

## MEMORANDUM

DATE: May 23, 2012

TO: LAFCO Commissioners

FROM: Sara Lytle-Pinhey, Assistant Executive Officer

**SUBJECT: CONSIDERATION OF DRAFT AGRICULTURAL PRESERVATION POLICIES**

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### RECOMMENDATION

Staff recommends that the Commission receive public comment regarding Stanislaus LAFCO's Draft Agricultural Preservation Policies and, following discussion, direct staff to prepare necessary revisions for further consideration at a future LAFCO meeting. The Draft Agricultural Preservation Policies are attached as Exhibit "A".

### BACKGROUND

Over the past year and a half, the Commission has discussed the development of agricultural preservation policies, similar to those adopted by other LAFCOs in the state. During this time, Staff has provided background information, policy examples from various LAFCOs, excerpts from relevant State laws, and Stanislaus LAFCO's existing Policies and Procedures. Also during this time, the Commission heard a presentation by the American Farmland Trust and the Mayors' Group provided updates on its efforts to develop a regional growth plan.

A variety of ideas and suggestions were discussed by the Commission and public commenters with regards to the initial drafting of policies for Stanislaus LAFCO. The following is a general summary of suggestions received at prior LAFCO meetings:

- Continue to direct urban growth to cities.
- Provide expectation that applicants address agricultural preservation early in the process (similar to a requirement for a "Plan for Services").
- Promote compact urban development, less consumption of agricultural lands, and more efficient services.
- Urban growth boundaries may or may not satisfy farmland preservation goal and may not be considered mitigation for the purposes of the California Environmental Quality Act (CEQA).
- Public uses should be exempt from the policy.
- Promote smart growth.
- Agricultural buffers could be based on Regional Transportation Plans, General Plans, or areas of regional importance.
- Use at least 1:1 mitigation, similar to the County's Agricultural Element.
- Conservation easements should consist of like or better quality lands.
- Use the Storie Index Rating system to determine soil quality.
- Allow for the ability to consider different preservation strategies based on local circumstances.

At the March 28, 2012 LAFCO meeting, the Commission directed Staff to prepare draft policies for further review. Staff prepared and circulated an initial draft taking into consideration the above suggestions.

### **EXISTING POLICIES**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) charges LAFCO with promoting orderly development, discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. LAFCO must consider the effect that any proposal may have on existing agricultural lands. The Commission's decisions must balance the competing needs for economic opportunities, affordable housing, public safety and the preservation of natural resources. Relevant sections of the Government Code related to agricultural preservation are attached to this report as Exhibit "B".

The Commission's current policies and procedures regarding agricultural preservation reflect State law and encourage planned, orderly, and compact development, as well as development within cities' existing boundaries and spheres of influence prior to development of agricultural land outside these boundaries. (See Exhibit "C" – Excerpts from the Stanislaus LAFCO Policies and Procedures Manual.)

### **PROPOSED POLICIES**

As proposed, the Draft Agricultural Preservation Policies are consistent with the Commission's existing policies and relevant State Law and are intended to more specifically address the preservation of agricultural lands. The definitions used in the Draft Policies for "Agricultural Lands" and "Prime Agricultural Land" are derived from those set forth in the Cortese-Knox-Hertzberg Act.

The Draft Agricultural Preservation Policies are attached as Exhibit "A" to this report. The Draft Policies are applicable to cities, as well as special districts providing urban services (potable water, sewer services) that wish to expand their boundaries or sphere of influence. The Draft Policies are divided into three sections outlining requirements at the time of a sphere of influence application, requirements at the time of annexation, and exceptions to the policies.

At the core of the Draft Policies is the requirement for preparation of a "Plan for Agricultural Preservation". The Plan for Agricultural Preservation is similar to the "Plan for Services" concept, currently required by State law and Commission policies. It provides the Commission with detailed information related to the effects of a proposal on agricultural lands and the strategy selected by the applicant to minimize these effects and preserve agricultural lands. Currently, the Draft Policies do not focus on a single strategy for agricultural preservation (e.g. 1:1 mitigation), but rather, provide a menu of strategies to the applicant.

