
**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

AGENDA ITEM No. 7

DATE: **October 8, 2008**

TO: **Fresno Local Agency Formation Commission**

FROM: **Rick Ballantyne, Executive Officer**
 Darrel Schmidt, Deputy Executive Officer
 Ken Price, LAFCo Counsel

SUBJECT: **Fresno LAFCo – Draft Agricultural Preservation Policies**

Background:

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 encourages the preservation of prime agricultural land and open space, charging LAFCo with *“promoting orderly development (with sometimes competing state interests), of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.”* Since Fresno County most often ranks as the number one agricultural county in the United States, balancing the interests of promoting orderly development and preserving open space and prime agricultural lands is of great importance.

Fresno LAFCo's adopted Agricultural policies reflect the State's charge of encouraging annexation and development to take place on “non-prime” agricultural and open space lands located within cities' boundaries and spheres of influence prior to development of “prime” agricultural land and open space outside these boundaries; guiding development away from these lands; and encouraging planned, orderly, and compact urban development. Despite these policies, a significant challenge to preserving these lands remains in that most cities within Fresno County are surrounded by prime agricultural land as well as otherwise productive agricultural land and open space.

For more than a year your staff has been actively working with the Council of Fresno County Governments (COG), its partners (cities and Fresno County), and the American Farmland Trust to develop a “Model Farmland Conservation Program” which seeks to protect and preserve agricultural and open space lands. Independent of the efforts to create this Program, staff and LAFCo Counsel have been in contact with LAFCOs throughout the State to determine what types of agricultural land preservation policies have been enacted in their respective counties.

LAFCo Counsel also provided a memorandum to you regarding LAFCo's legal authority to require “agricultural conservation easements” and other measures to mitigate development related impacts to prime agricultural and open space lands. A copy of this memorandum is attached to this report as Exhibit "A". On May 9, 2008, staff also conducted an Agricultural Land Preservation Workshop attended by representatives of various local jurisdictions and the agriculture and building industries.

At its September 10, 2008 hearing, the Commission directed staff and LAFCo Counsel to pursue drafting Agricultural Land Preservation Policies independent of the efforts currently underway by Fresno COG and its partner cities, Fresno County, and American Farmland Trust.

Definitions:

Defining some of the terms included within this report and the *Draft Agricultural Land Preservation Policies* is necessary to ensure that all affected agencies and the public have a firm understanding of the topics under consideration. These terms are found in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, beginning with Government Code Section 56000.

Section 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.*

Section 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 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 dollars (\$400) per acre for three of the previous five calendar years.

The Cortese-Knox-Hertzberg Act further describes the intent of the legislation with regard to agricultural resources in Government Code Section 56377, which states:

Section 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 nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

(b) Development of existing vacant or nonprime 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.

Government Code Section 56377 has been used by LAFCOs as the basis for developing more specific policies that address local circumstances and conditions.

Many LAFCOs have required that “conservation easements” be used as a means of preserving agricultural lands and open space. A conservation easement is an agreement that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. The easement is signed by the landowner, who is the easement donor, and typically, a land conservancy, who is the party receiving the easement. The conservancy accepts the easement with the understanding that it must enforce the terms of the easement in perpetuity. After the easement is signed, it is recorded and applies to all future owners of the land.

One way to visualize a “conservation easement” is to think of owning land as holding a bundle of sticks. Each one of these sticks represents the landowners’ right to do something with their property. Building a house, extracting minerals, leasing the property, passing it on to heirs, and allowing hunting on the property are all rights of the landowner. A landowner may give up certain development rights, or sticks from the bundle, associated with their property through a document called a “conservation easement”.

Agricultural Preservation Policies:

Staff has listed a number of potential agricultural land preservation policies in Exhibit “B”. In order to inform the Commission of some of the different approaches it might take toward agricultural land preservation, staff has clustered these draft policies into three different “sets” – “A”, “B”, and “C”. Sets “A” and “C” are modeled on policies adopted by Yolo LAFCo and Ventura LAFCo, respectively. Set “B” is modeled on policies considered (though not adopted) by Sacramento LAFCo. Each of these sets of policies take a markedly different approach to meeting the goal of preserving prime agricultural land, ranging from including very specific standards and mitigation measures, to those that are more generalized and less stringent.

