

SECTION THREE

RESPONSES TO COMMENTS

SECTION THREE RESPONSES TO COMMENTS

This section contains the letters of comment that were received on the Draft EIR. Following each comment letter is a response intended to either supplement, clarify, or amend information provided in the Draft EIR, or refer the commenter to the appropriate place in the Draft EIR where the requested information can be found. Those comments that are not directly related to environmental issues are briefly described and noted for the record.



Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Cathleen Cox
Acting Director

October 25, 2010

Kim Espinosa
City of Merced Planning & Permitting Division
678 W. 18th Street, 2nd Floor
Merced, CA 95340

Subject: Merced Vision 2030 General Plan
SCH#: 2008071069

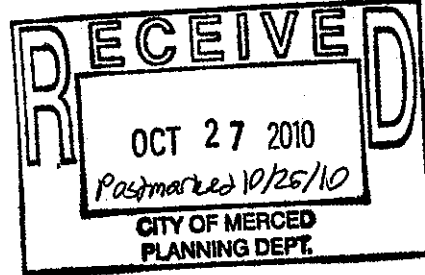
Dear Kim Espinosa:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on October 22, 2010, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse



A

**Document Details Report
State Clearinghouse Data Base**

SCH# 2008071069
Project Title Merced Vision 2030 General Plan
Lead Agency Merced, City of

Type EIR Draft EIR
Description Note: Review per lead

The proposed project includes an update of the City of Merced's General Plan. The General Plan will include Urban Expansion, Land Use, Transportation & Circulation, Public Facilities & Services, Urban Design, Open Space, Conservation & Recreation, Sustainable Development, Housing, Noise and Safety Elements. The Housing Element is currently being updated by the City and will be incorporated into the General Plan after its adoption. The expansion of the urban land use designation define the limits for extending City services and infrastructure so as to accommodate new development anticipated within the 2010-2030 time-frame of the General Plan. Policies in the proposed General Plan limit leap-frog development and provide for an orderly transition from rural to urban land uses. The Plan includes Guiding Principles developed during the Community Workshops.

Lead Agency Contact

Name Kim Espinosa
Agency City of Merced Planning & Permitting Division
Phone (209) 385-6858
email
Address 678 W. 18th Street, 2nd Floor
City Merced **State** CA **Zip** 95340
Fax

Project Location

County Merced
City Merced
Region
Lat / Long 37° 18' 36" N / 120° 17' 32" W
Cross Streets City-wide
Parcel No. City-wide
Township 7S **Range** 14E **Section** 19 **Base** MDB&M

Proximity to:

Highways Hwys 59,99,140
Airports Merced Regional & Castle Airpors
Railways BNSF & UP
Waterways Bear Creek
Schools Merced City & Union HS District
Land Use Multiple designations

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Drainage/Absorption; Economics/Jobs; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Septic System; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Wetland/Riparian; Water Supply; Growth Inducing; Landuse; Cumulative Effects; Other Issues

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 4; Office of Historic Preservation; Department of Parks and Recreation; Office of Emergency Management Agency, California; Caltrans, Division of Aeronautics; California Highway Patrol; Caltrans, District 10; Caltrans, Division of Transportation Planning; Department of Housing and Community Development; Regional Water Quality Control Bd., Region 5 (Fresno); Department of Toxic Substances Control; Native American Heritage Commission; Public Utilities Commission

Note: Blanks in data fields result from insufficient information provided by lead agency.

**Document Details Report
State Clearinghouse Data Base**

Date Received 08/24/2010

Start of Review 08/24/2010

End of Review 10/22/2010



Arnold Schwarzenegger
Governor

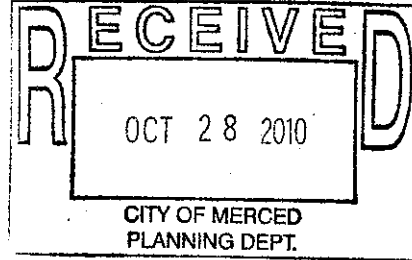
STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Cathleen Cox
Acting Director

October 26, 2010

Kim Espinosa
City of Merced Planning & Permitting Division
678 W. 18th Street, 2nd Floor
Merced, CA 95340



Subject: Merced Vision 2030 General Plan
SCH#: 2008071069

Dear Kim Espinosa:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on October 22, 2010. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2008071069) when contacting this office.

Sincerely,

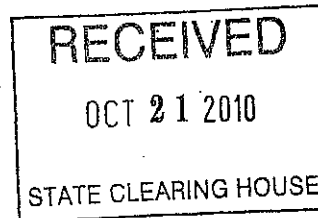
Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

**DEPARTMENT OF FISH AND GAME**

JOHN McCAMMAN, Director

Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
<http://www.dfg.ca.gov>



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October 18, 2010

Kim Espinosa, Planning Manager
Planning and Permitting Division
678 West 18th Street
Merced, California 95340

**Subject: Draft Environmental Impact Report (DEIR)
General Plan Update (City of Merced Vision 2030 General Plan)
SCH No. 2008071069**

Dear Ms. Espinosa:

The Department of Fish and Game has reviewed the DEIR submitted by the County of Merced Planning Department (County) with regard to the Project title labeled above. The proposed Project includes an update of the City of Merced's General Plan over the next 20 years. The General Plan will include urban expansion, land use, transportation and circulation, public facilities and services, urban design, open space, conservation and recreation, sustainable development, housing, noise and safety elements. The proposed Project is located in central Merced County. The geographic area covered by the Project includes the current city limits of Merced and expands the sphere of influence so that the proposed General Plan boundary is roughly bounded by Old Lake Road to the north, Franklin Road to the west, North Orchard Drive to the East, and Harley Road to the south.

The Department has concerns about the Project-related impacts to the surrounding area and the permanent loss that would result from the development and construction activities occurring in wildlife compatible agriculture and historical wetlands; degradation of surface waters from activities occurring in close proximity to Bear Creek, Fahrens Creek, the multiple laterals and canals that traverse the Project area; and the loss of riparian habitat, as well as the associated impacts to species that utilize these habitat types. In order to adequately assess any potential impacts to biological resources, biological survey(s) may need to be conducted for each development project that will subsequently tier off of the finalized City of Merced updated General Plan. All surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether or not any special status species may be present within the proposed Project areas. This information is necessary to identify any mitigation, minimization, and avoidance measures and/or the need for additional focused surveys. These issues should be evaluated and addressed in the California Environmental Quality Act (CEQA) document prepared for this Project.

Kim Espinosa, Planning Manager
October 21, 2010
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The potential biological impacts of the Project are enhanced by and add to the cumulative impacts of the planned future build out of the nearby University of California, Merced, campus, adjacent planned campus community, and other small residential developments nearby. The Project-related impacts should be assessed within the context of the entire area, which faces the loss of several thousand acres containing vernal pool complexes and grasslands, and the species that live within those habitats. These issues should be evaluated and analyzed in the finalized CEQA document prepared for this Project and prior to Project approval. Our specific comments follow.

The Project has the potential to reduce the number or restrict the range of endangered, rare, or threatened species (as defined in Section 15380 of CEQA) including State-listed species known to occur in the Project area. The Federally threatened and State endangered succulent's owl clover (*Castilleja succulenta*), the Federally threatened and State endangered Colusa grass (*Neostapfia colusana*), the Federally and State endangered hairy orcutt grass (*Orcuttia pilosa*), the Federally threatened and State endangered San Joaquin Valley orcutt grass (*Orcuttia inaequalis*), Federally and State threatened giant garter snake (*Thamnophis gigas*), Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the Federally and State threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State fully protected bald eagle (*Haliaeetus leucocephalus*) and white tailed kite (*Elanus leucurus*) are known to occur within the Project area vicinity.

Other species of special concern that may also be present in the Project area include the Federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*), the Federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*), tricolored blackbird (*Agelaius tricolor*), Western pond turtle (*Actinemys marmorata*) and burrowing owl (*Athene cunicularia*). Regarding Federally listed species, the Department recommends early consultation with the United States Fish and Wildlife Service (USFWS).

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities as those terms are used under CEQA.

Kim Espinosa, Planning Manager
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Responsible Agency Authority: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

Fully Protected Species: The Department has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code Sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take." Two fully protected species, the white tailed kite and the bald eagle, are known to occur throughout the Project study area. Therefore, biological surveys should be conducted to determine whether or not this species could be impacted by the execution of any projects that will tier off of the proposed updated General Plan.

