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March 9, 2016 (Agenda)

March 9, 2016  
 Agenda Item 13

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

**LAFCO Agricultural & Open Space Preservation Policy**

Dear Commissioners:

This is a report from LAFCO’s Policies & Procedures Committee (“Committee”) relating to the Commission’s ongoing discussion regarding a LAFCO Agricultural & Open Space Preservation Policy (AOSPP). The LAFCO Executive Officer has worked closely with the Committee on the issues discussed below and concurs with the Committee’s recommendations.

**BACKGROUND/DISCUSSION**

Development of a LAFCO AOSPP was identified years ago as part of the Commission’s ongoing efforts to update its Policies & Procedures. The discussion was elevated in March 2015, at which time the Committee presented a report to the Commission that included a summary of relevant LAFCO statutes and a collection of LAFCO policies and procedures representing 18 different LAFCOs from around the State.

In July 2015, LAFCO hosted an Agricultural & Open Space Preservation Workshop to engage stakeholders and begin a conversation as to whether or not LAFCO should develop a local AOSPP; and if so, what the Contra Costa LAFCO policy should address.

The conversation continued throughout the summer and fall. The Committee and County GIS presented series of maps depicting prime agricultural soil, important farmland, land covered under Williamson Act land contracts, parks and protected open space areas, areas with and without urban services, urban growth boundaries, and related features. The maps were intended to show important agricultural and open space areas that could potentially be at risk.

Subsequently, the Commission directed the Committee to reach out to various local agency groups to gauge their level of interest in a LAFCO AOSPP. In October and November, the Committee reported on its meetings with these groups, including the Contra Costa Transportation Authority (CCTA), Contra Costa Public Managers Association (PMA), County/City Planning Directors (CCPD), and the Contra Costa Special Districts (CCSDA). Through these meetings, we learned that the groups are generally interested in a LAFCO AOSPP and wish to be kept apprised of LAFCO’s progress.

Throughout the process, LAFCO has received input from agriculture, building, environmental, farming, local government and other interest groups, along with members of the general public.

In November, the Commission directed the Committee to draft guidelines relating to agriculture and open space preservation that focus on the LAFCO application requirements and procedures.

In January 2016, the Committee presented proposed revisions to the Questionnaire for Amending a Sphere of Influence (SOI), Questionnaire for Annexations, Detachments and Reorganizations, and Procedures for Processing Boundary Changes. The Commission agreed with the proposed revisions, and directed the Committee to draft an AOSPP and discuss the draft policy with the various local agency groups (i.e., CCTA, PMA, CCPD, CCSDA). Meetings with these groups are scheduled in March and April.

### **DRAFT AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY**

At this time, the Committee is pleased to present to the Commission the draft LAFCO Agricultural & Open Space Preservation Policy (attached). Based on the Commission's prior direction, the draft policy complements the recent updates to the LAFCO questionnaires and procedures, which now include an agricultural and open space impact analysis.

The purpose of the policy is twofold: 1) to provide guidance to the applicant on how to assess the impacts of LAFCO proposals on agricultural and open space and to explain how the proposal intends to mitigate those impacts; and 2) to provide a framework for LAFCO to evaluate and process, in a consistent manner, LAFCO proposals that involve or impact agricultural and/or open space lands.

The draft policy discusses LAFCO's authority, and provides definitions, goals, policies and guidelines.

As directed by the Commission, the Committee will share the draft policy with the local agency groups. At this time, it would be useful to receive the Commission's initial input.

### **RECOMMENDATIONS:**

Receive report and provide input on the draft policy.

Respectfully submitted,

*Sharon Burke and Don Tatzin*

c: Distribution

Attached - Draft LAFCO Agricultural & Open Space Preservation Policy

## **4.1 DRAFT PRESERVATION OF OPEN SPACE AND AGRICULTURAL LAND**

### **INTRODUCTION**

In accordance with the Cortese Knox Hertzberg Local Government Reorganization Act (“CKH Act”), the State Legislature finds and declares that the preservation of open space and agricultural lands is a “state interest” to be balanced with orderly growth and development (§56001).

Among the purposes of LAFCO are discouraging urban sprawl and preserving open space and agricultural lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands.

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

Contra Costa LAFCO encourages planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of open space and agricultural land (§56300).

When making a decision, LAFCO must consider whether a proposal could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space and agricultural lands to other uses. Further, LAFCO should guide development away from existing open space and agricultural land, and encourage development of existing vacant and non-prime agricultural lands within a local agency’s existing jurisdiction or SOI [§§56377(a) and 56668(d)]. Finally, LAFCO must consider the effect of a proposal on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

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

### **AUTHORITY OF LAFCO**

LAFCO regulates boundary change and other proposals (e.g., SOI changes, extension of extraterritorial services, etc.) through approval or denial. The Commission also has the authority to impose terms and conditions (§§56885 -56890).

While LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions, it may not directly regulate land use: “*A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements*” [§§56375(6), 56886].

### **PURPOSE OF THE POLICY**

The purpose of this policy is twofold: 1) to provide guidance to the applicant on how to assess the impacts of LAFCO proposals on agricultural and open space and to explain how the proposal intends to mitigate those impacts; and 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural and/or open space lands.

