Policy begins by reciting §56377's mandate that, in reviewing reorganization proposals, a LAFCO "shall consider" specified policies and priorities concerning preservation of agricultural land. The Policy subsequently states that "annexation of prime agricultural lands shall not be approved unless the following factors have been considered:...the adoption and implementation of effective measures to mitigate the loss of agricultural lands...Such measures may include, but need not be limited to...the acquisition and dedication of...conservation easements...."

The questions raised concern the Yolo County LAFCO's authority to implement the above-quoted portions of its Agricultural Conservation Policy by conditioning approval upon the acquisition and dedication of an agricultural conservation easement in appropriate circumstances.³

DISCUSSION

QUESTION 1: May a LAFCO condition approval of a reorganization proposal upon the acquisition and dedication of an agricultural conservation easement to mitigate the loss of agricultural land?

A. Authority to Impose Condition Generally

As noted above, §56375(a) authorizes a LAFCO to review and conditionally approve reorganization proposals; this authority to impose conditions is broadly construed (eg, Fallbrook Sanitary District v San Diego County LAFCO (1989) 208 CA3d 753, 758). In my opinion, conditioning approval of a reorganization proposal upon the acquisition and dedication of an agricultural conservation

² A "reorganization" means two or more changes of organizations initiated in a single proposal, such as an annexation to a city and a detachment from a district as part of the same proposal (§56073).

³ In addition to being lawful generally, any official action should avoid being arbitrary and capricious or inappropriate under the circumstances; these limitations apply to LAFCO actions. Whether a condition is appropriate depends upon the circumstances in which it is being contemplated.

easement falls within this broad grant of authority.⁴

Authority for the condition can also be found in §56844(h), which provides that a LAFCO may condition approval of a reorganization proposal upon "the acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal."⁵ Since an agricultural conservation easement is an interest in real property, in my opinion the condition also falls within §56844(h)'s grant of authority.

Thus, I conclude that imposing this condition falls within the authority generally granted to LAFCOs by §§56375 and 56844.

B. Effect of Limitation Against Direct Regulation of Land Use

However, this does not end the inquiry; if this particular condition runs afoul of some superseding rule of law, then it may not be imposed.

Examining the Cortese-Knox Act, both §56375(a) and §56844 provide that a LAFCO may not impose a condition which would directly regulate land use, density or intensity, property development, or subdivision requirements; thus, if one were to conclude that a condition requiring dedication of an agricultural conservation easement constitutes a "direct regulation" of land use, then it would follow that a LAFCO could not impose the condition.

Unfortunately, I have found no reported decision construing this limitation of §§56375 and 56844; the issue is therefore open to question and not free from doubt. However, in my opinion it can reasonably be concluded that a condition requiring the acquisition and dedication of an agricultural conservation easement would not directly regulate land use, and therefore would not transgress this limitation.

At the outset, it is important to keep in mind that a LAFCO

⁴ A condition imposed by a LAFCO is generally in addition to a condition imposed by another agency; the two agencies' conditions will not always be identical. The LAFCO condition does not change the other agency's condition; instead, it is a separate and independently effective condition.

⁵ Section 56844 has also been broadly construed (57 Ops. Cal. Atty. Gen. 599, 607-8), as have a LAFCO's powers generally (Fallbrook Sanitary Dist. v San Diego LAFCO, supra; Del Paso Rec & Park Dist. v Board of Supervisors (1973) 33 CA3d 483, 495-7).

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action often influences or affects land use. For example, the determination of a sphere of influence⁶ may encourage the development of land within the designated sphere boundaries, while at the same time it may discourage development outside those boundaries; as another example, the approval of an annexation of undeveloped territory to a city which has rezoned the land for a specific land use can encourage that land use, while disapproval might discourage it; a condition imposing financial obligations might also discourage the proposed land use. Thus, the Cortese-Knox Act clearly contemplates that LAFCO actions will affect land use, and nothing in Sections 56375 and 56844 suggests that this is improper.

It is also clear that, in limiting a LAFCO's power to affect land use, the Legislature only barred conditions which would "directly regulate" land use, density or intensity, property development, or subdivision requirements (§§56375(a) & 56844);⁷ in my opinion, these qualifying words indicate that the Legislature intended that this limitation of LAFCO power be narrowly construed.⁸

With these thoughts in mind, it can reasonably be concluded that the condition in question is not impermissible because it does not directly regulate land use.