Set “A” (Yolo Model) takes a more aggressive stance and includes the following features:

- Encourages local agencies to adopt their own policies protecting prime agricultural land.
- Encourages maintenance of agricultural buffers between cities, including the use of non-binding, but formalized agreements to establish and maintain these buffers.
- Does not allow annexation of prime agricultural lands and other open space areas unless it has been determined there is insufficient marketable and viable nonprime land available within the agency’s jurisdiction, and mitigation measures have been adopted and implemented to protect adjoining lands and other agricultural lands.
- Assesses a proposal’s effect on the physical and economic viability of other agricultural operations.

Most notably, Set “A” requires mitigation in the form of acquisition and dedication of farmland, development rights, agricultural conservation easements, or payment of in-lieu fees to permanently protect adjacent and other prime agricultural lands a minimum 1:1 ratio.

Set “B” (Sacramento Model) is somewhat more generalized than Set “A” in that it includes fewer specifics, but still takes a somewhat aggressive stance in terms of requirements for cities to

include certain considerations in their General Plans and mitigation for converting prime agricultural land, including the following features:

- Requires cities to adopt certain General Plan policies implementing ordinances and programs that address: (1) A demand analysis for build-out within their boundaries; (2) Infill and redevelopment programs and assessment of infill development capacity and goals; and (3) A mitigation and acquisition program for prime agricultural land and open space resources.
- Mitigation of loss of prime agricultural land at a minimum 1:1 off-set ratio and mitigation of lesser quality agricultural lands from ¾:1 to ¼:1 ratios.
- Mitigation options include fee purchase with operations and maintenance endowment, purchase or dedication of easements, and payment of in-lieu fees.
- Encourages mitigation measures to be imposed during the land use entitlement process prior to consideration for approval by LAFCo.

Set “C” (Ventura Model) takes the least aggressive stance toward mitigation measures and includes the fewest specifics of the three presented options, including the following features:

- In order for an application to be deemed complete (and for the Executive Officer to accept an application for filing), the application must include information sufficient to allow impacts on agriculture to be fully assessed. Such assessment is conducted through the environmental analysis conducted for the project (Initial Study or Environmental Impact Report).
- Submitted documents must include identification and analysis of feasible mitigation measures that may eliminate or reduce impacts on agricultural or prime agricultural lands. Analysis should include information as to the adoption or rejection of mitigation measures by the lead agency.
- Potential impacts and feasible mitigation measures are to be based on the land’s current condition without consideration for zoning, land use designation, or adopted growth boundaries.
- Analysis of potential agricultural buffers.

Unlike Sets “A” and “B”, Set “C” does not require mitigation in the form of agricultural conservation easements or other specific measures to permanently protect agricultural land at any ratio. Notably, Set “C” allows the LAFCo Executive Officer to reject an application as incomplete if it does not include adequate analysis of impacts to prime agricultural land. Set “C” appears to make staff the “gatekeeper” of whether or not an application contains sufficient agricultural and open-space mitigation.

Discussion/Analysis:

Staff believes that each of these sets of agricultural land preservation policies include appropriate and viable features that, if adopted, would result in the increased protection and preservation of agricultural land within the County of Fresno. Some features may be more appropriate in our County than others; however, while it may be appropriate to leave certain aspects of these policies open to the Commission’s discretion (such as whether an agency can feasibly annex other, less productive land rather than prime agricultural land), staff believes it is also appropriate to include certain specifics, such as mitigation for converted land at a 1:1 ratio so that agencies and the public can more easily calculate potential costs associated with a proposal at the outset of the process.

Staff also believes it is appropriate to require cities to adopt policies for their respective General Plans, which would address concerns related to conversion of prime agricultural land and which would appropriately mitigate such concerns. This is because, as Counsel points out in the attached memorandum (Exhibit "A"), it is undisputed that cities have direct land use authority. In contrast, there is some disagreement as to whether or not LAFCo has the ability to impose certain agricultural and open-space mitigation measures. It should be noted that the current "Model Farmland Conservation Program" being established under the auspices of COG would be an appropriate Program to make recommendations to cities that they include Agricultural Preservation Policies within each of their General Plans and that they be consistent with the future policies adopted through the Model Farmland Conservation Program as well as LAFCO policies.