## **DEFINITIONS**

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

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

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

(a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.

(b) Land that qualifies for rating 80 through 100 Storie Index Rating.

(c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

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

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

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

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

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

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

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

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

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

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

LAFCO's overriding objectives are to encourage the orderly formation of local government agencies, discourage urban sprawl, and preserve agricultural and open space resources. LAFCO must consider the effects that a proposal will have on agricultural and open space lands. By guiding development toward vacant urban land and away from agricultural and open space land, LAFCO promotes the protection of our valuable agricultural and open space lands. In furtherance of this objective, the CKH Act describes the intent of the legislation with regard to agricultural resources in §56377, which states:

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

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

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

## **GOALS, POLICIES AND GUIDELINES**

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

### **GOALS**

Agriculture is a vital and essential part of the Contra Costa County economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. The following goals will help guide LAFCO's decisions regarding agricultural and open space resources.

**Goal 1.** Minimize the conversion of prime agricultural land to other land uses.

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

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

**Goal 4.** Preserve agricultural lands for continued agriculture uses while balancing the need to ensure orderly development and the efficient provision of services.

**Goal 5.** Strengthen and support the agricultural sector of the economy.

**Goal 6.** Fully consider the impacts a proposal will have on existing agricultural lands.

**Goal 7.** Protect the natural resources and surrounding areas that sustain agriculture in Contra Costa County.

## **POLICIES**

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application or proposal for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act (“proposals”), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space and agricultural lands within those patterns. The following policies support the goals stated above and shall be used by Contra Costa LAFCO when considering a proposal that involves agricultural and/or open space resources:

**Policy 1.** Vacant land within urban areas should be developed before agricultural land is annexed for non-agricultural purposes.

**Policy 2.** Land substantially surrounded by existing jurisdictional boundaries should be annexed before other lands.

**Policy 3.** In general, urban development should be discouraged in agricultural areas. For example, agricultural land should not be annexed for non-agricultural purposes when feasible alternatives exist. Large lot rural development that places pressure on a jurisdiction to provide services and causes agricultural areas to be infeasible for farming is discouraged.

**Policy 4.** The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers should be established to promote this policy.

**Policy 5.** Development near agricultural land should not adversely affect the sustainability of or constrain agricultural operations.

**Policy 6.** Where feasible, and consistent with LAFCO policies, non-prime farmland should be annexed before prime farmland.

**Policy 7.** The Commission will consider feasible mitigation (found in the following guidelines) if a proposal would result in the loss of agricultural land.

**Policy 8.** The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan and SOI areas and that encourage protection of prime agricultural land in a manner that is consistent with this policy.

**Policy 9.** Property owners of agricultural lands adjacent to land that is the subject of a LAFCO proposal shall be notified when an application is submitted to LAFCO.

## **GUIDELINES**

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers and other stakeholders with regard to LAFCO's expectations in reviewing a proposal that involves agricultural resources; and to provide sample mitigation measures to address impacts to agricultural land.

**Guideline 1.** Applications submitted to LAFCO involving agricultural and/or open space resources shall include an Agricultural and Open Space Impact Assessment. At a minimum the following should be addressed:

- a. A proposal must discuss how it balances the State's interest in preserving open space and agricultural lands against the need for orderly development (§56001).
- b. A proposal must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].
- c. A proposal must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).
- d. A proposal must describe how it guides development away from agricultural and/or open space lands.
- e. A proposal must describe how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. A proposal must discuss what measures it contains that will protect the physical and economic integrity of adjacent agricultural and/or open space land uses.

**Guideline 2.** The California Environmental Quality Act (CEQA) analysis for a proposal should evaluate the impacts affecting agricultural and open space resources, and should include an assessment of impacts to agricultural, prime agricultural, and open space lands as defined in the CKH Act. In the absence of an evaluation in the CEQA document, a supplemental agriculture and impact analysis will be required as part of the LAFCO application.

**Guideline 3.** If a proposal involves a loss of prime agricultural lands, property owners, cities, the County, special districts, and other agricultural conservation agencies should work together as early in the process as possible to adequately mitigate the impacts.

**Guideline 4.** The following factors should be considered for an annexation of prime agricultural and/or open space lands:

- a. The applicant should provide a land use inventory of the jurisdiction that indicates the amount of available land within the subject jurisdiction for the proposed land use.
- b. The applicant should provide an evaluation of the effectiveness of proposed measures to mitigate the loss of agricultural lands, and to preserve adjoining lands for agricultural use to prevent their premature conversion to other uses. Examples of such measures include, but are not be limited to:
  1. acquisition and dedication of farmland (e.g., substitution ratio of at least 1:1 for the prime land annexed), development rights, open space and agricultural conservation easements to permanently protect adjacent and other agricultural lands within the county
  2. participation in other development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits)
  3. payment to responsible, recognized government and/or non-profit organization in Contra Costa County for the purpose of preserving agricultural lands; payment should be sufficient to fully fund the acquisition and dedication
  4. establishment of buffers to protect adjacent agricultural operations from the effects of development
  5. other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural land at a minimum 1:1 ratio

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

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

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