At the time of application for annexation, the agency must provide further information detailing how it intends to implement its Plan for Agricultural Preservation. This section lists a set of criteria for the Commission to utilize, including whether the proposal demonstrates compact urban growth patterns, efficient use of land and services, and the timeliness and appropriateness of the method to preserve agricultural land. It also sets forth a list of requirements for those proposals utilizing agricultural mitigation lands or in-lieu fees. The Commission retains the discretion to determine the timeliness and appropriateness of the method or strategy proposed by the applicant to preserve agricultural land.

## **COMMENTS RECEIVED**

Staff circulated the Draft Agricultural Preservation Policies to affected agencies and interested parties on April 17, 2012 for their review and comment. A notice was placed in the Modesto Bee and the document was made available on the LAFCO website ([www.stanislauslafco.org](http://www.stanislauslafco.org)). The comment letters received as of May 14, 2012 are attached in full for the Commission's review as Exhibit "D" and include responses from:

- Vance C. Kennedy, Ph.D.
- Modesto Irrigation District
- Oakdale Irrigation District
- Keith Schneider, Keystone Corporation
- City of Patterson
- Craig Moon, Patterson Frozen Foods
- Joe Hollowell
- Edward Thompson, Jr., American Farmland Trust
- Pastor Ronald Youngdale, Good Shepherd Lutheran Church
- City of Ceres

Below are Staff's responses to some common questions as well as requests for clarification and technical changes:

1. *How do the proposed policies compare to the County's Agricultural Element? Can LAFCO adopt a 1:1 mitigation requirement just for residential uses?*

Stanislaus County's Agricultural Element was adopted in 2007 and requires that lands proposing to be re-designated from Agriculture (General Plan or Community Plan designation) to a residential designation be mitigated at a 1:1 ratio. (Proposals for 20 acres or less may satisfy the requirement with in-lieu fees.) Buffer and setback guidelines are included for non-agricultural uses.

The County's Agricultural Element is applicable to lands developing within the unincorporated area of the County, although they encourage the cities to adopt similar policies. The Agricultural Element also encourages LAFCO to "strengthen its policies, standards and procedures for evaluating proposed annexations of agricultural land and proposed expansions of service districts or spheres of influence onto agricultural land to insure resulting urban growth minimizes impacts to adjacent agricultural lands."

LAFCO's Draft Agricultural Preservation Policies are applicable to cities as well as special districts providing urban services (sewer or potable water) that are proposing sphere of influence expansions or annexations that include agricultural lands.

Unlike the County and cities, LAFCO cannot directly regulate land use (Government Code Sections 56375(a)(6) and 56886). Although the Commission can encourage compact growth patterns and efficient use of resources, the cities and County retain land use authority. Staff also interprets this to mean that the Commission cannot condition a project to be developed at specific land use designations or specific densities. Staff's research of other LAFCOs' agricultural policies has found none that base ratios of mitigation on specific land uses (e.g. 1:1 mitigation for residential uses only).

2. Which agricultural preservation strategies are mandatory and which are voluntary? Does an agency have to utilize all the strategies or just 1:1 mitigation?

In their current form, Stanislaus LAFCO's Draft Policies provide a menu of methods or strategies that an agency may present to demonstrate that agricultural preservation has been addressed in a proposal. This approach is intended to support varying methods of agricultural preservation, which may differ from one agency to another. Staff notes that although 1:1 mitigation and in-lieu fees are listed as strategy for consideration, at this time, the Draft Policies do not require the use of a single strategy outright. One or more of the strategies listed in Section A may be selected to demonstrate the goals of agricultural preservation. An agency may wish to utilize this flexibility to apply its own policies in formulating a Plan for Agricultural Preservation.