The regulation of land use is typically accomplished by adoption of, among other things, general and specific plans, zoning ordinances, and subdivision approvals. While there is a wide variety of land use regulations, generally speaking they share a common feature in specifying how particular areas may and may not be used; for example, some parcels are reserved for residences, others for retail business, and still others for agricultural purposes. However, not all legislative or regulatory actions can fairly be characterized as "land use regulations", even though they undoubtedly affect the use of land.

⁶ A "sphere of influence" is "a plan for the probable physical boundaries and service area of a local agency, as determined by the commission." (§56076)

⁷ For example, a LAFCO condition which specified that annexed land must be zoned for residential uses and developed to a density of four homes per acre could certainly be questioned.

⁸ By way of contrast (and as noted previously), LAFCO powers are generally construed broadly.

For example, a city ordinance prohibiting the discharge of firearms within the city limits, while effectively prohibiting the use of any land within the city for a firing range (absent some exception), would typically not be considered a land use regulation. Similarly, general nuisance laws are ordinarily not considered land use regulations, although they certainly limit some land uses in some instances. As another example, taxes are generally not considered land use regulations, although they may make certain types of development financially unfeasible. Lastly, to use an example in the context of a LAFCO action, imposing a condition (eg to an incorporation proposal) requiring the transfer of property (eg, a county building, to be transferred to the city upon incorporation) subject to a road or utility easement would not generally be thought of as a "direct regulation" of land use.

Turning back to the condition requiring dedication of an agricultural conservation easement, it is difficult to find the typical hallmarks of a "direct regulation" of land use. It doesn't seem to regulate the use of the land being annexed, and it certainly doesn't seem to directly affect that land; it also doesn't seem to directly regulate the use of any other land--- indeed, the condition thus far imposed by the Yolo County LAFCO does not itself dictate the location of the land where the easement must be located nor does it otherwise directly regulate how any land may or may not be used.⁹ Therefore, in my opinion it's reasonable to conclude that the condition does not directly regulate land use.

To further illustrate this point, it is unquestioned that a LAFCO may condition approval of a reorganization approval upon the transfer of certain district or county property to an annexing city (e.g., roads and buildings); while this undoubtedly causes the transferred property to be used for municipal purposes (at least in the short run), in my opinion this does not transgress the limitation against the "direct regulation" of land use because it does not directly regulate land use at all. Also, as noted above a LAFCO action imposing a condition requiring the transfer of property (eg, a county building, to be transferred to the city upon incorporation) subject to a road or utility easement is generally not considered a "direct regulation" of land use. In my view,

⁹ I believe this conclusion is particularly compelling when the condition requiring an agricultural conservation easement doesn't specify where the easement must be located. While I believe the question would be closer if the location of the easement were specified, I also believe it could still reasonably be concluded that the condition does not "directly regulate" land use.

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similar reasoning supports the conclusion that the condition requiring dedication of an agricultural conservation easement does not constitute a "direct regulation" of land use.

Turning now to the easement itself,¹⁰ recall the discussion above concerning some typical hallmarks of land use regulations; recall also the examples of laws and other actions that, while limiting land use, do not constitute direct regulations of land use. In my opinion the same conclusions can be reached about easements.

Furthermore, while an agricultural conservation easement may be written to specify uses of the "conserved land"¹¹ which are inconsistent with the easement, in my view this does not "directly regulate" land use because it simply does not "regulate" the land use at all. An easement is an interest in real property, not a regulation; while it also has some hallmarks of a contractual relationship, that too is not the same as a land use regulation. To further illustrate this point, while utility and road easements also restrict the use of land, they are generally not considered land use regulations; in my view, similar conclusions can be reached regarding agricultural conservation easements.

Thus, while reasonable minds may differ, in my opinion it is reasonable to conclude that a LAFCO condition requiring the acquisition and dedication of an agricultural conservation easement does not constitute a direct regulation of land use, and therefore

¹⁰ I believe it is noteworthy that the limitation contained in §§56375 and 56844 only concerns terms which are imposed as "conditions" of approval---it does not purport to restrict the mechanisms by which the conditions are subsequently satisfied. Since it is not at all clear that the limitation even applies to the mechanisms used to satisfy conditions imposed by LAFCO, I believe that it could reasonably be concluded that the limitation does not apply to the easement itself. However, even assuming *arguendo* that the limitation extends to the mechanisms used to satisfy LAFCO conditions, in my opinion it is still reasonable to conclude that the agricultural conservation easement does not constitute a direct regulation of land use.