Bird Protection: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State."

It is possible that without mitigation measures this Project could result in pollution of a "Waters of the State" from increased road, parking, stormwater runoff, or construction-related erosion. In addition, the residential growth associated with project implementation would likely result in additional and potentially significant impacts to waters of the state from increased toxic runoff associated with roads and parking areas, increased sediment input, and increased discharges laden with household products such as pesticides, fertilizers, and cleaning chemicals. Both the direct construction

Kim Espinosa, Planning Manager
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related impacts, and the growth related impacts, could result in impacts to the fish and wildlife resources associated with Bear Creek, Fahrens Creek, and other surface waters.

Project Recommendations

Listed Plant Species: There are several State- and Federally listed plant species known to occur in the vicinity of the Project area and could potentially occur within all or a portion of the Project area. Focused, repeated surveys should be conducted multiple times during the appropriate floristic period(s) in any area in order to adequately assess the potential Project-related impacts to listed plant species. If State-listed plants are detected during surveys, consultation with the Department is warranted to discuss the potential for "take" under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act without incidental "take" authority secured under Sections 2080.1 or 2081 of the Fish and Game Code.

Riparian Habitat and Wetlands: Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat and wetlands (vernal pools and waterways) exist within and adjacent to the proposed Project site. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Department has a no-net-loss policy regarding impacts to wetlands. Potential impacts to special status resources posed by wetland creation should also be considered. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer should be implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and Federally listed species. The Department recommends delineating wetlands, vernal pools, and swales with a 250-foot no-disturbance buffer. In addition, the Department recommends delineating a minimum 100-foot buffer from the high water mark of surface water channels and other blue-lined waterways that have no riparian vegetation. However, depending upon what Project-related activities are proposed in these areas, larger buffers may be warranted to avoid impacts. Further, a wetland delineation should be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.

Swainson's Hawk (SWHA): This State threatened species can be very sensitive to human disturbance around nests, which can lead to nest abandonment, and thus fledgling death. A minimum avoidance distance of 0.5 miles around an active nest site is sometimes necessary to avoid adult distress, but the buffer distance necessary to minimize adult distress varies significantly from site to site, and seems to depend on the level of disturbance present during nest initiation. Birds often become habituated to

Kim Espinosa, Planning Manager
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disturbances, particularly if these disturbances are regular and pre-date nest establishment. The most consistent pattern of concern are disturbances (such as human presence) that are new or that suddenly increase in intensity or volume, in the immediate vicinity of active nests, and that occur during the pre-nesting and incubation phases (March 15 to May 15). During the pre-nesting and active nesting season, pre-construction surveys should be conducted no more than 10 days prior to the start of the Project and should be conducted in accordance with the Department's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (May 31, 2000). If an active SWHA nest is identified within the 0.5-mile radius of the planned Project, the Department should be consulted prior to initiating any ground disturbance or any other increase in human presence or activities

Due to the loss of suitable foraging and existing nesting habitat that may occur during area development, mitigation measures compensating for these potential losses of habitat should be included in the CEQA document. The Department's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (1994) recommends that for projects that occur within 1 mile of an active nest tree, 1.5 acres of habitat be protected in perpetuity for every acre of Swainson's hawk foraging habitat impacted; for projects that occur within 5 miles of an active nest tree that 0.75 acres of habitat be protected in perpetuity for every acre foraging habitat impacted; and for projects that occur within 10 miles of an active nest tree, that 0.5 acres of habitat be protected in perpetuity for every acre of foraging habitat impacted.

Funding of a sufficient long-term endowment for the management of the protected properties should be paid by the Project sponsors. In addition to fee title acquisition of grassland habitat, mitigation could occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

The above recommended mitigation measures should be fully discussed in the DEIR for the Project.

Nesting Birds: Regarding common and migratory birds under Mitigation Measure #3.4-1e, the Department does not concur that a 100-foot buffer be designated for identified nesting. If Project implementation occurs during the bird nesting season (February 1 through mid-September), surveys for active nests should be conducted by a qualified biologist no more than 30 days prior to the start of the disturbance (blasting, vegetation removal, or other ground-disturbing activities). A minimum no-disturbance buffer of 250 feet should be delineated around active nests of non-listed species until

Kim Espinosa, Planning Manager
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the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

San Joaquin Kit Fox: San Joaquin kit fox populations are known to fluctuate over years and absence during any one survey does not necessarily exclude the potential for kit fox to occur on a site at a future time. Regarding Mitigation Measure #3.4-1i, the Department agrees that pre-construction surveys be conducted by a qualified biologist at all Project sites that contain appropriate habitat and that the Project proponent shall implement the standardized measures adopted by the USFWS or the Department. These surveys should also be conducted a maximum of 30 days prior to ground-disturbing activities. In the event that this species is detected during protocol-level surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid "take." If "take" cannot be avoided, acquisition of a State Incidental Take Permit would be required prior to Project implementation.

"Take" under the Federal Endangered Species Act (FESA) is more stringently defined than CESA; "take" under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the United States Fish and Wildlife Service (USFWS) in order to comply with FESA is advised well in advance of Project implementation.

California Tiger Salamander (CTS): Records from the California Natural Diversity Database (CNDDDB) show that the State-listed threatened California tiger salamander (*Ambystoma californiense*) is known to be present throughout and adjacent to the Project site. The Department has jurisdiction over this species under CESA. Because suitable aestivation and breeding habitat for CTS exists within the Project area, the Department believes this species could be potentially impacted if ground disturbance were to occur and the appropriate avoidance, minimization, and mitigation measures are not in place. The individual and cumulative impacts to CTS of expanding the sphere of influence for the General Plan Update should be fully discussed in the DEIR.

The Department requests potential Project-related impacts to this species within the Proposed General Plan Update boundaries are evaluated by a qualified and permitted biologist using the Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander which were issued by the Department and the USFWS in 2003. If CTS are found on the Project site, "take" authorization would occur through the issuance of the Incidental Take Permit, pursuant to Fish and Game Code Section 2081(b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an Incidental Take Permit. For information regarding Incidental Take Permits please

Kim Espinosa, Planning Manager
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see the following link: <http://www.dfg.ca.gov/habcon/cesa/>. Included in the Incidental Take Permit would be measures required to avoid and/or minimize direct "take" of CTS on the Project site, as well as measures to fully mitigate the impact of the "take."


Burrowing Owl: Burrowing owls are known to occur within the Project area. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. Mitigation Measure #3.4-1d states that the Project proponent shall include the standardized avoidance measures of the Department. Therefore, the Department's Staff Report on Burrowing Owl Mitigation (CDFG 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

The Department's Staff Report on Burrowing Owl Mitigation also recommends that the appropriate foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrowing habitat.

CEQA Compliance: CEQA Guidelines Section 15378 defines "project" to mean the whole of an action that may result in either a direct or reasonably foreseeable indirect physical change in the environment. The final CEQA document should adequately address all impacts to natural resources of the Project site.

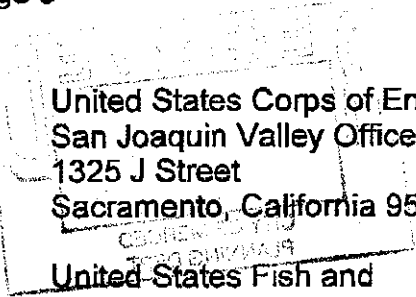
If you have any questions regarding these comments, please contact Jim Vang, Environmental Scientist, at the address or telephone number, extension 254, provided on this letterhead.

Sincerely,


For Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Eight

Kim Espinosa, Planning Manager
October 21, 2010
Page 8

cc:  United States Corps of Engineers
San Joaquin Valley Office
1325 J Street
Sacramento, California 95814-2922

United States Fish and
Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, California 93706-2020

State Clearinghouse
Post Office Box 3044
Sacramento, California 95812-3044

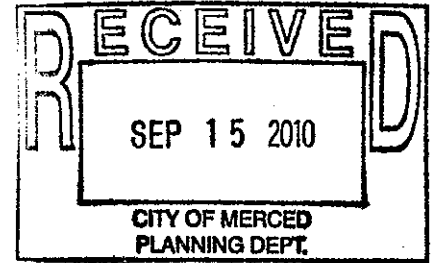
**Letter 1 Scott Morgan, Director, State Clearinghouse, Governor's
Office of Planning and Research**

Comment 1A: *The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on October 22, 2010, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.*

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Response 1A: The comment is noted. All letters received from the Clearinghouse are included in Section Three and in accordance with CEQA Guidelines Section 15088, written responses to all comments are provided.