As an example, City XYZ proposed a 300 acre Sphere of Influence expansion and annexation that includes a mix of uses. City XYZ does not support using 1:1 mitigation or in-lieu fees. The City submits a Plan for Agricultural Preservation demonstrating that they have recently adopted an urban limit line to preserve higher quality soils north of the City. Additionally, the City demonstrates that the proposal uses compact growth patterns, increases their current average density (persons per acre), and converts less agricultural land than originally contemplated.

A concern that was brought up regarding this "menu" approach is that not all of the strategies may be equally effective at reducing the conversion of farmland. The American Farmland Trust, in their comments dated May 11, 2012, suggests establishing substantive evaluation standards that would enable the Commission to evaluate proposals more objectively and determine whether an agency is conserving farmland.

3. How do the proposed policies relate to the Mayors' efforts to develop a Regional Growth Plan?

As a concurrent effort, the Mayors' Regional Growth Plan may complement and enhance LAFCO's Agricultural Preservation Policies. Although not specifically named in the Draft Policies (as there is some uncertainty as to the timing and outcome of the Mayors' efforts), the Commission's ability to consider a long-term growth management plan as part of an agency's "Plan for Agricultural Preservation" is included in Section A-4:

"An adopted, long-term growth management strategy providing an urban limit line that is acceptable to LAFCO."

4. Would the lead agency's CEQA process be affected by the proposed policies? Is a "Plan for Agricultural Preservation" intended to act as mitigation?

The Lead Agency for a proposal to LAFCO would continue to be subject to CEQA requirements. While a selected strategy may reduce the impact to agricultural lands or prevent future harm, the overall net loss of agricultural lands may still be considered a significant impact for the purposes of CEQA. Information provided in the Plan for Agricultural Preservation should be consistent with that provided in the CEQA documentation, particularly with regards to the amount and quality of agricultural land affected by the proposal, consideration of alternatives, and analysis of all feasible mitigations. LAFCO Staff encourages agencies to address the loss of agricultural lands as early in the process as possible.

5. The phrase “premature conversion of agricultural lands” implies that all agricultural lands will eventually be converted to urban uses.

As it is not the intent to imply that all agricultural lands will eventually be converted, Staff would propose an amendment to that portion of the policies to read as follows:

“The Commission has declared its intent to ~~prevent the premature conversion of agricultural land to urban uses by guiding~~ **guide** development away from ~~existing~~ agricultural lands and ~~encouraging~~ **encourage** development of existing vacant lands within an agencies’ boundaries prior to conversion of additional agricultural lands.”

6. Irrigation Districts should be exempt from the proposed policies.

Staff recognizes the concern that the policies could be interpreted to apply to those special districts that are primarily providing irrigation water and are not growth inducing. Staff is hesitant to exempt entire classifications of districts from the Draft Policies, as there are many classifications of districts (including irrigation districts, water districts, community services districts, county service areas, and sanitary districts) that either are currently providers or could potentially become providers of potable water or sewer services. Instead, Staff would suggest adding an exception for those proposals which clearly have no significant impact to agricultural resources (including the example of a water or irrigation district annexing lands for the purposes of providing irrigation water).

Further, Staff would propose a minor clarification to Exception C-1, to ensure that proposals consisting solely of the inclusion of lands owned by a city or special district and used for public uses (e.g. well sites, treatment plants, etc) are also exempt from the policies.

7. Can a city exclude property from a Sphere of Influence without a public hearing?

Any application that includes a modification to a sphere of influence (whether the agency intends to add or remove territory) must occur at a noticed public hearing. LAFCO establishes, amends, and regularly updates spheres of influence to designate territory it believes represents the appropriate and probable future jurisdictional boundary of an affected agency. However, inclusion within an agency’s sphere of influence does not guarantee that the territory will be annexed.

8. Where do the definitions used in the policies come from? Does the definition for “Agricultural Lands” create a loophole for land that has removed from agricultural production to be considered exempt from the policies?