Furthermore, as the lead agency for California Environmental Quality Act (CEQA) purposes, agricultural impacts should be appropriately identified and mitigated by the local agency. If LAFCo, as the responsible agency, finds that these impacts were not adequately addressed, then it may require that certain additional CEQA work be completed, which may result in significant delays of a project, and may result in substantial additional cost to the applicant and potentially LAFCo. If cities include such policies in their General Plans, there will be less confusion and uncertainty concerning the costs and ultimate viability of a project at the outset.

Staff is aware of the great challenges associated with preserving agricultural and open space lands, especially when it is apparent that most of our cities are surrounded by excellent quality soils and there will continue to be pressure to designate and develop these lands for urban use. Fresno LAFCo is aware of the concerns of local stakeholders, including developers, farmers, and others, that have challenged policies in other counties, which they deem to be unreasonable.

The on-going efforts of the "Model Farmland Conservation Program" are nearing completion and it is expected that recommended actions will be presented before the COG Policy Board by December of this year. Such recommendations will be considered by each of the 15 cities and the County of Fresno. While LAFCo may adopt separate distinctive policies apart from the Cities and County regarding agriculture and open-space mitigation, staff believes it is appropriate to at least consider such policies prior to adoption of LAFCo's policies.

Recommended Actions:

1. Provide staff direction on which potential Agricultural Preservation Policies the Commission believes should be included within its *Policies and Procedures*, refining such policies as appropriate.
2. Direct staff to circulate its "Draft" Policies to all interested parties (Fresno County, the fifteen cities, Fresno COG, American Farmland Trust, the Fresno County Agricultural Commissioner, the Fresno County Farm Bureau, the Building Industry Association, etc.)
3. Continue consideration of the Agricultural Preservation Policies to its January, 2009 meeting to allow consideration of Model Farmland Conservation Program recommendations and comments received from interested parties as appropriate.

Exhibit “A”

Kenneth J. Price
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MEMORANDUM

To: Fresno LAFCo Commissioners
Mr. Rick Ballantyne, LAFCo Executive Officer

From: Kenneth J. Price
Baker Manock & Jensen, PC

Re: **AGENDA ITEM NO. 18(A)**: LAFCo’s Legal Authority to Adopt Agricultural and Open-Space Mitigation Policies

Date: November 1, 2007

Question

Does the Fresno Local Agency Formation Commission (“LAFCo” or the “Commission”) have the authority to condition its approval of a change of organization or reorganization proposal on agricultural and open-space mitigation?

Short Answer

Probably. There is no consensus among LAFCOs around the State that the Commission may impose conditions to mitigate the loss of prime agricultural land and open-space. While LAFCo’s enabling statute does not contain simple, direct language authorizing such a condition, the statute expressly authorizes the Commission to impose conditions, affect interests in land, and, most importantly, to preserve prime agricultural land and open-space.

LAFCo is prohibited from directly regulating the use of land. No court has settled the question regarding whether or not such a condition constitutes a direct land use regulation. My review of the law indicates that it is most likely *not* such a regulation. It is clear, however, that the County and cities *do* have authority to regulate land use. Therefore, as discussed below, LAFCo may want to consider working with local governmental agencies to achieve the same result. Additionally, the Commission may want to conduct a workshop to examine the need for such a policy and to consider the best way to achieve agricultural and open-space mitigation.

Background

This memorandum is the first step in a multilayered process to determine if and what kind of policy LAFCo would like to develop to mitigate the impact of development on prime agricultural lands and open-space. Like other LAFCos around California, Fresno LAFCo has expressed concern regarding the impact of urbanized development on prime agricultural lands and open-space. Specifically, you have inquired about your ability to condition approval of annexations and other various changes of organization and reorganization upon certain mitigation, such as an applicant's acquisition of conservation easements. Such easements are designed to permanently restrict the use of the land.

