



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 28, 2006

Approved

Date

11/28/06

COUNCIL DISTRICT: Citywide

SNI AREA: Citywide

SUBJECT: LAFCO's Revised (10/26/06) Draft Agricultural Mitigation Policies

RECOMMENDATION

Planning staff recommends that the City Council adopt a resolution to authorize the Mayor to execute a letter on behalf of the City Council to the Local Agency Formation Commission of Santa Clara County (LAFCO) transmitting comments of the City on the Draft (revised October 26, 2006) LAFCO Agricultural Mitigation Policies and directing the City Manager to forward such letter to LAFCO and LAFCO's Executive Officer.

OUTCOME

Adoption of the resolution would allow the City Council to formally submit comments in a letter executed by the Mayor on behalf of the Council that the City Manager's office would send to LAFCO and LAFCO's Executive Officer on Council's behalf regarding LAFCO's proposed Agricultural Mitigation Policies (see attached Draft Letter and Revised Draft Policies).

BACKGROUND

On August 14, 2006, LAFCO proposed Draft Agricultural Mitigation Policies for public comment and scheduled a public hearing for October 11, 2006 for LAFCO to consider adoption of the policies. LAFCO held a public workshop to discuss the proposed policies on August 28, 2006. City staff attended the workshop, and the City's Director of Planning, Building and Code Enforcement, in coordination with the City Attorney's Office, sent a letter, dated September 13, 2006 (attached) to LAFCO's Executive Officer, commenting on the initial Draft (8/14/2006) Policies.

At its public hearing on October 11, 2006, LAFCO deferred taking action on the item, but considered the recommendations from a LAFCO staff report and public testimony, which included testimony from City of San Jose Planning staff. LAFCO staff then revised the draft Policies on

October 26, 2006, held a public workshop on November 13, 2006 for the northern portion of the County, which was attended by City of San Jose staff, and scheduled a workshop on November 27, 2006, for the southern portion of the County. The revised draft Agricultural Mitigation Policies, dated October 26, 2006 (Policies) are now scheduled to be considered for adoption by LAFCO at a public hearing on December 13, 2006. To respond to the Policies, City staff has recommended additional comments in a letter for the City Council to consider sending to LAFCO prior to the LAFCO hearing.

ANALYSIS

While staff is supportive of the intent of agricultural mitigation policies, staff has concerns about the proposed LAFCO Policies as currently drafted. Transmittal of formal comments is important given that LAFCO's proposed Policies would affect how the City of San Jose and other local jurisdictions within Santa Clara County could exercise their local land use authority for implementing growth management strategies within a jurisdiction's sphere of influence. City of San Jose staff is concerned that the Policies, as currently proposed by LAFCO, could impinge upon local land use authority and negatively impact the City's ability to manage development in an orderly fashion. Staff is also concerned that the Policies are proposed for adoption by LAFCO without adequate environmental clearance under CEQA. Other jurisdictions in the County of Santa Clara share these concerns and are presenting the Policies to their decision-makers for consideration. For these reasons, City of San Jose staff is bringing forward the Policies for comment by the City Council.

LAFCO states in its proposed Policies that, "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." City of San Jose staff concurs with the intent of this mission statement. However, as currently drafted by LAFCO, the Policies could unintentionally encourage urban sprawl by creating a more costly and burdensome process for development within incorporated City boundaries within a proposed Urban Service Area (USA) expansion, as compared to development in unincorporated areas outside the City's USA. The Policies could therefore lead to inefficient provision of government services, rather than orderly urban development.

For example, based on the City of San Jose's and County of Santa Clara's agreement regarding procedures for City Review of Proposed Land Use Amendments, Exhibit "J": "Summary of Treatment of Unincorporated Areas," (see attachment) a 20-unit residential subdivision could be approved by the County in an unincorporated area of the City's Sphere of Influence with no expansion of the City's Urban Service Area (USA). Such a development would not be subject to LAFCO's proposed Agricultural Mitigation Policies. However, if this same development were proposed to be annexed to the City of San Jose, with a request to expand the City's USA to provide sewer connections and other City services to the development, that development would be subject to LAFCO's proposed Policies.