Many of the definitions included in the Draft Policies are quoted directly from State law (the Cortese-Knox-Hertzberg Act). Staff notes in the introductory language that, as used in the Draft Policies, that the use of the term “agricultural lands” refers to both the definition under Government Code 56016 (with the language for *currently* farmed lands) as well as Government Code Section 56064 (which defines “prime agricultural land” and considers lands that meet one of multiple qualifications, including soil type).

Items for Further Discussion

The following are other concerns regarding the Draft Policies that the Commission may wish to discuss and provide direction to Staff regarding:

- a. Should any of the agricultural preservation strategies listed in Section A of the Draft Policies be changed or removed? Does the Commission have a preference based on which strategy may be more effective?
- b. Should Staff incorporate benchmarks and/or more measurable standards into Sections A and B of the Draft Policies?
- c. Are the exceptions listed in Section C of the Draft Policies sufficient?

### **RECOMMENDED ACTIONS**

Staff recommends that following review of the Draft Agricultural Preservation Policies and receipt of comments at the Public Hearing, the Commission consider directing Staff to:

1. Make necessary revisions to the draft policies.
2. Circulate the revisions to agency stakeholders and/or interested parties for public review.
3. Schedule a Public Hearing for a future LAFCO meeting to further consider the Draft Agricultural Preservation Policies.

Attachments: Exhibit A: Draft Agricultural Preservation Policies & Notice of Exemption  
Exhibit B: Government Code Sections Relative to Agricultural Lands  
Exhibit C: Excerpts from Stanislaus LAFCO Policies and Procedures Manual (Amended June 23, 2010) regarding Agricultural and Open-Space  
Exhibit D: Comment Letters Received (as of May 14, 2012)

**EXHIBIT A**

**Draft Agricultural Preservation Policies & Notice  
of Exemption**

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*Stanislaus LAFCO*  
**AGRICULTURAL PRESERVATION POLICIES**

Agriculture is a vital and essential part of the Stanislaus County economy and environment. Accordingly, boundary changes for urban development should only be proposed, evaluated, and approved in a manner which, to the fullest extent feasible, is consistent with the continuing growth and vitality of agriculture within the County.

LAFCO's mission is to discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies. The Commission has declared its intent to prevent the premature conversion of agricultural land to urban uses by guiding development away from existing agricultural lands and encouraging development of existing vacant lands within an agencies' boundaries prior to conversion of additional agricultural lands. Additionally, Government Code Section 56668(e) requires LAFCO to consider "the effect of the proposal on maintaining the physical and economic integrity of agricultural lands."

"Agricultural lands", as defined by Government Code Section 56016, means "land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under crop rotational program, or land enrolled in an agricultural subsidy or set-aside program." As used in this section, "agricultural lands" also includes those lands considered "prime agricultural land", as defined by Government Code Section 56064.

The Commission encourages local agencies to identify the loss of 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 consistent with this Policy, as soon as feasible. Local agencies may also adopt their own agricultural preservation policies, consistent with this Policy, in order to better meet their own circumstances and processes.

The Commission shall consider the following agricultural preservation policies, in addition to its existing goals and policies, as evaluation standards for review of those proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of agricultural land.

A. Sphere of Influence Proposals – Plan for Agricultural Preservation Requirement

For proposals involving the expansion of a sphere of influence for a city or special district providing one or more urban services (i.e. potable water, sewer services), a Plan for Agricultural Preservation must be provided upon application to LAFCO.

The Plan for Agricultural Preservation shall include a detailed analysis of direct and indirect impacts to agricultural resources on the site and surrounding area; a detailed description of the agricultural resources affected; information regarding Williamson Act Lands; a vacant land inventory and absorption study evaluating lands within the existing boundaries of the jurisdiction that could be developed for the same or similar uses; existing and proposed densities (persons per acre); relevant County and City General Plan policies; and an analysis of mitigation measures that could offset impacts. The Plan for Agricultural Preservation shall be consistent with documentation prepared in accordance with the California Environmental Quality Act (CEQA), as prepared by the Lead Agency.

