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December 14, 2016
Agenda Item 7

December 14, 2016 (Agenda)

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

LAFCO Agricultural & Open Space Preservation Policy

Dear Commissioners:

The Policies and Procedures Committee appreciates the Commission’s decision in November to adopt the Agricultural & Open Space Preservation Policy (AOSPP). A copy of the adopted policy (previously called “Version 1”) including the changes discussed at the November meeting and those outlined in this report is attached.

Upon subsequent review, the Committee requests that the Commission consider two additional modifications to the policy that reflect changes to the draft policy between September and November. These provisions appear as “examples” in Version 3 Guideline 3(b); therefore, an applicant is not required to include them in an application and the Commission is not bound by the examples. The added text simply provides additional ideas for an applicant and LAFCO to consider.

9. *Protect open space lands utilizing science-based impact analysis methods approved by appropriate California State and federal agencies, for example, regarding biological resources.*

10. *Adopt a “Right to Farm” agreement that shall be included in the title of the land and in any subdivision thereof when an application proposes to convert prime agricultural and agricultural lands to other uses and is adjacent to prime agricultural and agricultural lands. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.*

Finally, the Committee recommends deleting a phrase in the first example mitigation in Guideline 3(b).

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

Once again, the Committee appreciates the Commission's prior approval of the AOSPP, and the valuable participation by stakeholders and interested parties throughout the course.

RECOMMENDATIONS: The Committee and LAFCO staff recommend that the Commission approve the refinements as proposed.

Respectfully submitted,

Sharon Burke and Don Tatzin

c: Distribution

Attached – Agricultural & Open Space Preservation Policy - Final Version - Tracked Changes

4.1 ~~DRAFT~~ AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY—VERSION 1

PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AUTHORITY OF LAFCO

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

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

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

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

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

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

PURPOSE OF THE POLICY

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

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GOALS, POLICIES AND GUIDELINES

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

GOALS

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

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

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

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

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

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

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

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

POLICIES

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

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

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

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

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

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

Policy 5. While annexation of prime agricultural ~~lands~~, agricultural ~~lands~~ and open space lands is not prohibited, annexation of these areas for urban development is not encouraged if there are ~~in general,~~

⁵ *In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code 4789.2(i)-65560.b.2.*

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

~~urban development should be discouraged in these areas. For example, agricultural land should not be annexed for non-agricultural or non-open space purposes when~~ feasible alternatives exist that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services, and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

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

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

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

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

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

GUIDELINES

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

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

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

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

Guideline 3. The following factors should be considered for an annexation of prime agricultural, agricultural and/or open space lands:

- a. The applicant should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- b. The applicant should provide an evaluation of the effectiveness of measures proposed by the applicant to mitigate the loss of prime agricultural, agricultural and/or open space lands, and to preserve adjoining lands for prime agricultural, agricultural and/or open space use to prevent their premature conversion to other uses. Examples of such measures include, but are not limited to:
 1. Acquisition or dedication of prime agricultural and agricultural land (e.g., substitution ratio of at least 1:1 for the prime agricultural land annexed), development rights, ~~bringing qualified land into an open space plan~~, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
 2. Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).
 3. Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.
 4. Establishment of buffers of at least 300 feet to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).
 5. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.
 6. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands at a minimum 1:1 ratio.
 7. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.
 8. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.
 9. Protect open space lands utilizing science-based impact analysis methods approved by appropriate California State and federal agencies, for example, regarding biological resources.
 10. Adopt a "Right to Farm" agreement that shall be included in the title of the land and in any subdivision thereof when an application proposes to convert prime agricultural and agricultural lands to other uses and is adjacent to prime agricultural and agricultural lands. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

Guideline 4. Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

Guideline 5. Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

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

Guideline 6. Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

Guideline 7. Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

OBSERVATIONS

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

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

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

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