Most developers would find it less costly and less burdensome to develop the 20-unit residential subdivision in an unincorporated County area. The developer would have far less incentive to develop land close enough to City limits (i.e., within 300 feet as measured along a public street) and be annexed to the City, where this land would have to be replaced at a 1:1 ratio, as compared to development in unincorporated County where no land replacement mitigation would be required.

If, on the other hand, a more modest residential development were proposed on an unincorporated site adjacent to existing urbanized residential development within the City of San Jose, with a proposal for expansion of the City's USA and annexation of the unincorporated site to the City, such a project potentially could trigger agricultural land mitigation requirements under the proposed Policies. If the proposed project included a portion of the site to be set aside for agricultural use, which previously had been fallow, the introduction of the new agricultural use could include practices, such as pesticide applications, and operation of diesel powered machinery, that could negatively impact the health of the adjacent existing residents. The previously fallow land could also have evolved into wetlands or habitat for protected species. The conversion of this land to agricultural use could significantly compromise the biotic value of the site.

Adequate CEQA review, with circulation of the proposed environmental clearance documentation through the State Clearinghouse, is necessary and would also provide a method of informing and coordinating with responsible State agencies.

The above scenarios illustrate some potential unintended consequences of the Policies and indicate that the environmental impacts of the Policies are still not adequately disclosed and addressed under CEQA. The Policies would have impacts not contemplated in the documentation cited by LAFCO to address CEQA: the cited documentation is at least a decade old, and does not address existing conditions as of November 2006. Additionally, the CEQA analysis referred to by LAFCO staff does not in any way disclose, discuss or evaluate the potential for the Policies to drive development into areas where these mitigations would not be required, and the environmental impacts of encouraging development in certain areas over others.

Moreover, LAFCO has not provided a nexus study to justify the proposed requirement of 1:1 mitigation of agricultural land or in-lieu fees for mitigation for projects that would impact, but not result in a loss of prime agricultural land (i.e., projects that would create less than significant impacts under CEQA).

In fact, to date, LAFCO has not documented that it has the authority to require any mitigation. City staff, in consultation with the City Attorney's Office, has concluded that LAFCO has no land use authority under State law and, as a creature of state law, has only those powers delegated to it by the State Legislature. City staff recognizes that LAFCO is mandated to preserve open space and prime agricultural lands, as well as guide development away from existing agricultural lands under California Government Code §56301 and §56377. However, as an entity created by statute, the City understands that LAFCO fulfills its mandates by performing and administering the tasks, duties, and processes set forth for the Commission under the Cortese-Knox-Hertzberg Act of 2000, as amended. City staff is not aware of any independent authority granted to LAFCO under the Cortese-Knox-Hertzberg Act or otherwise to adopt agricultural mitigation policies or requirements to which all municipalities within LAFCO's jurisdiction must adhere.

The proposed Policies could provide to LAFCO the discretion to not consider a new annexation application until agricultural mitigation for a previously submitted annexation is completed. In practice, this could result in pending annexations being delayed for years, with consequences contrary to LAFCO's and the City's mutually agreed upon priorities for orderly growth. For large or long range

projects possibly spanning several decades, this proposed policy may limit or delay the City's ability to move forward with its annexation program.

The Policies are likely to be impractical for many large or long range projects because of how the timing and funding of development entitlements and exactions often occur. The Policies would require that agricultural mitigation be fulfilled within 3 years of an application being conditionally approved by LAFCO. However, LAFCO, typically does not accept the submittal of an application prior to the City approving a pre-zoning. For long term projects, this proposed time limit, even with the opportunity to apply for a one year extension, would create a time line that is too short to be feasible. This is because for large or long range projects, funding is not likely to be available to carry out agricultural mitigation within three or four years of an action requiring LAFCO approval. Consequently, this proposed policy still needs to be reworked to be more flexible with both short and long range projects.