¹¹ The term "conserved land" refers to the real property which has an agricultural conservation easement placed on it, typically by the landowner's voluntary dedication of the easement.

is not limited by §§56375 and 56844.¹²

C. LAFCO Designation of Grantees

Turning now to the question of whether LAFCO may designate the grantee(s) of the agricultural conservation easement which it has required as a condition of approval, I would first note that the analysis set forth above is not affected by the identity of the grantee(s); that is, the above analysis regarding LAFCO authority and the "direct regulation" of land use is either correct or incorrect, but it doesn't depend upon the identity of the grantee(s). However, if LAFCO imposes the condition I believe that it clearly has the authority to specify the grantee(s).

As noted above, §56844(h) expressly authorizes a LAFCO to condition approval of a reorganization proposal upon "the acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal"; while this does not expressly state that a LAFCO may designate the parties to a "transfer" of property, in my opinion that authority is necessarily implicit because the grant of authority often would be difficult to exercise unless a LAFCO could specify the grantee(s).

For example, requiring that a county transfer its interests in county roads as condition of approving annexation of the underlying land to a city would be difficult to understand unless the condition also specified who would receive the county's interests in the roads (e.g., the annexing city? the State? the abutting landowners?); similarly, a condition that a county transfer a building (eg, upon incorporation of a city which included the building within its limits) could also be expected to specify who would receive the building. In many of these instances (eg, roads and utilities), the sole interest being transferred is an easement, because the transferring party often does not own the underlying land. Thus, in my opinion §56844(h) must be construed to authorize a LAFCO to designate the grantee(s) of the interest being transferred pursuant to a condition imposed pursuant to that Section.

¹² However, I would point out that if one were to accept the contrary conclusion, then it would seem to follow that such a condition could only be imposed by an agency having land use authority over the property which would be subject to the easement; in the case of agricultural conservation easements in Yolo County, this generally would be the County of Yolo rather than a city, because most agricultural land in this County is not within any city limits.

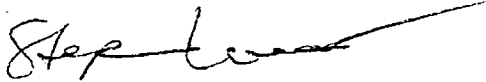
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Authority to designate the grantee(s) also flows from §56844(v), which provides that a LAFCO's permissible conditions include "any other matters necessary or incidental to any of the terms and conditions specified in this section." As just noted, designating the grantee(s) of the interest being transferred in accordance with a condition imposed pursuant to §56844(h) is certainly incidental, and perhaps necessary, to effectively carrying out the condition. Accordingly, in my opinion specifying the grantee(s) is also authorized by §56844(v).

Thus, in my opinion §56844 authorizes a LAFCO to designate the grantee(s) of a property interest being transferred pursuant to a condition imposed pursuant to that Section, including the grantee(s) of an agricultural conservation easement.

I believe that this adequately responds to your inquiries. If you have any questions or would like to discuss this matter further, please don't hesitate to contact me.

Very truly yours,



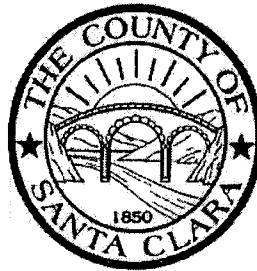
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MEMORANDUM

TO: Honorable LAFCO Commissioners
Neelima Palacherla, Executive Officer
Local Agency Formation Commission of Santa Clara County

FROM: *Ann Miller Ravel*
Ann Miller Ravel, County Counsel
Robert Campbell, Assistant County Counsel *pec*
Kathy Kretchmer, Deputy County Counsel *KK*

RE: Authority to require mitigation for impacts due to loss of agricultural land

DATE: November 30, 2006

OPINION REQUESTED

You requested an opinion from this office on the following question: Does the Local Agency Formation Commission of Santa Clara County ("LAFCO") have the authority to adopt policies that establish minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural land?

CONCLUSION

The plain language of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the "Act") clearly gives LAFCO the authority to condition approvals on the provision of mitigation for the loss of or impact to agricultural land. The Act also requires LAFCO to establish written policies and procedures. Policies that establish minimum criteria and standards for acceptable mitigation are within this authority.

BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq, "Act") establishes a local agency formation commission in each county to provide for "planned, well-ordered, efficient urban development

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patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns". Section 56300¹. The primary function of a commission is to "review and approve or disapprove with or without amendment , wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission." Section 56375(a). The commission is empowered to adopt written policies, procedures and standards for the evaluation of proposals. Section 56375(g). The commission also establishes spheres of influence and urban service areas, and is authorized to approve amendments wholly, partially or conditionally. Sections 56426 and 56428(e). The Act is the sole and exclusive authority for making changes in local government reorganization. Section 56100. The Act clearly establishes that a commission has jurisdiction over boundary changes, is to adopt written policies to guide its decision making authority and is authorized to condition its decisions.

LAFCO has established written policies and procedures which can be found on the LAFCO website at www.santaclara.lafco.ca.gov. Existing policies governing the expansion of urban service areas discourage expansions which include agricultural or other open space land unless, among other things, it is shown why the expansion is necessary and how the agricultural status of the land will be protected. If the agricultural status of the land is not protected, the current policies require an explanation of why the inclusion of agricultural land is necessary and how the loss will be mitigated. Examples of mitigation measures are provided. To provide further clarification of these existing policies, LAFCO is proposing minimum criteria and standards for providing mitigation for LAFCO proposals involving agricultural lands.

It has been suggested that LAFCO does not have the authority to require mitigation for the loss of agricultural lands. Arguments have been presented that LAFCO lacks the police powers necessary to regulate and impose mitigation measures, that the proposed mitigation is a direct regulation of land use, and that the policies are inconsistent with the role of LAFCO as a responsible agency under the California Environmental Quality Act (CEQA). You have requested our opinion on the legality of the policies. This memorandum outlines the statutory powers granted to LAFCO and concludes that the policies are consistent with those powers and therefore valid.

DISCUSSION

LAFCO is statutorily authorized to preserve prime agricultural land

The preservation of prime agricultural land is among the statutory purposes of LAFCO.

¹All statutory citations will be to the Government Code unless otherwise specified.

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Section 56301. The Commission of Local Governance for the 21st Century, a Commission established in 1997 by AB 1484 to assess governance issues and make appropriate recommendations, and which directed special attention to the Local Government Reorganization Act, issued a Report in January, 2000 entitled *Growth Within Bounds*. The Report identifies the permanent loss of agricultural lands as perhaps the most far-reaching effect of urban/suburban sprawl. *Growth Within Bounds* also recognizes the importance of regional approaches in addressing urban growth. LAFCOs are currently the only bodies empowered by the State to consider general governance powers beyond an individual local government jurisdiction. The Report finds that most LAFCOs have agricultural policies, though the nature and rigor of the policies vary greatly. The Report further finds the efforts adopted by LAFCOs commendable and encourages all LAFCOs to adopt strong policies regarding the conversion of agricultural lands. Based on the findings and recommendations of *Growth Within Bounds*, the Local Government Reorganization Act was revised in 2000 to more clearly state the statutory directives including the preservation of agricultural land.

To accomplish the directive to preserve prime agricultural land, LAFCO must assess each proposal for its impact on these lands. Section 56668(e) requires an analysis of the effect of the proposal on maintaining the physical and economic integrity of agricultural lands. To assist in the analysis, current LAFCO policies require any proposal involving agricultural land to include an explanation of why the inclusion of agricultural land is necessary and how the loss of such lands will be mitigated. The current policies include examples of mitigation measures. LAFCO Urban Service Area Policy #8. These policies were last amended January 1, 2003.

Recognizing that there will be situations where alternatives may not exist for a project to proceed without impacting or causing the loss of agricultural land, LAFCO is proposing augmented policies that provide more specific information about acceptable mitigations for the loss of agricultural land in certain situations. The proposed policies provide a standard by which applicants can ascertain what mitigations will be acceptable to LAFCO where the loss of agricultural land is unavoidable. In order to balance the need for orderly growth and development, the proposed policies allow the applicant to secure acceptable mitigations for the loss/impacts on agricultural land. If the mitigation is secured at the time of the presentation of the project to LAFCO, LAFCO can consider approval of the project without conditions. In the alternative, the policies provide additional time for the applicant to secure appropriate mitigation to the loss of or impact to agricultural land subsequent to LAFCO's consideration of the project. In this case, the project may be approved conditioned on fulfillment of the proposed mitigation.