**Merced Gateway, LLC
 133 Old Wards Ferry Rd. Ste. G
 Sonora, CA 95370
 (209) 533-3333**



City of Merced – Planning Staff
 678 West 18th Street
 Merced, CA 95340

City of Merced General Plan Update

September 15, 2010

To Whom It May Concern:

Merced Gateway, LLC would like to thank you for the opportunity to comment on the draft General Plan Update for the City of Merced as it relates to the property we own consisting of the approximately seventy (70) acres APN 061-250-013 (Lots 173, 175, 228-30 part of the Map of Merced Colony 1910) located just east of the Mission Avenue/Campus Parkway interchange. The subject property is presently divided by Campus Parkway which is now currently being constructed with approximately fifty (50) acres to the north and twenty (20) acres to the south. The site currently has Regional Commercial (RC) and High Density Residential (HDR) land use designations with about 75 % listed as RC and the northernmost 25% being HDR. The property is presently zoned Central Commercial and R-3.

A

Our questions and concerns are focused primarily on the Circulation Element, as well as housing. With regard to the Circulation Element, we ask that the following be addressed:

B

1. The Circulation Plan shows an extension of Parsons across the property to the east and a new road (presumably Plum Ave.) to the south. Can you point to the technical documentation in the record that supports the warrant for these roads?

2. Are these new road segments based upon the existing traffic needs or do they include forecasted traffic based upon the proposed zoning in the GPU?

C

3. Do these proposed road segments serve any regional benefits or mitigate potential cumulative impacts? If so, will they be included in the City's traffic improvement plan and be subject to traffic mitigation fee credits or reimbursement?

D

4. What are the ramifications to Coffee Rd. if these new roads are constructed and what are the expected levels of improvements along it to accommodate this growth plan?

E

5. What are the underlying assumptions used for the Circulation Plan in this general area?

F

With respect to housing, we would like to know the following:

1. The City Council has recently made findings that there is an over abundance (10-11 times) of zoning to accommodate its housing needs (both existing & subject to annexation). Does this document reflect that or is the Housing Element need to be modified for consistency?

G

2. Given the current economic state of housing in the City, how has this plan reflected growth projections in comparison to the existing plan? How well did the existing plan forecast its growth projections and are fees based upon growth assumptions being modified to reflect current data?

H

3. Are areas (such as ours) that currently have housing land use designations being modified to other uses in order to better represent the actual need? If possible, can applicants have their property considered for different land uses as part of this process? If so, how?

I

We also have some general questions for your response and consideration:

J

1. What is different about this plan's assumptions in our area from the existing one?
2. What is different in this EIR from the one done as part of the 'Weaver Area Study' and subsequent City annexation that was prepared by staff in 1995?

K

3. Do any of the assumptions in this EIR differ from those incorporated into the recent Wal-Mart distribution center project EIR?

L

If it is possible to get answers to these questions before the close of the Public comment period, we would certainly request that this happen as it might influence additional concerns. Please do not hesitate to discuss with us any questions that you may have regarding this letter, and know that we are available to meet with you at your convenience.

M

Sincerely,

Jim Todd
Member
jim@calgolddevelopment.com

Letter 2 Jim Todd, Member, Merced Gateway, LLC

Comment 2A: *Merced Gateway, LLC would like to thank you for the opportunity to comment on the draft General Plan Update for the City of Merced as it relates to the property we own consisting of the approximately seventy (70) acres APN 061-250-013 (Lots 173, 175, 228-30 part of the Map of Merced Colony 1910) located just east of the Mission Avenue/Campus Parkway interchange. The subject property is presently divided by Campus Parkway which is now currently being constructed with approximately fifty (50) acres to the north and twenty (20) acres to the south. The site currently has Regional Commercial (RC) and High Density Residential (HDR) land use designations with about 75 % listed as RC and the northernmost 25% being HDR. The property is presently zoned Central Commercial and R-3.*

Response 2A: The comment states that the Merced Gateway, LLC (commenter) owns approximately 70 acres of land just east of the Mission Avenue/Campus Parkway interchange. The 70 acre site will be divided by the Campus Parkway alignment with approximately 50 acres to the north and 20 acres to the south of the alignment. The comment is noted.

Comment 2B: *Our questions and concerns are focused primarily on the Circulation Element, as well as housing. With regard to the Circulation Element, we ask that the following be addressed:*

- 1. The Circulation Plan shows an extension of Parsons across the property to the east and a new road (presumably Plum Ave.) to the south. Can you point to the technical documentation in the record that supports the warrant for these roads?*

Response 2B: Please refer to the General Plan Transportation and Circulation Element Section 4.4.2, pages 4-32 through 4-34, which describes the rationale for completion of Parsons Avenue. Please also refer to the Draft EIR Appendix K – Traffic Count Data and Summary of Traffic Impact Modeling for existing and projected traffic counts and Section 3.15 of the Draft EIR for a description of roadway improvements/configurations required to meet established Level of Service requirements within the City.

Comment 2C: *2. Are these new road segments based upon the existing traffic needs or do they include forecasted traffic based upon the proposed zoning in the GPU?*

Response 2C: The proposed road segment extensions referenced in Response 2B above are based on land use and zoning reflected in the proposed General Plan Update.

Comment 2D: *3. Do these proposed road segments serve any regional benefits or mitigate potential cumulative impacts? If so, will they be included in the City's traffic improvement plan and be subject to traffic mitigation fee credits or reimbursement?*

Response 2D: The road improvements referenced in Response 2B may be included in the City's traffic improvement plan and may ultimately subject to traffic mitigation fee credits or reimbursement as applicable if included in the City's Public Facilities Impact Fee program. The

improvements will contribute toward reduction of cumulative impacts on the City's overall circulation system, but will not provide significant regional benefits.

Comment 2E: *4. What are the ramifications to Coffee Rd. if these new roads are constructed and what are the expected levels of improvements along it to accommodate this growth plan?*

Response 2E: As shown on Figure 3.15-1 of the DEIR after page 3.15-2, Coffee Road is planned to be a collector street with a 74 foot right of way (one lane of traffic in each direction, curbside parking, bike lanes, and 5' sidewalks on both sides of the street) north and south of Mission Avenue.

Comment 2F: *5. What are the underlying assumptions used for the Circulation Plan in this general area?*

Response 2F: Underlying assumptions used for the Circulation Plan in the southeasterly quadrant of the City are that future growth will proceed in accordance with the population projections and General Plan Land Use Element Diagram shown as shown by Figure 2-1 found after page 2-6 of the DEIR.

Comment 2G: *With respect to housing, we would like to know the following:*

- 1. The City Council has recently made findings that there is an over abundance (10-11 times) of zoning to accommodate its housing needs (both existing & subject to annexation). Does this document reflect that or is the Housing Element need to be modified for consistency?*

Response 2G: To the City's knowledge, no such findings have been made by the City Council in regards to residential zoning. The proposed 2030 General Plan Land Use Element reflects land use designations in sufficient quantity to accommodate future housing needs without imposing inflated land values that could result from a limited supply of land planned and zoned to accommodate demand. A revised Housing Element was recently adopted on May 16, 2011. See also Response 17A.

Comment 2H: *2. Given the current economic state of housing in the City, how has this plan reflected growth projections in comparison to the existing plan? How well did the existing plan forecast its growth projections and are fees based upon growth assumptions being modified to reflect current data?*

Response 2H: The proposed General Plan is based on the growth projection methodology used in developing the current General Plan. Population growth projections have recently been revised by MCAG to be more realistic in light of the economic downturn that began in 2007 and City of Merced impact fees related to housing, commercial, and infill development projects have also been revised downward in consideration of current economic conditions. However, the City respectfully disagrees with the assumption that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 2I: *3. Are areas (such as ours) that currently have housing land use designations being modified to other uses in order to better represent the actual need? If possible, can applicants have their property considered for different land uses as part of this process? If so, how?*

Response 2I: The 2030 General Plan Update process included a number of land use/zoning requests from property owners that have been reflected in the proposed General Plan Land Use diagram. The commenter's property is not proposed for a land use change due, in part, to the limited amount of undeveloped high density residential land existing within the City. Property owners may apply for land use designation changes through the City's general plan amendment process. Specific direction can be acquired by contacting the City of Merced Planning Department.