In sum, the Policies require additional clarification and refinement, as well as adequate environmental clearance under CEQA, prior to their adoption. LAFCO's implementation of the suggestions in the attached letter prepared by City staff would help make the Policies more workable.

POLICY ALTERNATIVES

Not Applicable.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Not Applicable. Adoption of the resolution by Council, as recommended by staff, would support the transmittal of comments by the City Council to LAFCO regarding a new set of policies proposed by LAFCO. As the author of these proposed policies, LAFCO has conducted public outreach activities that are described in the "Background" section of this memo. City staff recommends that additional public outreach activities be conducted by LAFCO, as mentioned in the attached letter proposed for Council consideration.

COORDINATION

This memo and the comments provided in the attached letter for Council consideration have been coordinated with the City Attorney's Office.

CEQA

Not a project under CEQA.



Joseph Horwedel
Director, Department of Planning, Building and
Code Enforcement

For questions please contact Laurel Prevetti, Deputy Director of Planning Services, at 535-7901.

Attachments:

1. Draft proposed letter to LAFCO from City of San Jose dated December 12, 2006
2. Revised Draft LAFCO Agricultural Mitigation Policies
3. Letter to LAFCO from Director of Planning dated September 13, 2006
4. City of San Jose's and County of Santa Clara's agreement regarding procedures for City Review of Proposed Land Use Amendments, Exhibit "J": "Summary of Treatment of Unincorporated Areas"

DRAFT

December 12, 2006

Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

RE: Comments on Local Agency Formation Commission of Santa Clara County (LAFCO) Revised Draft (October 26, 2006) Agricultural Mitigation Policies

Dear Chairman Gage and Commissioners:

The City of San Jose appreciates the opportunity to provide comments on LAFCO's Draft Agricultural Mitigation Policies as revised October 26, 2006 (Draft Policies). We support LAFCO's intent of creating policies to protect agricultural uses in Santa Clara County; however, the draft policies are not ready for adoption. This letter provides comments on the Draft Policies, requests additional CEQA analysis, and suggests additional outreach and communication with affected jurisdictions and other stakeholders.

Comments on the Revised Draft Policies

The City of San Jose supports LAFCO's mission, as stated in the Draft Policies, "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." However, the City has concluded that implementation of the Draft Policies will not only fail to achieve this mission, but will, in fact, have unintended consequences that are detrimental to LAFCO's mission.

It is with these concerns in mind that the San Jose City Council offers the following additional comments on the Draft Policies, as well as reiterates the comments provided to you by the City of San Jose's Director of Planning, Building, and Code Enforcement in a letter dated September 13, 2006 (a copy of which is attached for your reference). The City looks forward to continuing the dialogue with LAFCO staff on additional revisions to the Draft Policies so that jurisdictions can effectively work with the Policies and help implement LAFCO's mission.

Additional City comments on the Draft Policies are as follows:

Regarding General Policies,

Item 1) LAFCO's Agricultural Mitigation Policy establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural lands."

The City interprets this policy to apply to all LAFCO proposals involving agricultural lands; however, LAFCO staff has indicated that the policies are intended to apply only to proposals that involve Urban Service Area expansions. The policy text should be revised to state:

“LAFCO's Agricultural Mitigation Policies establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals for Urban Service Area expansions involving agricultural lands.”

Item 2) “LAFCO requires adequate and appropriate agricultural mitigation for all LAFCO applications that impact or result in a loss of prime agricultural lands. Prime agricultural lands are defined in Policy No. 5.”