LAFCO's ability to exercise its powers in a manner that provides planned, well-ordered, efficient urban development patterns while discouraging urban sprawl, preserving agricultural and open space lands, and efficiently providing government services is clear. To achieve this purpose, LAFCO may require mitigation for the loss of agricultural land and may not approve a

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boundary change until the mitigation is provided. The Act states and restates that the Commission is authorized to approve or disapprove projects, with or without conditions. Sections 56325(a), 56426, 56428(e), 56880. Specifically, Section 56886(h) allows for approval to be conditioned on "the acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal." The purchase of agricultural property or an agricultural conservation easement fits within this authorized term and condition.

LAFCO's authority goes beyond commenting as a Responsible Agency under CEQA and allows for requiring appropriate mitigations by Commission action

Letters questioning LAFCO's proposed policies have stated that LAFCO only has the authority to comment on appropriate mitigations through the CEQA process, and has no further authority to impose the mitigations. However, it is the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that provides the authority and procedure for LAFCO's approval of local agency boundary changes. Section 56100. LAFCO's role in commenting on the environmental documentation is only one step in LAFCO's consideration of the project.

Any action of LAFCO must be completed in compliance with CEQA. LAFCO will typically be the responsible agency reviewing the environmental documentation. As a responsible agency, LAFCO will comment on the environmental documentation circulated by the lead agency and will make sure the analysis conforms to the LAFCO's policies and mandates. The environmental documentation must be considered by LAFCO when it reviews the proposal. CEQA Guidelines Section 15096(a) states: "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved." Guidelines Section 15096(g)(2) further provides that "when an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." So LAFCO must consider and may impose mitigations consistent with its own policies when approving projects coming before it.

LAFCO's consideration of mitigations for the loss of agricultural lands is not a direct regulation of land use

A commission is prohibited from imposing any conditions that would directly regulate "land use density or intensity, property development, or subdivision requirements." Section 56375. However, the requirement to provide adequate mitigation for the loss of or impacts to agricultural land is not a direct regulation of land use, land use density or intensity, or subdivision requirements. It is not an exercise of police powers but an exercise of the authority

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granted in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. It is a means to allow approval of projects that result in the loss of agricultural land. It is the setting of a standard for what LAFCO considers adequate mitigation for the loss of agricultural land. The requirement for mitigation has long been in the LAFCO policies. Through these proposed augmented policies, LAFCO is clarifying what will be considered appropriate mitigation for the loss of agricultural land. What LAFCO is requiring is a showing that the loss of agricultural land is being offset by the preservation of agricultural land elsewhere. LAFCO is not requiring any changes to existing land use designations. LAFCO is not designating what specific lands are to be preserved. Direct regulation of land use occurs through the adoption of general plans or specific plans, zoning designations and subdivision requirements. LAFCO is not requiring any of this. The mitigation requirement is not a direct regulation of land use. What LAFCO is requiring is a showing that the loss or impact to agricultural land is offset by the preservation of agriculture land elsewhere.

It is important to keep in mind that LAFCO actions by their very nature impact land use. *Growth Within Bounds* recognizes that LAFCO actions are “a key step in the process which results in major land-use change through the approval or disapproval of annexations and incorporations.” The determination of an urban service area may encourage the development of land within the designated boundary, and discourage development outside of the boundary. As another example, the approval of an out-of-agency service agreement may allow for the development or continued use of a particular piece of property. Indeed, the Act also directs that land area and land use are factors to be considered in review of a proposal. Section 56668(a). Additionally, there is the provision within the Act where LAFCO is directed to require a city to prezone the area to be annexed as a condition of annexation. Section 56375. The Act indicates that LAFCO is not allowed to specify how, or in what manner, the territory is prezoned. These examples demonstrate that there is no question that LAFCO actions influence land use. But the proposed requirement of providing mitigation for the loss of agricultural land by the preservation of other existing agricultural land does not directly regulate land use.

CONCLUSION

In conclusion, the State’s interest in preserving agricultural land is of compelling importance and is one of LAFCO’s primary purposes. LAFCO, through the adoption of agricultural mitigation policies, is establishing standards for acceptable mitigation. Compliance with these standards will allow the approval of projects that otherwise may be denied based on their impacts. The mitigation standard is just that, a standard of what mitigation will be deemed acceptable. It is not a direct regulation of land use. The plain language of the statute gives LAFCO the authority to condition boundary change approvals on the provision of mitigation for the loss of or impact to agricultural land.