The Plan for Agricultural Preservation shall specify the method or strategy proposed to address the loss of agricultural lands. In evaluating an agency's Plan for Agricultural Preservation, and ultimately the sphere of influence proposal, the Commission will consider the use of the following strategies by the applicant:

1. Removal from the existing sphere of influence of agricultural lands in order to offset a proposed sphere of influence expansion or redirection.
2. An adopted policy or condition requiring mitigation at a ratio of *at least* 1:1 (one acre of agricultural land permanently preserved for every acre converted) by either acquisition of an agricultural conservation easement or payment of in-lieu fees to an established, qualified, mitigation program.
3. A permanent greenbelt or buffer adjacent to the proposal area that has been adopted by the agency and recognized by LAFCO.
4. An adopted, long-term growth management strategy providing an urban limit line that is acceptable to LAFCO.
5. Other adopted policies which meet the goals of agricultural preservation, as determined by the Commission.

**B. Annexation Proposals – Implementation of a Plan for Agricultural Preservation**

Upon application for the annexation of agricultural lands to a city or special district providing one or more urban services (i.e. potable water, sewer services), the applicant shall provide detailed information regarding the implementation of a Plan for Agricultural Preservation for the proposal area. Absent an existing Plan for Agricultural Preservation, the applicant shall prepare said Plan in accordance with those requirements for a sphere of influence expansion.

In evaluating annexation proposals to a city or special district providing one or more urban services (i.e. potable water, sewer services), the Commission will consider each of the following criteria:

1. The proposal's use of compact urban growth patterns, demonstrating the efficient use of land and services, and a reduced impact to agricultural lands. This can be measured by comparing current average density (persons per acre) and the proposed average density of the proposal.
2. The timeliness and appropriateness of the method or strategy proposed by the applicant to preserve agricultural land. In determining the appropriateness of the method or strategy, the Commission retains the discretion to analyze each proposal in the context of constraints and opportunities related to local conditions and circumstances.
3. For those proposals utilizing agricultural mitigation lands or in-lieu fees:
  - a. That the mitigation lands be of equal or better soil quality, have an adequate water supply, and be located within Stanislaus County, proximate to the affected territory or in an area of regional benefit (e.g. a community separator).

- b. That an adopted ordinance or resolution has been submitted by the agency confirming that mitigation has occurred, or requires the applicant to have the mitigation measure in place before the issuance of either a grading permit, building permit, or final map approval for the site.
- c. Land already effectively encumbered by a conservation easement of any nature is not eligible to qualify as agricultural mitigation land.

C. Exceptions

The following applications may be considered exempt from the requirement for a Plan for Agricultural Preservation and its implementation, unless otherwise determined by the Commission:

- 1. Proposals consisting solely of the inclusion of lands owned by the agency and currently used by the agency for public uses (pursuant to Government Code Section 56742).
- 2. Proposals consisting solely of lands which are substantially developed with urban uses and will not have any significant impact to agricultural or open space lands.
- 3. Proposals which serve to create a more logical boundary for the agency by including territory substantially surrounded by existing development.
- 4. Proposals initiated by the Commission that are found to be consistent with the goals and policies of LAFCO and an adopted Municipal Service Review.

**DEFINITIONS**

Agricultural Lands: Land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under crop rotational program, or land enrolled in an agricultural subsidy or set-aside program (Government Code Section 56016).

Agricultural Mitigation Land: Agricultural land encumbered by an agricultural conservation easement or other conservation mechanism acceptable to LAFCO.

Agricultural Preservation Easement: An easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural preservation easement is an interest in land which is less than fee simple. Agricultural preservation easements acquired shall be established in perpetuity (or shall be permanently protected from future development via enforceable deed restriction).

Prime Agricultural Land: 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 the 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 (Government Code Section 56064).

Sphere of Influence: A plan for the probably physical boundaries and service area of a local agency, as determined by the commission (Government Code Section 56076).