LAFCo was created, in part, to preserve agricultural lands and open-space. Its enabling legislation, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (hereinafter, the "LAFCo Law"), expressly charges the Commission with "discouraging urban sprawl, preserving open-space, and prime agricultural lands . . ." (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, in reviewing proposals "which could reasonably expect to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses," the LAFCo Law mandates that the Commission adopt policies that guide development away "from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area." (Gov. Code §56377.)

LAFCo's *Policies, Standards and Procedures Manual*, revised on February 13, 2004, further reflects its consideration of open-space and prime agricultural land by indicating that "[d]evelopment of existing non open-space, and non-prime agricultural land within an agency's boundaries is encouraged prior to further annexation and development." (Fresno LAFCo Policies, Standards and Procedures Manual §103-02.)

Mitigation Policies

LAFCos in other counties have implemented various mitigation policies. By way of example, in Yolo County, proposals involving the conversion of prime agricultural lands require (1) the acquisition and transfer of ownership of agricultural land to a qualified agricultural easement holder for permanent protection of the agricultural lands; (2) the acquisition and transfer of agricultural conservation easements to a qualified agricultural conservation easement holder; or (3) the payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund either (i) the acquisition of prime farmland encumbered by an easement or (ii) the cost of administering, managing, monitoring, and enforcing the easement. If the mitigation includes the acquisition of farmland or a conservation easement, the policy requires that the applicant encumber one acre with an easement for every one acre of prime farmland converted for development (a 1:1 ratio).

Again, Yolo County's policy is merely an example of an agricultural land mitigation policy. LAFCo may choose to consider other proposals if the Commission decides to draft its own policy.

LAFCo's Authority To Impose Conditions

LAFCo may condition its approval of changes of organization and reorganization. It 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(a).) LAFCo is a quasi-legislative body and its authority to condition its approval is broadly construed. Specifically, LAFCOs may make any additions or deletions to a proposal so long as such revisions do not materially alter the general nature of the proposal. (*Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com'n* (1989) 208 Cal.App.3d 753, 759.)

The LAFCo Law does contain certain limits to LAFCo's power to condition approval of an application. Specifically, Government Code section 56886 states that "[a]ny change of organization or reorganization may provide for, or be subject to one or more of the following conditions" and then lists out numerous allowable conditions. The same section provides that ". . . none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirement . . ." (Gov. Code §56886.) A similar limitation is found in Government Code section 56375(a)(3), which discusses the Commission's powers. This section states that "a commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements."

The LAFCo Law contains language both affirming and prohibiting various conditions. For example, Government Code section 56376 states that the Commission shall not impose a condition for the provision of services by an annexing city to an area that has been placed with that city's sphere of influence, unless that condition would "mitigate" the effects which are a direct result of the annexation. Therefore, this section precludes certain conditions unless they are imposed to mitigate the direct affects of the annexation.

The LAFCo Law does not contain simple, direct language authorizing the Commission to impose, as a condition of approval, mitigation of agricultural lands. No court has analyzed the issue and determined that LAFCo either has or does not have the authority to require such a condition. Furthermore, our research reveals that no court has ever made the determination that LAFCo's imposition of a conservation easement is an implied power of the LAFCo Law.

Therefore, the Commission should consider that if it were to condition its approval on such mitigation, there could be a challenge to such an action. Without case law interpreting such an action, it is very difficult to know whether or not such a policy would be overturned by a court.

Direct Regulation of Land Use

The question is whether or not a condition requiring an applicant to encumber property with a conservation easement as mitigation for the loss of agricultural lands or open-space constitutes a direct land use regulation. The LAFCo law does not state what constitutes a direct land use regulation and I am unaware of any case law interpreting this provision of the LAFCo Law.

From a strictly regulatory perspective, direct land use regulations are implemented through the adoption and amendment of general and specific plans, and zoning codes. (1 Lindgren & Mattas, Cal. Land Use Practice (2006) Overview §1.20, p. 16 citing Gov. Code §§65000-66103.) Such regulations generally specify how a particular area may or may not be used. For example, when adopting land use ordinances, local agencies divide land into zones, and specify which areas may be used for certain purposes. (*Id.* at §4.1, p. 120.)