The City interprets this policy to be vague, as it theoretically could apply to applications that have a beneficial impact, a less than significant impact, or no net loss of prime agricultural lands, therefore raising nexus issues. We suggest that the policy text should be revised to state:

“LAFCO requires that adequate and appropriate agricultural mitigation should be provided for all LAFCO applications that ~~impact or result in a significant net loss of prime agricultural lands.~~ Prime agricultural lands are defined in Policy No. 5 7.”

Items 3 through 6) City of San Jose has no comments on these items.

Item 7) Regarding LAFCO's definition of Prime Agricultural Lands, the City of San Jose encourages LAFCO to revise its definition to be consistent with the criteria used by the State of California Department of Conservation, and we reiterate comments stated in the letter dated September 13, 2006 from the City of San Jose's Director of Planning reprinted below:

the City suggests using the California Land Evaluation and Site Assessment Model (LESA), which uses six different factors to rate the relative quality of land resources based upon specific measurable features. The six factors are land capability, soil quality/type, project size, water resource availability, surrounding agricultural land, and surrounding protected resource land. The advantage of the LESA model is that it ranks prime agricultural land according to the six factors mentioned. Under the current Draft Agricultural Mitigation Policies, if a parcel meets only one of the factors as described in number 5 [now 7] (a –f), it is classified as prime agricultural farmland. However, this fails to recognize other aspects that contribute to the quality of agricultural land such as parcel size and adjacent use. Additionally, the City is not aware that LAFCO has authority to define prime agricultural farmlands in a manner that is different from existing state laws.

Items 8, 9, 10, and 11) Regarding LAFCO's proposed Mitigation Requirements, the City of San Jose questions the one-size-fits-all approach of requiring not less than a 1:1 ratio (1 acre preserved for every acre converted.) As per our response to Item 7, LAFCO's policies should account for the relative quality and quantity of agricultural land, as provided by the LESA criteria, as well as any negative environmental and economic impacts resulting from setting aside additional land for exclusively agricultural uses.

Item 12) Regarding LAFCO's proposed Agricultural Conservation Entity Qualifications, the City of San Jose requests further clarification for LAFCO's proposal to exclude private for-profit agricultural conservation entities from the list of options.

Items 13 and 14) Regarding LAFCO's proposed requirement that the submittal of an Agricultural Mitigation Plan must occur at the time that a proposal impacting agricultural lands is filed with LAFCO, the City of San Jose is concerned that this would be an impractical approach in terms of the need for CEQA analysis, and questionable in terms of being able to show a nexus in situations where a project's impacts to agricultural lands is less than significant. CEQA typically would require early consultation by a lead agency, such as the City of San Jose, with a responsible agency, such as LAFCO, to discuss and resolve mitigation requirements prior to the City approving a project such as a Planned Development pre-zoning, or a Specific Plan, which may then require LAFCO approval of an Urban Service Area expansion and annexation. LAFCO should therefore be willing to review and accept feasible mitigation measures that could be incorporated into the project well before the project is finalized and adopted by the lead agency, so that the lead agency's CEQA document can provide environmental clearance for the project with mitigation measures incorporated. This approach is more consistent with the CEQA process and provides more certainty of anticipated costs and timing for the project proponent.

Items 15, 16, 17, 18, and 19) Regarding LAFCO's proposed requirements for Timing and Fulfillment of Mitigation, the revised draft language, as of October 26, 2006, does not adequately address opportunities to take advantage of economies of scale that may better achieve LAFCO's goals, and does not address comments stated by the City of San Jose's Director of Planning in the letter to LAFCO dated September 13, 2006, reprinted below:

The City agrees that mitigation measures should be carried out within a reasonable amount of time; however, for long term projects this proposed policy is probably infeasible. This is because for large and/or long range projects, funding is not likely to be available to carry out agricultural mitigation within two years of an action requiring LAFCO approval. Therefore, the City suggests that if this proposed policy is carried forward in some fashion that it be reworked to be flexible with both short and long range projects.