Comment 2J: *We also have some general questions for your response and consideration:*

1. What is different about this plan's assumptions in our area from the existing one?

Response 2J: With exception of the route of Campus Parkway as included in the proposed General Plan Circulation Element, fundamental General Plan assumptions in the vicinity of the commenter property are essentially the same for the proposed 2030 General Plan as they were for the existing General Plan.

Comment 2K: *2. What is different in this EIR from the one done as part of the 'Weaver Area Study' and subsequent City annexation that was prepared by staff in 1995?*

Response 2K: The 2030 General Plan EIR addresses the entire City of Merced region whereas the Weaver Area Study and subsequent annexation was area specific.

Comment 2L: *3. Do any of the assumptions in this EIR differ from those incorporated into the recent Wal-Mart distribution center project EIR?*

Response 2L: Assumptions in the 2030 General Plan EIR do not substantially vary from those incorporated into the recent Wal-Mart Distribution Center EIR.

Comment 2M: *If it is possible to get answers to these questions before the close of the Public comment period, we would certainly request that this happen as it might influence additional*

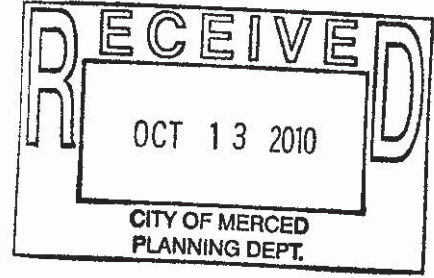
concerns. Please do not hesitate to discuss with us any questions that you may have regarding this letter, and know that we are available to meet with you at your convenience.

Response 2M: The responses provided above address the commenter questions as required by CEQA.



October 12, 2010

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, California 95340



Subject: Comments on Merced Vision 2030 General Plan

Dear Kim:

Yosemite Church is located at 2230 East Yosemite Avenue just north of the end of McKee Road. The Yosemite Church campus is approximately 19 acres in size and has only been partially developed. We have reviewed the proposed Merced Vision 2030 General Plan and support being included in the sphere of influence of the City of Merced. Ultimately, it is our desire for the Yosemite Church campus to be annexed into the City of Merced.

A

We do have a concern about one change in the General Plan that could potentially impact the Yosemite Church campus. In the existing Merced Vision 2015 General Plan, Yosemite Avenue is designated as a Minor Arterial on Figure 4.3 with a right-of-way width of 94 feet along the frontage of Yosemite Church. In 2003, as a requirement of Merced County Conditional Use Permit 01023, Yosemite Church dedicated right-of-way and a Public Utility Easement in conformance with the City of Merced Vision 2015 General Plan designation for Yosemite Avenue.

Figure 4.3 of the proposed Vision 2030 General Plan designates Yosemite Avenue along the frontage of Yosemite Church as a Divided Arterial with a right-of-way width of 118 feet. Although it may be possible for the undeveloped portion of the Yosemite Church campus to accommodate the increased right-of-way, the portion of the Yosemite Church campus east of McKee Road is fully developed complete with curb and gutter along Yosemite Avenue. East of McKee Road, the additional right-of-way will significantly impact the front parking lot of Yosemite Church, eliminate the landscaping between the remaining portion of the front parking lot and Yosemite Avenue, require the relocation of the backflow preventers serving the entire campus, and potentially prevent vehicular circulation to the church offices.

B

East of McKee Road, Yosemite Avenue is fully developed with curb and gutter on both sides of the road. West of McKee Road, the south half of Yosemite Avenue is fully developed to Parsons/Gardner Road. Any widening of the right-of-way along the developed portions of Yosemite Avenue will impact numerous other properties besides Yosemite Church.

Meeting people where they are and loving them to where Christ wants them to be.



B cont.

As a result, we request the General Plan Designation for Yosemite Avenue east of Parsons/Gardner Road be designated in the Merced Vision 2030 General Plan to be a Minor Arterial with a right-of-way width of 94 feet as currently reflected in the Merced Vision 2015 General Plan.

Thank you for your consideration. We invite City staff, the Planning Commission and the City Council to visit Yosemite Church at any time. Weekend services are at 6:00 PM on Saturdays and 9:00 AM and 11:00 AM on Sundays. We look forward to future cooperative efforts serving the residents of the City of Merced.

Sincerely,

Dr. Tino Ballesteros
Executive Pastor

Meeting people where they are and loving them to where Christ wants them to be.

2230 East Yosemite Avenue • Merced, CA 95340 • 209.383.5038 • Fax 209.383.2709 www.yosemitechurch.com

Letter 3 Dr. Tino Ballesteros, Executive Pastor, Yosemite Church

Comment 3A: *Yosemite Church is located at 2230 East Yosemite Avenue just north of the end of McKee Road. The Yosemite Church campus is approximately 19 acres in size and has only been partially developed. We have reviewed the proposed Merced Vision 2030 General Plan and support being included in the sphere of influence of the City of Merced. Ultimately, it is our desire for the Yosemite Church campus to be annexed into the City of Merced.*

Response 3A: The City appreciates the opportunity to address concerns of its citizens and businesses. The comment in support of being included in the proposed 2030 General Plan sphere of influence is noted.

Comment 3B: *We do have a concern about one change in the General Plan that could potentially impact the Yosemite Church campus. In the existing Merced Vision 2015 General Plan, Yosemite Avenue is designated as a Minor Arterial on Figure 4.3 with a right-of-way width of 94 feet along the frontage of Yosemite Church. In 2003, as a requirement of Merced County Conditional Use Permit 01023, Yosemite Church dedicated right-of-way and a Public Utility Easement in conformance with the City of Merced Vision 2015 General Plan designation for Yosemite Avenue.*

Figure 4.3 of the proposed Vision 2030 General Plan designates Yosemite venue along the frontage of Yosemite Church as a Divided Arterial with a right-of-way width of 118 feet. Although it may be possible for the undeveloped portion of the Yosemite Church campus to accommodate the increased right-of-way, the portion of the Yosemite Church campus east of McKee Road is fully developed complete with curb and gutter along Yosemite Avenue. East of McKee Road, the additional right-of-way will significantly impact the front parking lot of Yosemite Church, eliminate the landscaping between the remaining portion of the front parking lot and Yosemite Avenue, require the relocation of the backflow preventers serving the entire campus, and potentially prevent vehicular circulation to the church offices.

East of McKee Road, Yosemite Avenue is fully developed with curb and gutter on both sides of the road. West of McKee Road, the south half of Yosemite Avenue is fully developed to Parsons/Gardner Road. Any widening of the right-of-way along the developed portions of Yosemite Avenue will impact numerous other properties besides Yosemite Church.

As a result, we request the General Plan Designation for Yosemite Avenue east of Parsons/Gardner Road be designated in the Merced Vision 2030 General Plan to be a Minor Arterial with a right-of-way width of 94 feet as currently reflected in the Merced Vision 2015 General Plan.

Response 3B: Specific plans for potential future right-of-way acquisition have not been determined and at the time of buildout, the City will consider all feasible alternatives. If it is not possible to obtain the full planned 118-foot right-of-way for Yosemite Avenue along the north side of the street (commenter owned property), the right-of-way may also be obtained on the south side with appropriate travel lane design.



DEPARTMENT OF FISH AND GAME

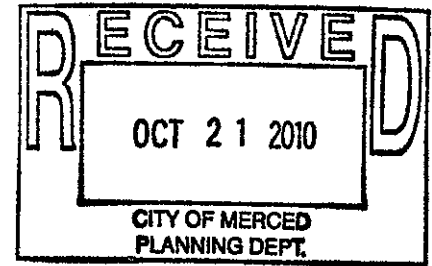
JOHN McCAMMAN, Director



Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
<http://www.dfg.ca.gov>

LETTER 4

October 18, 2010



Kim Espinosa, Planning Manager
Planning and Permitting Division
678 West 18th Street
Merced, California 95340

**Subject: Draft Environmental Impact Report (DEIR)
General Plan Update (City of Merced Vision 2030 General Plan)
SCH No. 2008071069**

Dear Ms. Espinosa:

The Department of Fish and Game has reviewed the DEIR submitted by the County of Merced Planning Department (County) with regard to the Project title labeled above. The proposed Project includes an update of the City of Merced's General Plan over the next 20 years. The General Plan will include urban expansion, land use, transportation and circulation, public facilities and services, urban design, open space, conservation and recreation, sustainable development, housing, noise and safety elements. The proposed Project is located in central Merced County. The geographic area covered by the Project includes the current city limits of Merced and expands the sphere of influence so that the proposed General Plan boundary is roughly bounded by Old Lake Road to the north, Franklin Road to the west, North Orchard Drive to the East, and Harley Road to the south.