Attorneys representing developer interests who have commented that LAFCOs do not have the authority to impose such mitigation conditions state that conservation easements, which permanently encumber the use of land, would constitute a direct regulation on the use of land. This is because the land would be permanently used for agricultural and open-space purposes. (Letter to Santa Clara LAFCo Executive Officer Neelima Palacherla from Ann Mudge of Morrison & Foerster, LLP representing Coyote Housing Group and the Home Builders of Northern California; Letter to Sacramento LAFCo Chair Christopher Tooker from Gregory D. Thatch of the Law Offices of Gregory D. Thatch representing developer Reynen and Bardis.)

However, I believe that the LAFCo Law's authorization for the Commission to impose conditions, combined with its broad mandate to preserve open-space and prime agricultural lands, weighs heavily in favor of the notion that the Commission has the authority to impose mitigation. As mentioned, Government Code section 56375(a) authorizes LAFCo to review and conditionally approve various proposals. Furthermore, LAFCo is given broad authority to effectuate such conditions by affecting specific parcels. Government Code section 56886(h) states that LAFCo may condition approval upon the "acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal." A conservation easement, by its very nature, constitutes an interest in real property.

Government Code sections 56375(a)(3) and 56886(a) state that LAFCOs may not directly regulate land use. The word *directly* appears to serve as a qualifier. For example, Government Code section 56375(a)(3) also states that the Commission shall "require, as a

condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan." If LAFCo specified the zoning designation for a property, which is expressly prohibited by statute, that would be a direct land use regulation. In fact, just about every decision made by LAFCo inherently and indirectly affects the land. LAFCo routinely considers and approves annexations into various jurisdictions, which is fundamental to ensuring orderly development. (Gov. Code §§56375(a); 56001 *et seq.*)

A Split Among LAFCOs

There is division among LAFCOs in California as to whether or not the commission has the authority to impose conditions requiring the applicant to encumber prime agricultural lands and open-space with conservation easements if such an applicant is seeking to develop on other prime agricultural lands.

Ventura LAFCo, upon the advice of its County Counsel, has determined that it may not impose conditions to require applicants to encumber certain agricultural lands to create buffers (or set backs) to protect nearby adjacent lands. Its legal counsel has stated that to do so would constitute a direct land use regulation. However, as I understand it, Ventura County considered mandating specific buffers and territory which would be encumbered by such easements. Similar to Ventura, Sacramento LAFCo, despite a contrary opinion by its Counsel, recently voted not to implement an advisory (rather than a mandatory) policy encouraging the applicant to dedicate land to agricultural preserves.

Conversely, Yolo County has adopted a policy that annexation of prime agricultural lands shall not be approved unless the applicant institutes certain mitigation, with certain exceptions, "by acquiring and dedicating farmland, development rights, and agricultural conservation easements to permanently protect adjacent and other agricultural lands within the County." (Yolo LAFCO Agricultural Conservation Policy, Section IV(F)(1)(a).) In lieu of encumbering such lands, LAFCo may also "require the payment of fees that are sufficient to fully fund the acquisition and maintenance of such farmland, development rights or easements." (*Id.* at Section IV(F)(1)(b).)

Similarly, Santa Clara LAFCo's legal counsel has concluded that the LAFCo Law gives the Commission the authority "to condition approvals on the provision of mitigation for the loss of or impact to agricultural land." Furthermore, Santa Clara's counsel has stated the policies with "minimum criteria and standards for acceptable mitigation are within its authority." (Memo to Santa Clara LAFCo Commissioners from Ann Miller Ravel, Robert Campbell, and Kathy Kretchmer dated November 30, 2006.)

LAFCo Coordination With Counties and Cities

There is no question that counties and cities have the authority to impose land use regulations conferred upon them by their “police power” to make and enforce ordinance and regulations not in conflict with general laws. (Cal. Const. Art. XI, Section 7.) Certainly, courts have recognized that counties and cities may impose land use regulations. (*Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582.) LAFCo may want to work with the County of Fresno and/or the cities to implement a joint agricultural mitigation policy. Such an effort would reduce the risk of a legal challenge to LAFCo than if it unilaterally imposed mitigation conditions.