CEQA Analysis

The City of San Jose reiterates the concern voiced by many stakeholders and respondents that the environmental impacts of LAFCO's proposed Agricultural Mitigation Policies are still not adequately disclosed and addressed under CEQA. The Policies would have impacts not contemplated in the documentation cited by LAFCO to address CEQA: the cited documentation is at least a decade old, and does not address existing conditions as of November 2006. Moreover, there would be unintended negative impacts to orderly growth, biotics, and to sensitive receptors, if these Policies were to be adopted as currently proposed. Additionally, the CEQA analysis referred to by LAFCO staff does not in any way disclose, discuss, or evaluate the potential for the Policies to drive development into areas where these mitigations would not be required, and the environmental impacts of encouraging development in certain areas over others. Such a situation is more fully described below.

For example, based on the City of San Jose's and County of Santa Clara's agreement regarding procedures for City Review of Proposed Land Use Amendments, a 20-unit residential subdivision could be approved by the County in an unincorporated area of the City's Sphere of Influence with no expansion of the City's Urban Service Area (USA). Such a development would not be subject to LAFCO's proposed Agricultural Mitigation Policies. However, if this

November 28, 2006

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same development were proposed to be annexed to the City of San Jose, with a request to expand the City's USA to provide sewer connections and other City services to the development, that development would be subject to LAFCO's proposed Policies.

Most developers would find it less costly and less burdensome to develop the 20-unit residential subdivision in an unincorporated County area. The developer would have far less incentive to develop land close enough to City limits (i.e., within 300 feet as measured along a public street) and be annexed to the City, where this land would have to be replaced at a 1:1 ratio, as compared to development in unincorporated County where no land replacement mitigation would be required.

If, on the other hand, a more modest residential development were proposed on an unincorporated site adjacent to existing urbanized residential development within the City of San Jose, with a proposal for expansion of the City's USA and annexation of the unincorporated site to the City, such a project potentially could trigger agricultural land mitigation requirements under the proposed Policies. If the proposed project included a portion of the site to be set aside for agricultural use, which previously had been fallow, the introduction of the new agricultural use could include practices, such as pesticide applications, and operation of diesel powered machinery, that could negatively impact the health of the adjacent existing residents. The previously fallow land could also have evolved into wetlands or habitat for protected species. The conversion of this land to agricultural use could significantly compromise the biotic value of the site.

Adequate CEQA review, with circulation of the proposed environmental clearance documentation through the State Clearinghouse, is necessary and would also provide a method of informing and coordinating with responsible State agencies.

Conclusion

We appreciate the opportunity to participate in this process. We request that our comments be incorporated into the crafting of LAFCO's final version of the Agricultural Mitigation Policies. LAFCO's consideration of adoption of the Draft Policies should be deferred until LAFCO has completed adequate CEQA documentation and a more extensive dialogue with affected jurisdictions and other stakeholders.

Again, the City of San Jose strongly shares the objectives underlying LAFCO's Draft Agricultural Mitigation Policies to conserve prime agricultural farmland in Santa Clara County. We look forward to continuing to working with you on this important issue.

Sincerely,

Mayor Ron Gonzales on behalf of the San Jose City Council

Attachment: Copy of Letter from City of San Jose's Director of Planning, Building, and Code Enforcement, dated September 13, 2006

c: Neelima Palacherla, LAFCO Executive Officer

LAFCO'S AGRICULTURAL MITIGATION POLICIES

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

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

General Policies

1. LAFCO's Agricultural Mitigation Policy establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural lands.
2. LAFCO requires adequate and appropriate agricultural mitigation for all LAFCO applications that impact or result in a loss of prime agricultural lands. Prime agricultural lands are defined in Policy #5.
3. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural citywide agricultural mitigation policies and programs that are consistent with this Policy.
4. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with this Policy.
5. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.
6. LAFCO will review these Policies as necessary, and determine if revisions are necessary to clarify and address issues in order to better achieve the stated intent.

