

## **CHAPTER 7. AGRICULTURAL LAND PRESERVATION AND MITIGATION POLICIES**

### **7.1 INTRODUCTION**~~Background~~

Government Code (GC) §56377 requires LAFCO to discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and promote the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands.

Consistent with GC §56377 it is LAFCO's goal to avoid or substantially minimize potential impacts to agricultural lands. Mitigation of impacts to agricultural lands cannot be viewed as the equivalent of avoidance of impacts or as an acceptable means of facilitating urban encroachment into agricultural lands where viable alternatives are available that meet the overall objectives of state law and LAFCO's mission.

The hierarchy of agricultural land preservation strategies of 1) avoidance, 2) minimizing, and then 3) mitigating impacts to agricultural lands as a last resort where conversion or other impacts cannot be avoided has been reinforced in CALAFCO's 2018 White Paper "State of the Art on Agricultural Preservation [Feb. 2018] to address the need for more effective preservation strategies, particularly on the urban fringe where agricultural land is most at risk.

Pursuant to its Urban Service Area Policies in Chapter 2, LAFCO will consider whether a city has developed and successfully implemented measures to first avoid and minimize the conversion of agricultural lands or open space prior to bringing forward a proposal that involves conversion of agricultural lands or open space; and whether the proposal contains mitigation for the conversion of any such lands consistent with LAFCO policies.

~~LAFCO's mission is to encourage orderly growth and development, 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 will consider impacts to agricultural lands along with other factors in its evaluation of proposals. LAFCO's Urban Service Area (USA) Amendment 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 USA Amendment Policies require an explanation of why the inclusion of agricultural lands is necessary and how such loss will be mitigated.~~

### **Purpose of Policies**

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

## **7.2 GENERAL POLICIES**

1. LAFCO promotes the agricultural preservation strategies of avoiding and/or minimizing potential impacts to agricultural lands in preference to mitigation, consistent with GC §56377. In reviewing proposals involving potential impacts to agricultural lands, LAFCO will strongly weigh the feasibility of avoiding and minimizing impacts prior to considering the effectiveness and utility of mitigation.
2. Given that agricultural workers are an essential component of Santa Clara County's agricultural industry, Santa Clara LAFCO will give special consideration to proposals that are for agricultural worker housing as referenced in Urban Service Area Policy #3.4.15 and Out of Agency Service by Contract Policy #5.3.3(b).
31. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #67.3.1. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.
42. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural preservation and mitigation policies and programs that are consistent with these policies.
53. 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 these policies.
64. 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.
75. LAFCO will review and revise these policies as necessary.

## **7.3 DEFINITION OF PRIME AGRICULTURAL LANDS**

61. "Prime agricultural land" as defined in GC §56064 means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:
  - a. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
  - b. Land that qualifies for rating 80 through 100 Storie Index Rating.
  - c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.

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

**7.4 MITIGATION RECOMMENDATIONS**

**71.** Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance 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, with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment

**1i.** The cost of acquisition of agricultural lands or agricultural conservation easements for permanent protection, and

**2ii.** The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of maintaining agriculture on the mitigation lands.

~~\*with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment~~

**82.** Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.

**9. a.** The agricultural mitigation should result in preservation of land that would be:

**ai.** Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and

**bii.** Located within cities' spheres of influence in an area planned/envisioned for agriculture, and

eiii. That would preferably promote the definition and creation of a permanent urban/agricultural edge.

103. Because urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect 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 include, but are not limited to:

- a. 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. Adoption of protections 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. Development of programs to promote the continued viability of surrounding agricultural land.

## 7.5 **AGRICULTURAL CONSERVATION ENTITY QUALIFICATIONS**

11. The agricultural conservation entity should be a city or a public or non-profit agency. LAFCO encourages consideration of agricultural conservation entities that:

- a. Are committed to preserving local agriculture and 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 are operating in compliance with those standards.

## 7.6 **TIMING AND FULFILLMENT OF MITIGATION**

121. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) should be fulfilled no later than at the time of city's approval of the final map, or issuance of a grading permit or building permit, whichever occurs first.

132. Cities should provide LAFCO with information on how the city will ensure that the agricultural mitigation is provided at the appropriate time.

- 143. Cities should provide LAFCO with a report on the status of agricultural mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation commitments are fulfilled.
- 154. The agricultural conservation entity should report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.

## 7.7 PLAN FOR MITIGATION

- 161. A plan for agricultural mitigation that is consistent with these policies should be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The plan for mitigation should include all of the following:
  - a. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation. Upon LAFCO approval of the proposal, the agreement should be recorded with the County Recorder's office against the property to be developed. The agreement should specify:
    - 1i. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
    - 2ii. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
    - 3iii. The acreage that would be preserved through mitigation and /or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment) along with the methodology adopted by the entity for calculating the in-lieu fees.
    - 4iv. The location of the mitigation lands, when possible.
    - 5v. Information on the specific measures adopted by the city as encouraged in Policy #10 (mitigation for impacts to adjacent agricultural lands)
    - 6vi. The timeframe within which the mitigation will be fulfilled, which should be no later than at the time of city's approval of the final map, or issuance of the grading permit or building permit, whichever occurs first.
    - 7vii. The mitigation agreement is to be contingent on LAFCO approval of the proposal.
  - b2. Applicant should provide all other supporting documents and information to demonstrate compliance with these policies.