For example, the County could withhold its support of any annexation that contemplates property development on prime agricultural lands without some type of acceptable mitigation. Additionally, LAFCo could refuse to certify an application for a change of organization or reorganization as complete unless the County’s policy is satisfied.

The Role of CEQA

Some opponents have stated that LAFCo has only the authority to comment on, rather than implement, mitigation through the California Environmental Quality Act (“CEQA”) process. However, CEQA authorizes the Commission to request certain mitigation consistent with the LAFCo Law.

As you know, LAFCo’s decisions are subject to the CEQA (*Bozung v. Local Agency Formation Com’m* (1975) 13 Cal.3d 263, 266.) CEQA, among other things, requires governmental agencies to consider the environmental consequences of their actions before approving discretionary projects. (Pub. Resources Code §21000 *et seq.*)

Typically, the applicant for a change of organization serves as the *lead* agency under CEQA. The lead agency may approve a project if (1) changes or alterations have been required in the project to mitigate significant impacts; (2) the responsibility for such changes is within the jurisdiction of another agency; and (3) economic, social, or other considerations make the mitigation measures or project alternatives infeasible. (Pub. Resources Code §21081; 14 Cal. Code Regs. 15091-15094.)

LAFCo, however, is usually a *responsible* agency under CEQA. (Pub. Resources Code §21069.) As most of your staff reports point out, LAFCo, as the responsible agency, must consider the information contained in the environmental impact report or negative declaration prepared by the lead agency and make its own findings and conclusions regarding the information contained in the environmental document. LAFCo must make findings regarding mitigation and alternatives for impacts related to the part of the project it decides to carry out or approve. (14 Cal. Code Regs 15096(g)-(h).) Given LAFCo’s authority to condition its approval

discussed above, it appears that LAFCo may impose mitigation consistent with its own policies and the LAFCo Law when approving projects. Therefore, if the LAFCo Law authorizes such mitigation, LAFCo is within its purview to impose such a requirement as the responsible agency.

Next Steps

The Commission may want to consider taking the following steps, in sequential order:

(A) *Ag Mitigation Workshop*: Mr. Ballantyne has indicated his desire to hold a workshop regarding this issue. Speakers at such a workshop could include executive officers of LAFCOs from such counties as Ventura, Yolo, Sacramento, and Santa Clara counties to discuss their experiences in considering and, in each case, either adopting or rejecting such policies.

(B) *Work With The County and Cities*: As mentioned, the County and cities unquestionably have authority to implement regulations on the use of land. LAFCo's best option may be to team up with the County and, depending on the level of commitment for such a venture, the cities to develop a county-wide approach to mitigating the impacts of development on prime agricultural property.

(C) *Consider an Agricultural Lands Mitigation Policy*: The Commission may instruct staff to develop a mitigation policy that preserves agricultural and open-space. LAFCo, however, is required to provide notice and a hearing before adopting the proposed policy. As mentioned, there is no unanimity regarding LAFCo's ability to condition its approval of changes of organization or reorganizations on agricultural and open-space mitigation. In addition to the lack of consensus about the existence of a mitigation policy, there is no consistency between the policies considered and adopted by LAFCo's around the State. The original proposal considered by Ventura County LAFCo required CEQA documents to include an analysis of the feasibility of imposing an agricultural buffer. In contrast, Yolo County's agricultural mitigation requires the acquisition and dedication of farmland, development rights, and agricultural conservation easements to protect lands adjacent to existing farmlands. The Yolo policy also requires that the land used to mitigate the loss of prime farmland must also be prime farmland.

The stronger the policy, the more likely a court would conclude that such a policy is really an impermissible land use regulation. If and when LAFCo drafts such a policy, the Commission must bear in mind such potential risks and the overall effectiveness of the policy, when determining the breadth of the required mitigation.

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Conclusion

I will work with LAFCo and the Commission staff as you decide whether or not to pursue these steps and develop an agricultural and open-space mitigation policy that meets all legal requirements and LAFCo policies.