The Department has concerns about the Project-related impacts to the surrounding area and the permanent loss that would result from the development and construction activities occurring in wildlife compatible agriculture and historical wetlands; degradation of surface waters from activities occurring in close proximity to Bear Creek, Fahrens Creek, the multiple laterals and canals that traverse the Project area; and the loss of riparian habitat, as well as the associated impacts to species that utilize these habitat types. In order to adequately assess any potential impacts to biological resources, biological survey(s) may need to be conducted for each development project that will subsequently tier off of the finalized City of Merced updated General Plan. All surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether or not any special status species may be present within the proposed Project areas. This information is necessary to identify any mitigation, minimization, and avoidance measures and/or the need for additional focused surveys. These issues should be evaluated and addressed in the California Environmental Quality Act (CEQA) document prepared for this Project.

A

B

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The potential biological impacts of the Project are enhanced by and add to the cumulative impacts of the planned future build out of the nearby University of California, Merced, campus, adjacent planned campus community, and other small residential developments nearby. The Project-related impacts should be assessed within the context of the entire area, which faces the loss of several thousand acres containing vernal pool complexes and grasslands, and the species that live within those habitats. These issues should be evaluated and analyzed in the finalized CEQA document prepared for this Project and prior to Project approval. Our specific comments follow.

C

The Project has the potential to reduce the number or restrict the range of endangered, rare, or threatened species (as defined in Section 15380 of CEQA) including State-listed species known to occur in the Project area. The Federally threatened and State endangered succulent's owl clover (*Castilleja succulenta*), the Federally threatened and State endangered Colusa grass (*Neostapfia colusana*), the Federally and State endangered hairy orcutt grass (*Orcuttia pilosa*), the Federally threatened and State endangered San Joaquin Valley orcutt grass (*Orcuttia inaequalis*), Federally and State threatened giant garter snake (*Thamnophis gigas*), Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the Federally and State threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State fully protected bald eagle (*Haliaeetus leucocephalus*) and white tailed kite (*Elanus leucurus*) are known to occur within the Project area vicinity.

D

Other species of special concern that may also be present in the Project area include the Federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*), the Federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*), tricolored blackbird (*Agelaius tricolor*), Western pond turtle (*Actinemys marmorata*) and burrowing owl (*Athene cunicularia*). Regarding Federally listed species, the Department recommends early consultation with the United States Fish and Wildlife Service (USFWS).

E

Department Jurisdiction

Trustee Agency Authority: The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities as those terms are used under CEQA.

F

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Responsible Agency Authority: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

G

Fully Protected Species: The Department has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code Sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take." Two fully protected species, the white tailed kite and the bald eagle, are known to occur throughout the Project study area. Therefore, biological surveys should be conducted to determine whether or not this species could be impacted by the execution of any projects that will tier off of the proposed updated General Plan.

H

Bird Protection: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

I

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State."

It is possible that without mitigation measures this Project could result in pollution of a "Waters of the State" from increased road, parking, stormwater runoff, or construction-related erosion. In addition, the residential growth associated with project implementation would likely result in additional and potentially significant impacts to waters of the state from increased toxic runoff associated with roads and parking areas, increased sediment input, and increased discharges laden with household products such as pesticides, fertilizers, and cleaning chemicals. Both the direct construction

J

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related impacts, and the growth related impacts, could result in impacts to the fish and wildlife resources associated with Bear Creek, Fahrens Creek, and other surface waters.

J cont.

Project Recommendations

Listed Plant Species: There are several State- and Federally listed plant species known to occur in the vicinity of the Project area and could potentially occur within all or a portion of the Project area. Focused, repeated surveys should be conducted multiple times during the appropriate floristic period(s) in any area in order to adequately assess the potential Project-related impacts to listed plant species. If State-listed plants are detected during surveys, consultation with the Department is warranted to discuss the potential for "take" under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act without incidental "take" authority secured under Sections 2080.1 or 2081 of the Fish and Game Code.

K

Riparian Habitat and Wetlands: Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat and wetlands (vernal pools and waterways) exist within and adjacent to the proposed Project site. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Department has a no-net-loss policy regarding impacts to wetlands. Potential impacts to special status resources posed by wetland creation should also be considered. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer should be implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and Federally listed species. The Department recommends delineating wetlands, vernal pools, and swales with a 250-foot no-disturbance buffer. In addition, the Department recommends delineating a minimum 100-foot buffer from the high water mark of surface water channels and other blue-lined waterways that have no riparian vegetation. However, depending upon what Project-related activities are proposed in these areas, larger buffers may be warranted to avoid impacts. Further, a wetland delineation should be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.

L

Swainson's Hawk (SWHA): This State threatened species can be very sensitive to human disturbance around nests, which can lead to nest abandonment, and thus fledgling death. A minimum avoidance distance of 0.5 miles around an active nest site is sometimes necessary to avoid adult distress, but the buffer distance necessary to minimize adult distress varies significantly from site to site, and seems to depend on the level of disturbance present during nest initiation. Birds often become habituated to

M

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disturbances, particularly if these disturbances are regular and pre-date nest establishment. The most consistent pattern of concern are disturbances (such as human presence) that are new or that suddenly increase in intensity or volume, in the immediate vicinity of active nests, and that occur during the pre-nesting and incubation phases (March 15 to May 15). During the pre-nesting and active nesting season, pre-construction surveys should be conducted no more than 10 days prior to the start of the Project and should be conducted in accordance with the Department's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (May 31, 2000). If an active SWHA nest is identified within the 0.5-mile radius of the planned Project, the Department should be consulted prior to initiating any ground disturbance or any other increase in human presence or activities

M cont.

Due to the loss of suitable foraging and existing nesting habitat that may occur during area development, mitigation measures compensating for these potential losses of habitat should be included in the CEQA document. The Department's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (1994) recommends that for projects that occur within 1 mile of an active nest tree, 1.5 acres of habitat be protected in perpetuity for every acre of Swainson's hawk foraging habitat impacted; for projects that occur within 5 miles of an active nest tree that 0.75 acres of habitat be protected in perpetuity for every acre foraging habitat impacted; and for projects that occur within 10 miles of an active nest tree, that 0.5 acres of habitat be protected in perpetuity for every acre of foraging habitat impacted.

N

Funding of a sufficient long-term endowment for the management of the protected properties should be paid by the Project sponsors. In addition to fee title acquisition of grassland habitat, mitigation could occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

O

The above recommended mitigation measures should be fully discussed in the DEIR for the Project.

P

Nesting Birds: Regarding common and migratory birds under Mitigation Measure #3.4-1e, the Department does not concur that a 100-foot buffer be designated for identified nesting. If Project implementation occurs during the bird nesting season (February 1 through mid-September), surveys for active nests should be conducted by a qualified biologist no more than 30 days prior to the start of the disturbance (blasting, vegetation removal, or other ground-disturbing activities). A minimum no-disturbance buffer of 250 feet should be delineated around active nests of non-listed species until

Q

Kim Espinosa, Planning Manager
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Page 6

the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Q cont.

San Joaquin Kit Fox: San Joaquin kit fox populations are known to fluctuate over years and absence during any one survey does not necessarily exclude the potential for kit fox to occur on a site at a future time. Regarding Mitigation Measure #3.4-1i, the Department agrees that pre-construction surveys be conducted by a qualified biologist at all Project sites that contain appropriate habitat and that the Project proponent shall implement the standardized measures adopted by the USFWS or the Department. These surveys should also be conducted a maximum of 30 days prior to ground-disturbing activities. In the event that this species is detected during protocol-level surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid "take." If "take" cannot be avoided, acquisition of a State Incidental Take Permit would be required prior to Project implementation.

R

"Take" under the Federal Endangered Species Act (FESA) is more stringently defined than CESA; "take" under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the United States Fish and Wildlife Service (USFWS) in order to comply with FESA is advised well in advance of Project implementation.

California Tiger Salamander (CTS): Records from the California Natural Diversity Database (CNDDDB) show that the State-listed threatened California tiger salamander (*Ambystoma californiense*) is known to be present throughout and adjacent to the Project site. The Department has jurisdiction over this species under CESA. Because suitable aestivation and breeding habitat for CTS exists within the Project area, the Department believes this species could be potentially impacted if ground disturbance were to occur and the appropriate avoidance, minimization, and mitigation measures are not in place. The individual and cumulative impacts to CTS of expanding the sphere of influence for the General Plan Update should be fully should be fully discussed in the DEIR.