Definition of Prime Agricultural Lands

57. Prime agricultural land as referred to in this policy means agricultural land that meets any of the following qualifications:
- a. Lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" by the State Department of Conservation as shown on the "Important Farmland Map" dated 2004.
 - b. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
 - c. Land that qualifies for rating 80 through 100 Storie Index Rating.
 - d. 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.
 - e. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
 - f. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Mitigation Requirements

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

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

- c. ~~The city developing programs~~ Development of programs to improve the community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land.
- d. ~~Other appropriate measures to satisfy the intent of this policy may also be adopted.~~

Agricultural Conservation Entity Qualifications

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

Plan For Mitigation

143. A Plan for Agricultural Mitigation that is consistent with this Policy must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO.
142. The Plan for Mitigation shall include all of the following:
- a. An agreement between the property owner(s) and the city or between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the appropriate mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with this Policy. The agreement would be contingent on LAFCO approval. Upon LAFCO's conditional approval of proposal, the agreement must be recorded with the County Recorders' Office against the property to be developed.
 - b. Information on specific measures adopted by the city to demonstrate city's compliance with Policy #911.

- c. All other supporting documents and information to demonstrate compliance with this Policy. A checklist will be developed.

Timing and Fulfillment of Mitigation

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



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDDEL, ACTING DIRECTOR

September 13, 2006

Ms. Neelima Palacherla, Executive Officer
 Local Agency Formation Commission of Santa Clara County
 70 West Hedding Street, 11th Floor, East Wing
 San Jose, CA 95110

**RE: Comments on Local Agency Formation Commission of Santa Clara County
 (LAFCO) Draft Agricultural Mitigation Policies.**

Dear Ms. Palacherla:

Thank you for the opportunity to provide comments on LAFCO's Draft Agricultural Mitigation Policies. The City of San Jose shares a common interest with LAFCO in the preservation of viable agricultural uses in Santa Clara County, and accordingly, we support the overall goal underlying the draft Policies. The following comments and questions are primarily broad in scope because they represent the City's overarching and significant concerns with the proposed policies. The City looks forward to meeting with LAFCO staff to further discuss the Draft Agricultural Mitigation Policies.

- 1) The City recognizes that LAFCO is mandated to preserve open space and prime agricultural farm lands, as well as guide development away from existing agricultural lands under California Government Code §56301 and § 56377. However, as an entity created by statute, the City understands that LAFCO fulfills its mandates by performing and administering the tasks, duties and processes set forth for the Commission under the Cortese-Knox-Hertzberg Act of 2000, as amended. The City is not aware of any independent authority granted to LAFCO under the Cortese-Knox-Hertzberg Act or otherwise to adopt agricultural mitigation policies or requirements in which all municipalities within LAFCO's jurisdiction must adhere.
- 2) Has LAFCO completed its environmental analysis under CEQA as well as a Nexus Study under the Mitigation Fee Act to analyze potential environmental impacts of the proposed Draft Agricultural Mitigation Policies, as well as the proportionality of the exactions and fees being demanded under the Policies? The City requests an opportunity to review such related and supporting documents for the Policies.
- 3) Will LAFCO have the funding and resources necessary to process projects requiring LAFCO action involving prime agricultural land, as well as to monitor the mitigation actions required under the Policies?