DMS: 573977_1

EXHIBIT “B”

DRAFT AGRICULTURAL PRESERVATION POLICIES

Set “A” (Modeled on Yolo LAFCo Agricultural Preservation Policies)

- I. 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 Fresno 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 responsible to the public, while private parties are not. Public agencies are also required to provide services to the public. In addition, a public agency is generally required, by law or policy, to locate its facilities within its boundaries, while a private party has no such constraints.

Public agencies are also generally subject to certain constraints on their ability to raise revenues. Public agencies often experience increases in demand for services that may not 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.

II. 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 and viable non-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 General 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 or non-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 (as described below).
 2. Consideration shall also be given to the land's economic viability for continued agricultural use.
- E. LAFCo may approve a change of organization or reorganization, 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. Consistency with existing planning documents of the affected local agencies, including a service plan of the annexing agency or affected agencies.
 3. 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.
 4. 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.

5. 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 Fresno County Board of Supervisors.

F. Agricultural Mitigation

1. Except as expressly noted in subsection 8 and 9 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, which are 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, which may be periodically updated at the discretion of the Commission.
 - 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:
 - (1) 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.
 - (2) 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 shall 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 any Fresno County agricultural or open-space mitigation 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:
 - (1) Mitigation at a ratio of no less than 2:1 for the loss of prime agricultural soils; or
 - (2) Mitigation at a ratio of no less than 1:1 for the loss of all agricultural lands in the proposal area; or
 - (3) 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. LAFCo requires the use of a Qualified Conservation Easement Holder, as defined by IRC 170(h) and strongly encourages 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 shall 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 Fresno 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.

6. 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 Fresno 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.

7. 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.

8. Mitigation shall not be required for the annexation of less than five (5) acres of land if the Commission finds that the land:
 - a) scores in the fourth tier of the Fresno LAFCo Land Evaluation and Site Assessment (LESA) Model; and
 - b) is "infill" as defined in this Policy; and
 - c) has not been used for active agriculture purposes in the previous 20 years.

III. 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.

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 II(F)(6) of the Fresno 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 Fresno 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 Fresno that would otherwise be threatened, in the reasonably foreseeable future, by development and/or other urban uses.

Set “B” (Modeled on Sacramento LAFCo Draft Agricultural Preservation Policies – these policies were not adopted by Sacramento LAFCo)

LAFCo is required to evaluate Sphere of Influence and reorganization proposals for consistency with an affected city’s applicable policies and adopted General Plan. These factors provide a comprehensive framework for the review of a proposal. The overall focus is to avoid or minimize growth impacts on open space and prime agricultural resources. By placing the emphasis on the LAFCo legislated mandate to preserve these resources, city General Plans should encourage growth consistent with the intent of the legislature. Your Commission reserves the right to modify or deny a proposal if a city has not made a good faith effort at addressing these factors.

PROPOSED OPEN SPACE RESOURCES AND PRIME AGRICULTURAL LAND PRESERVATION POLICIES

Generally, LAFCo would favor a proposal where the city has adopted General Plan policies implementing ordinances and programs that address:

- Demand analysis – timing of buildout and use of existing land inventory
- Habitat preservation as applicable
- Mitigation and acquisition program for prime agricultural and open space resources
- Infill, reuse, and redevelopment programs – level of assessment of infill development capacity and goals
- Smart Growth Principles and Civic Standards for:
 - Transit supportive land uses
 - Efficient density distribution and land use intensities
- Capacity and ability to provide or extend services
- Sustainable water supply
- Performance Standards for meeting Regional Housing Needs Allocations

If an affected agency’s General Plan does not address these policy concerns, the Commission has the authority to modify, conditionally approve, or deny any proposal.

Proposed Specific Standards

I. Open Space and Agricultural Mitigation Policies

Unless otherwise provided in this Policy, the provisions of this Policy shall apply to all proposals requiring approval by the Fresno Local Agency Formation Commission, related to city annexation proposals or out-of-agency service contracts.

1. Where feasible, cities should direct development away from prime agricultural land to non-agricultural land, encouraging logical and efficient growth patterns.
2. Cities should adopt policies that mitigate for the net loss of agricultural/open space land as follows:

(Note: Cities may adopt higher standards. These policies establish the “floor” or minimum standard.)