S

The Department requests potential Project-related impacts to this species within the Proposed General Plan Update boundaries are evaluated by a qualified and permitted biologist using the Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander which were issued by the Department and the USFWS in 2003. If CTS are found on the Project site, "take" authorization would occur through the issuance of the Incidental Take Permit, pursuant to Fish and Game Code Section 2081(b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an Incidental Take Permit. For information regarding Incidental Take Permits please

T

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see the following link: <http://www.dfg.ca.gov/habcon/cesa/>. Included in the Incidental Take Permit would be measures required to avoid and/or minimize direct "take" of CTS on the Project site, as well as measures to fully mitigate the impact of the "take."

T cont.

Burrowing Owl: Burrowing owls are known to occur within the Project area. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. Mitigation Measure #3.4-1d states that the Project proponent shall include the standardized avoidance measures of the Department. Therefore, the Department's Staff Report on Burrowing Owl Mitigation (CDFG 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

U

The Department's Staff Report on Burrowing Owl Mitigation also recommends that the appropriate foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrowing habitat.


V

CEQA Compliance: CEQA Guidelines Section 15378 defines "project" to mean the whole of an action that may result in either a direct or reasonably foreseeable indirect physical change in the environment. The final CEQA document should adequately address all impacts to natural resources of the Project site.

W

If you have any questions regarding these comments, please contact Jim Vang, Environmental Scientist, at the address or telephone number, extension 254, provided on this letterhead.

Sincerely,


For Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Eight

Kim Espinosa, Planning Manager
October 21, 2010
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cc: United States Corps of Engineers
San Joaquin Valley Office
1325 J Street
Sacramento, California 95814-2922

United States Fish and
Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Regional Water Quality Control Board
Central Valley Region
1685 E Street
Fresno, California 93706-2020

State Clearinghouse
Post Office Box 3044
Sacramento, California 95812-3044



FACSIMILIE LEADER PAGE

**California Department of Fish and Game
Central Region
Region 4
1234 East Shaw Avenue
Fresno, California 93710**

INFO (559) 243-4017

FAX (559) 243-3004

DATE: 10/21/10 **PAGE 1 OF** 9

TO: Kim Espinosa
City of Merced Planning & Permitting Division

FAX: (209) 785-8775 **PHONE:** (209) 385-6858

FROM: Jim Vang

INSTRUCTIONS: Original to follow by mail.

Letter 4 Jeffrey R. Single, Ph.D., Regional Manager, California Department of Fish and Game, Central Region

Comment 4A: *The Department of Fish and Game has reviewed the DEIR submitted by the County of Merced Planning Department (County) with regard to the Project title labeled above. The proposed Project includes an update of the City of Merced's General Plan over the next 20 years. The General Plan will include urban expansion, land use, transportation and circulation, public facilities and services, urban design, open space, conservation and recreation, sustainable development, housing, noise and safety elements. The proposed Project is located in central Merced County. The geographic area covered by the Project includes the current city limits of Merced and expands the sphere of influence so that the proposed General Plan boundary is roughly bounded by Old Lake Road to the north, Franklin Road to the west, North Orchard Drive to the East, and Harley Road to the south.*

Response 4A: The comment describing the general location of the City and content of the proposed General Plan is noted.

Comment 4B: *The Department has concerns about the Project-related impacts to the surrounding area and the permanent loss that would result from the development and construction activities occurring in wildlife compatible agriculture and historical wetlands; degradation of surface waters from activities occurring in close proximity to Bear Creek, Fahrens Creek, the multiple laterals and canals that traverse the Project area; and the loss of riparian habitat, as well as the associated impacts to species that utilize these habitat types. In order to adequately assess any potential impacts to biological resources, biological survey(s) may need to be conducted for each development project that will subsequently tier off of the finalized City of Merced updated General Plan. All surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether or not any special status species may be present within the proposed Project areas. This information is necessary to identify any mitigation, minimization, and avoidance measures and/or the need for additional focused surveys. These issues should be evaluated and addressed in the California Environmental Quality Act (CEQA) document prepared for this Project.*

Response 4B: As stated in Mitigation Measures #3.4-1a through 3.4-1i beginning at page 3.4-35 of the DEIR, surveys to identify biological resource impacts and provide project specific mitigation measures shall be conducted prior to development projects supported by the proposed 2030 General Plan.

Comment 4C: *The potential biological impacts of the Project are enhanced by and add to the cumulative impacts of the planned future build out of the nearby University of California, Merced, campus, adjacent planned campus community, and other small residential developments nearby. The Project-related impacts should be assessed within the context of the entire area, which faces the loss of several thousand acres containing vernal pool complexes and grasslands, and the species that live within those habitats. These issues should be evaluated and analyzed in the finalized CEQA document prepared for this Project and prior to Project approval. Our specific comments follow.*

Response 4C: The commenter requests that cumulative impacts to biological resources, particularly vernal pool complexes and grasslands in the vicinity of the UC Merced campus, be addressed in the EIR prepared for the 2030 General Plan Update. Mitigation Measures #3.4-2, 3.4-3a and 3.4-3b requiring that measures be taken to reduce impacts to riparian and wetlands resources prior to development projects supported by the proposed 2030 General Plan address this comment.

Comment 4D: *The Project has the potential to reduce the number or restrict the range of endangered, rare, or threatened species (as defined in Section 15380 of CEQA) including State-listed species known to occur in the Project area. The Federally threatened and State endangered succulent's owl clover (*Castilleja succulenta*), the Federally threatened and State endangered Colusa grass (*Neostapfia colusana*), the Federally and State endangered hairy orcutt grass (*Orcuttia pilosa*), the Federally threatened and State endangered San Joaquin Valley orcutt grass (*Orcuttia inaequalis*), Federally and State threatened giant garter snake (*Thamnophis gigas*), Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the Federally and State threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State fully protected bald eagle (*Haliaeetus leucocephalus*) and white tailed kite (*Elanus leucurus*) are known to occur within the Project area vicinity.*

Response 4D: See Response 4B regarding protection of species listed by the commenter.

Comment 4E: *Other species of special concern that may also be present in the Project area include the Federally threatened vernal pool fairy shrimp (*Branchineota lynchi*), the Federally endangered vernal pool tadpole shrimp (*Lepidurus packardl*), tricolored blackbird (*Agelaius tricolor*), Western pond turtle (*Actinemys marmorata*) and burrowing owl (*Athene cunicularia*). Regarding Federally listed species, the Department recommends early consultation with the United States Fish and Wildlife Service (USFWS).*

Response 4E: See Response 4B regarding protection of species listed by the commenter.

Comment 4F: *Department Jurisdiction*

Trustee Agency Authority: *The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities as those terms are used under CEQA.*

Response 4F: The comment is noted.

Comment 4G: *Responsible Agency Authority:* *The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or*

endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit for the Project. GEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CECA lead Agency makes and supports Findings of Overriding Consideration (FOC). The CECA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080.

Response 4G: The comment is noted.

Comment 4H: *Fully Protected Species:* *The Department has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code Sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take." Two fully protected species, the white tailed kite and the bald eagle, are known to occur throughout the Project study area. Therefore, biological surveys should be conducted to determine whether or not this species could be impacted by the execution of any projects that will tier off of the proposed updated General Plan.*

Response 4H: See Response 4B regarding protection of species listed by the commenter.

Comment 4I: *Bird Protection:* *The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).*

Response 4I: Mitigation Measure #3.4-1e beginning at page 3.4-37 of the DEIR addresses protection of raptors and other special-status birds.

Comment 4J: *Water Pollution:* *Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State."*

It is possible that without mitigation measures this Project could result in pollution of a "Waters of the State" from increased road, parking, stormwater runoff, or construction-related erosion. In addition, the residential growth associated with project implementation would likely result in additional and potentially significant impacts to waters of the state from increased toxic runoff associated with roads and parking areas, increased sediment input, and increased discharges laden with household products such as pesticides, fertilizers, and cleaning chemicals. Both the direct construction-related impacts, and the growth related impacts, could result in impacts to the fish and wildlife resources associated with Bear Creek, Fahrens Creek, and other surface waters.