Ms. Neelima Palacherla
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- 4) Has LAFCO considered unintended consequences, such as discouraging orderly annexation, as a result of the Draft Agricultural Mitigation Policies? For example, if the process for agricultural mitigation is too long and/or restrictive, it may be more advantageous for the private sector to develop on nearby County lands, where the proposed Policies would not be triggered; thus, creating the unintended consequence of promoting urban sprawl or urban development on County lands in contravention of other City, County and LAFCO policies. This evaluation would normally be a part of the CEQA analysis of the proposed policies.
- 5) Under number 5, Definition of Prime Agricultural Lands, the City suggests using the California Land Evaluation and Site Assessment Model (LESA), which uses six different factors to rate the relative quality of land resources based upon specific measurable features. The six factors are land capability, soil quality/type, project size, water resource availability, surrounding agricultural land, and surrounding protected resource land. The advantage of the LESA model is that it ranks prime agricultural land according to the six factors mentioned. Under the current Draft Agricultural Mitigation Policies, if a parcel meets only one of the factors as described in number 5 (a -f), it is classified as prime agricultural farmland. However, this fails to recognize other aspects that contribute to the quality of agricultural land such as parcel size and adjacent use. Additionally, the City is not aware that LAFCO has authority to define prime agricultural farmlands in a manner that is different from existing state laws.
- 6) LAFCO's proposed Draft Agricultural Mitigation Policies require that agricultural mitigation is fulfilled within two years of an application being conditionally approved by LAFCO. The City agrees that mitigation measures should be carried out within a reasonable amount of time; however, for long term projects this proposed policy is probably infeasible. This is because for large and/or long range projects, funding is not likely to be available to carry out agricultural mitigation within two years of an action requiring LAFCO approval. Therefore, the City suggests that if this proposed policy is carried forward in some fashion that it be reworked to be flexible with both short and long range projects.
- 7) The proposed Draft Agricultural Mitigation Policies do not allow for more than one LAFCO application to be filed. Once that application's agricultural mitigation is complete, another LAFCO application involving prime agricultural farmlands can be submitted. For large and/or long range projects possibly spanning several decades, this proposed policy may limit the City's ability to move forward with its annexation program. In addition, the City is not aware of any nexus analysis that could support delaying, denying or conditioning one annexation action due to issues unrelated to that action and arising out of a separate annexation application.
- 8) In regards to implementation of the proposed Agricultural Mitigation Policies, what are the procedures, timing, and details of the certification process beyond the flow chart provided at the August 28, 2006 workshop?
- 9) Would an approved list of Agriculture Conservation Entity agencies or non-profits be established and periodically updated by LAFCO?

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- 10) The City would like to request more time to work with LAFCO to address the issues giving rise to any potential Agricultural Mitigation Policies put forth by LAFCO. The participatory process involving municipalities that the draft policies would affect is approximately one month. The current draft document is of great importance and it therefore deserves a thorough participatory process with those entities which must adhere to the policies.

Thank you for the opportunity to participate in this important process. Again, the City of San Jose strongly shares the concerns and objectives underlying LAFCO's Draft Agricultural Mitigation Policies to conserve prime agricultural farmland in Santa Clara County. An example of a recent Agricultural Mitigation Policy created by the City for the Evergreen East Hills Vision Strategy is attached to this letter. We hope our comments are helpful and will be considered when considering any final work product related to the Agricultural Mitigation Policies. As mentioned, we also look forward to meeting and discussing the proposed document in further detail. If you have any questions or comments regarding this letter please contact Laurel Prevetti (535-7901) or me (535-7900).

Sincerely,



Joseph Horwedel, Acting Director

Department of Planning, Building & Code Enforcement

EXHIBIT "J"

SUMMARY OF TREATMENT OF UNINCORPORATED AREAS

- I. Urbanized County Pockets:
 - A. Vacant parcels always annex to City
 - B. Parcels with existing uses:
 - i. Existing Residential Usage
 - a.) up to 20 units built without annexing
 - b.) above 20 units requires annexation to City
 - ii. Existing Commercial Usage
 - a.) up to 10% additions to existing commercial structures (NOT 110% of existing structure – so no demo then rebuild scenario) build without annexation; above 10% addition annex to City and City/County share sales tax 50/50.
 - b.) Mixed use applicable to existing commercial use only. Can add up to 20 residential units with no annexation to City and still use commercial (no greater intensity); above 20 must annex to City and City/County share sales tax 50/50.