A. Proposed Mitigation Requirement

<u>Soil Type</u>	<u>Mitigation (acres)</u>
Prime	1:1
Statewide Importance	¾:1
Unique	½:1
Local Importance	¼:1

Mitigation should be based on the net loss of agricultural/open space land. (i.e. if 100 acres are proposed to be annexed, with 20 on-site acres zoned for open space and recreation, mitigation will be required for 80 net acres.)

100 acres (total)
- 20 acres dedicated to Open Space
 = 80 acres to be mitigated

The policies respect that land may have multiple values, as working agricultural landscapes, with open space and habitat resources. In light of this recognition, stacking of mitigation may be considered. For example: A river preserve that included agricultural lands may also provide flood control and habitat values.

B. Mitigation Options:

1. Fee purchase of like land with adequate O&M endowment.
2. Easement purchase/dedication.
3. Payment of in-lieu fees.

C. Where:

Within Fresno County or shared soil setting, proximate to the affected territory if possible, or areas designated to provide regional benefits (e.g. flood control, recreation, habitat conservation, etc.)

D. When Must Mitigation Take Place:

Optimally, mitigation measures will be imposed during the land use entitlement process (prezoning, etc.) prior to LAFCo consideration/approval of annexation.

E. Public Agencies:

Public agencies are exempt, but are encouraged to avoid annexing prime agricultural soils for municipal services such as sewer treatment plants and landfills.

F. Additional Measures:

Any city or the county may adopt and implement more stringent mitigation measures addressing any and all open space and agricultural lands, not just prime agricultural lands.

Set “C” (Modeled on Ventura LAFCo Draft Agricultural Preservation Policies)

1. LAFCO must consider the impacts of proposed organizations, reorganizations, sphere of influence changes, or contracts for the provision of services on agricultural land resources. For an application to be deemed complete, therefore, it must include information sufficient to permit LAFCO to fully consider the impact of such proposed actions on the agricultural lands. To meet its obligations, it is the policy of LAFCO to require that applications and/or proposals contain the following information:
 - 1-1. Impacts on Agricultural Lands: Identification and analysis of potential impacts on agricultural lands as defined by Government Code Section 56016 and prime agricultural lands as defined by Government Code Section 56064. Environmental documents prepared for a project in compliance with CEQA may be deemed to meet this requirement provided that they identify and analyze the impacts on agricultural and prime agricultural lands as defined above.
 - 1-2. Analysis of Feasible Mitigation Measures: Identification and analysis of feasible mitigation measures that may eliminate or reduce impacts on agricultural or prime agricultural lands, as defined by Government Code Sections 56016 and 56064. The analysis should include information as to the adoption or rejection of mitigation measures by a lead agency and any mitigation monitoring plan. The lack of a pre-adopted lead agency agricultural mitigation policy or program does not exempt the applicant from the requirement to supply information addressing these factors. Environmental documents (including a program EIR in the case of tiered EIRs) prepared for a project in compliance with CEQA may be deemed to meet this requirement provided that they identify and analyze feasible mitigation measures that may eliminate or reduce identified potential impacts on agricultural or prime agricultural lands.
 - 1-3. Baseline Conditions: Information addressing potential impacts on agricultural and prime agricultural lands and feasible mitigation measures shall be based on the existing conditions of the lands affected. The current zoning, pre-zoning, general plan land designation of affected land, or its location relative to a locally adopted growth boundaries, shall not excuse an applicant from submitting information and analysis based on the land’s existing condition.
 - 1-4. Agricultural Buffers: Identification and analysis of feasible agricultural buffer zones where the proposal may result in the development of nonagricultural land uses adjacent to land designated as agricultural in the applicable general plan. The analysis should disclose all applicable general plan policies or buffer ordinances, and for those jurisdictions without an agricultural buffer ordinance or general plan policy, an analysis of whether the proposal is consistent with the recommendations of the Ventura County Agricultural Commission’s Office. Environmental documents (including a program EIR in the case of tiered EIRs) prepared for a project in compliance with CEQA may

be deemed to meet this requirement provided that they identify and analyze feasible agricultural buffer zones.