Response 4J: As stated under Impact #3.8-1 beginning at page 3.8-14 of the DEIR, implementation of the policies and implementing actions of the proposed 2030 General Plan will be self mitigating and reduce the potential impact of urban pollutants entering surface waters to a less than significant level.

Comment 4K: *Project Recommendations*

Listed Plant Species: *There are several State- and Federally listed plant species known to occur in the vicinity of the Project area and could potentially occur within all or a portion of the Project area. Focused, repeated surveys should be conducted multiple times during the appropriate floristic period(s) in any area in order to adequately assess the potential Project-related impacts to listed plant species. If State-listed plants are detected during surveys, consultation with the Department is warranted to discuss the potential for "take" under CEM. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act without incidental "take" authority secured under Sections 2080.1 or 2081 of the Fish and Game Code.*

Response 4K: See Response 4B.

Comment 4L: *Riparian Habitat and Wetlands:* *Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat and wetlands (vernal pools and waterways) exist within and adjacent to the proposed Project site. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Department has a no-net-loss policy regarding impacts to wetlands. Potential impacts to special status resources posed by wetland creation should also be considered. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer should be implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and Federally-listed species. The Department recommends delineating wetlands, vernal pools, and swales with a 250-foot no-disturbance buffer. In addition, the Department recommends delineating a minimum 100-foot buffer from the high water mark of surface water channels and other blue-lined waterways that have no riparian vegetation. However, depending upon what Project-related activities are proposed in these areas, larger buffers may be warranted to avoid impacts. Further, a wetland delineation should be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.*

Response 4L: Mitigation Measures #3.4-1a, 3.4-2, 3.4-3a and 3.4-3b require adequate measures to be taken to reduce riparian habitat and wetlands impacts to a less than significant level during implementation of the proposed 2030 Plan.

Comment 4M: *Swainson's Hawk (SWHA):* *This State threatened species can be very sensitive to human disturbance around nests, which can lead to nest abandonment, and thus fledgling death. A minimum avoidance distance of 0.5 miles around an active nest site is sometimes necessary to avoid adult distress, but the buffer distance necessary to minimize adult distress varies significantly from site to site, and seems to depend on the level of disturbance present*

during nest initiation. Birds often become habituated to disturbances, particularly if these disturbances are regular and pre-date nest establishment. The most consistent pattern of concern are disturbances (such as human presence) that are new or that suddenly increase in intensity or volume, in the immediate vicinity of active nests, and that occur during the pre-nesting and incubation phases (March 15 to May 15). During the pre-nesting and active nesting season, pre-construction surveys should be conducted no more than 10 days prior to the start of the Project and should be conducted in accordance with the Department's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (May 31, 2000). If an active SWHA nest is identified within the 0.5-mile radius of the planned Project, the Department should be consulted prior to initiating any ground disturbance or any other increase in human presence or activities.

Response 4M: The comment is noted. See Response 4B.

Comment 4N: *Due to the loss of suitable foraging and existing nesting habitat that may occur during area development, mitigation measures compensating for these potential losses of habitat should be included in the CEQA document. The Department's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (1994) recommends that for projects that occur within 1 mile of an active nest tree, 1.5 acres of habitat be protected in perpetuity for every acre of Swainson's hawk foraging habitat impacted; for projects that occur within 5 miles of an active nest tree that 0.75 acres of habitat be protected in perpetuity for every acre foraging habitat impacted; and for projects that occur within 10 miles of an active nest tree, that 0.5 acres of habitat be protected in perpetuity for every acre of foraging habitat impacted.*

Response 4N: The comment is noted. See Response 4B.

Comment 4O: *Funding of a sufficient long-term endowment for the management of the protected properties should be paid by the Project sponsors. In addition to fee title acquisition of grassland habitat, mitigation could occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.*

Response 4O: Monetary contribution toward acquisition and maintenance of long-term endowment lands to provide biological resources habitat will be determined on a project by project basis in accordance with local, state and Federal requirements as the 2030 General Plan is implemented.

Comment 4P: *The above recommended mitigation measures should be fully discussed in the DEIR for the Project.*

Response 4P: See Responses 4A through 4O above.

Comment 4Q: *Nesting Birds: Regarding common and migratory birds under Mitigation Measure #3.4-1e, the Department does not concur that a 100-foot buffer be designated for*

identified nesting. If Project implementation occurs during the bird nesting season (February 1 through mid-September), surveys for active nests should be conducted by a qualified biologist no more than 30 days prior to the start of the disturbance (blasting, vegetation removal, or other ground-disturbing activities). A minimum no-disturbance buffer of 250 feet should be delineated around active nests of non-listed species until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Response 4Q: The intent of the Mitigation Measure is to protect migratory birds from disturbance or other “take,” which the U.S. Fish and Wildlife Service has defined as “pursue, hunt, shoot, wound, kill, trap, capture or collect” migratory birds. The Migratory Bird Act protects birds, their nests, and their eggs from, “possession, sale, purchase, barter, transport, import, export, capture, pursue, hunt, and kill.” This has generally been interpreted to include the disturbance of nesting birds, which would cause the parents to leave the nest (nest abandonment). California Fish and Game Code Section 3503 prohibits the take, possession, or needless destruction of nests or eggs of any bird species. Nesting is likely to occur for most migrating species between February 15 and August 31. As stated, Mitigation Measure #3.4-1e would require preconstruction surveys by a qualified biologist to determine if nesting birds occur within a project area. The 100-foot buffer noted in the mitigation measure is recommended by the U.S. Fish and Wildlife Service for some migrating birds, while no recommendation is made for others. A 250-foot buffer is recommended by the California Department of Fish and Game for nesting raptors, which, although included in the Migratory Bird Act, are also protected under the more strict recommendations of the State (see second bullet under Mitigation Measure #3.4-1e, page 3.4-37 of the Draft EIR). The determination of buffer size has been modified to: The size of buffer areas for any particular project shall be determined in consultation with CDFG (see Comment Letter 13, Response 13E). This will allow flexibility in buffer sizes to meet various agency and species requirements.

Comment 4R: *San Joaquin Kit Fox:* *San Joaquin kit fox populations are known to fluctuate over years and absence during anyone survey does not necessarily exclude the potential for kit fox to occur on a site at a future time. Regarding Mitigation Measure #3.4-1i, the Department agrees that pre-construction surveys be conducted by a qualified biologist at all Project sites that contain appropriate habitat and that the Project proponent shall implement the standardized measures adopted by the USFWS or the Department These surveys should also be conducted a maximum of 30 days prior to ground-disturbing activities. In the event that this species is detected during protocol-level surveys, consultation with the Department is warranted to discuss how to implement the Project and avoid “take.” If “take” cannot be avoided, acquisition of a State Incidental Take Permit would be required prior to Project implementation.*

“Take” under the Federal Endangered Species Act (FESA) is more stringently defined than CESA; “take” under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the United States Fish and Wildlife Service (USFWS) in order to comply with FESA is advised well in advance of Project implementation.

Response 4R: As noted by the Commenter, the San Joaquin kit fox is protected by USFWS, which has standardized recommendations to survey and protect the species. These recommendations include specific pre-construction survey periods and areas, and require notification within five days of the completion of the survey. To ensure that the City adheres to the recommendations of the State and/or USFWS, as appropriate, Mitigation Measure #3.4-1i (DEIR page 3.4-39) will be revised as follows:

Mitigation Measure #3.4-1i: Special-Status Mammals

To protect Merced kangaroo rat, western mastiff bat, western red bat, hoary bat, Yuma myotis, San Joaquin pocket mouse, American badger, and San Joaquin kit fox on proposed projects where suitable habitat exists, the following shall be implemented:

- *To protect special-status mammals, a habitat assessment shall be conducted on each project site prior to construction to ascertain whether habitat suitable for supporting special status mammals exists on the project site. If suitable habitat is present, preconstruction surveys shall be conducted by a qualified biologist at all project sites that contain appropriate habitat according to established standards or protocols of the CDFG or USFWS, if available for that species. If during the preconstruction survey, special-status mammals are found to be present, the project proponent shall implement the measures recommended by the biologist and measures adopted by the USFWS or the CDFG.*

Comment 4S: California Tiger Salamander (CTS): *Records from the California Natural Diversity Database (CNDDDB) show that the State-listed threatened California tiger salamander (*Ambystoma californiense*) is known to be present throughout and adjacent to the Project site. The Department has jurisdiction over this species under CESA. Because suitable aestivation and breeding habitat for CTS exists within the Project area, the Department believes this species could be potentially impacted if ground disturbance were to occur and the appropriate avoidance, minimization, and mitigation measures are not in place. The individual and cumulative impacts to CTS of expanding the sphere of influence for the General Plan Update should be fully should be fully discussed in the DEIR.*

Response 4S: California tiger salamander are discussed on pages 3.4-19 and 3.4-20 of the DEIR, and Mitigation Measure 3.4-1f is included for the protection of this species. Further discussion in the DEIR of the potential impacts to the species due to expansion of the sphere of influence would be premature, as potential impacts must be evaluated on a project by project basis. The DEIR does state that, “California tiger salamander populations have declined primarily because of the widespread conversion of valley and foothill grassland and oak woodland habitats to agricultural and urban uses (Stebbins 2003).” Potential impacts to CTS will be discussed in detail in Project level environmental documents when those individual projects include conversion of land to agricultural or urban use within the species’ habitat.

Comment 4T: *The Department requests potential Project-related impacts to this species within the Proposed General Plan Update boundaries are evaluated by a qualified and permitted biologist using the Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander which were issued by the Department and the USFWS in 2003. If CTS are found on the Project site, “take” authorization would occur through the issuance of the Incidental Take Permit, pursuant to Fish and Game Code Section 2081 (b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an Incidental Take Permit. For information regarding Incidental Take Permits please see the following link: <http://www.dfg.ca.gov/habcon/cesa/>. Included in the Incidental Take Permit would be measures required to avoid and/or minimize direct “take” of CTS on the Project site, as well as measures to fully mitigate the impact of the “take.”*

Response 4T: As explained under Response 4T, impacts that may occur to California Tiger Salamander would occur as the result of specific projects, and not as the result of the proposed expansion of the Sphere of Influence. Therefore, it is appropriate to require that mitigation measures to determine the potential for California tiger salamander to occur, and to take steps to avoid or reduce impacts to the species be conducted on a project-by-project basis. To address this in a manner that meets the intent of the CDFG to protect the species, Mitigation Measure #3.4-1f (DEIR page 3.4-38) has been revised as follows:

Mitigation Measure #3.4-1f: Special-Status Amphibians

To protect California tiger salamander and western spadefoot on proposed projects where suitable habitat exists, the following shall be implemented:

- To protect special-status amphibians, ~~preconstruction surveys~~ a project specific site assessment report, including protocol-level surveys, when indicated, shall be ~~conducted~~ prepared by a qualified and permitted biologist at all project sites that contain appropriate habitat. ~~If, during a pre-construction survey,~~ this site assessment report reveals that special status amphibians are found to be present, the project proponent shall implement the measures recommended by the biologist and standardized measures adopted by the USFWS or the CDFG.*

Comment 4U: Burrowing Owl: *Burrowing owls are known to occur within the Project area. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. Mitigation Measure #3.4-1d states that the Project proponent shall include the standardized avoidance measures of the Department. Therefore, the Department's Staff Report on Burrowing Owl Mitigation (CDFG 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure*

to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

Response 4U: The City appreciates the CDFG’s clarification of the agency’s recommended avoidance measures specific to burrowing owls. Project proponents will coordinate with CDFG when burrowing owls are found to occur within their project area to ensure that nest abandonment and other impacts to burrowing owls are avoided or minimized to the extent feasible.

Comment 4V: *The Department's Staff Report on Burrowing Owl Mitigation also recommends that the appropriate foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrowing habitat.*

Response 4V: Please refer to Response 4U. The CDFG will have the opportunity to consult with project proponents as specific projects, which may include burrowing owls, are proposed and biological surveys for the species occur.

Comment 4W: *CEQA Compliance: CEQA Guidelines Section 15378 defines “project” to mean the whole of an action that may result in either a direct or reasonably foreseeable indirect physical change in the environment. The final CEQA document should adequately address all impacts to natural resources of the Project site.*

Response 4W: The proposed General Plan Update is a policy document that describes how land will be used, and under what circumstances certain land uses or changes to land uses can occur. The DEIR addresses only the potential impacts that will occur because of the policies and actions required in the General Plan Update. The DEIR is not intended to address potential impacts that might occur as the result of a specific project. To ensure that all potential impacts to resources are appropriately considered, an environmental document is required under CEQA for each proposed project.



COUNTY EXECUTIVE OFFICE

LETTER 5

Larry T. Combs
County Executive Officer

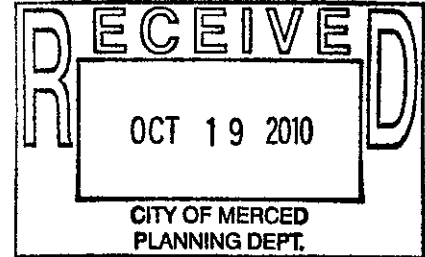
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October 19, 2010

Hand Delivered

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, CA 95340



Re: County of Merced Comments on the City of Merced, Merced Vision 2030 General Plan, and Draft Program Environmental Impact Report, SCH # 2008071069.

Dear Ms. Espinoza:

Introduction

The following comments are submitted on the City of Merced Vision 2030 General Plan Update, and Draft Environmental Impact Report. While a variety of issues and concerns are included in these comments, the most significant concerns center on how the General Plan Update ("GPU") may impact the future of Castle Airport. For the Merced region to provide a major platform for strong, diverse industrial and commercial business growth well into the future, the development of Castle Airport is paramount. Castle Airport features a uniquely massive infrastructure and is located in close proximity to highway and rail facilities such that the facility provides extraordinary opportunities found nowhere else. While recognizing a long history of working cooperatively to bring about other major transformative economic changes to the Merced region, the County of Merced ("County") finds itself in the discomforting but imperative position of having to express its vital concerns about the proposed northwest expansion of the Sphere of Influence in the Merced Vision 2030 General Plan. While the County fully respects the City of Merced ("City") in exercising its land use authority to create a General Plan that will serve its residents and businesses in the coming decade, the proposed northwest expansion, in its current form, would be so severely and irreversibly detrimental to Castle Airport that the County is compelled to submit these comments.

A

There are two major areas of concern that the County wishes the City to consider. First, with regards to CEQA, the GPU and GPU Draft Program Environmental Impact Report ("GPU EIR") do not adequately evaluate significant impacts, and do not fully mitigate such impacts, in the areas of Agriculture and Forest Resources, Hazards and Hazardous Materials, Land Use and Planning, Noise, and Transportation/Traffic. It also summarily and improperly rejects, without sufficient analysis, the alternative that is stated to be feasible and to be the environmentally superior project

B

alternative, that would entirely eliminate impacts to Castle Airport, and still attain the basic project objectives. (CEQA 21002.1(a)(b).) Second, with regards to the Airport Land Use Compatibility Plan, the Airport Land Use Commission must review the GPU to ensure compatibility with Castle Airport. (Pub. Util. Code § 21674(a).) The County believes the GPU would be found to be inconsistent with the Merced County Airport Land Use Compatibility Plan (April 1999) (“ALUCP”) because of the land use, noise, and other aircraft overflight issues generated by the northwest expansion of the City, known as Castle Farms. (ALUCP § 1.4.)

B cont.

C

The County would be delighted if upon review of these comments, the City would be interested to further explore these issues and to work towards building a common ground based on mutual interest and a wise resolution that serves the prosperity and critical planning interests of the entire Merced County region.

This type of cooperation is referenced in the proposed GPU policies related to the University Community and the City’s future annexation interests: Policy UE-1.4 “Continue Joint Planning Efforts on the UC Merced Campus and University Community Plans.” The GPU also contains Implementing Action 1.3.f. (Page 2-29) which identifies the City’s interest in negotiating a new “Property Tax Sharing Agreement” that reflects the SUDP/Sphere of Influence and Area of Interest proposed in the General Plan Update, which not only includes the University Community Plan, but also the future Community Plan areas for Castle Farms northwest of the City, Yosemite Lakes which is already identified as an “SUDP Study Area” in the County General Plan, and Mission Lakes located south of the Merced Regional Airport. Comments that follow include specific reference to the future negotiation of a new Property Tax Sharing Agreement.

D

1. CEQA Comments on the General Plan Update.

The EIR is the “heart of CEQA” and an “environmental alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached their ecological point of no return.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) If the decision to approve a project is based on an EIR that fails to provide the information required by CEQA, the decision becomes a nullity. (*Santiago County Water District v. County of Orange* (1981) 118 Clap. 3d 818, 829.) The GPU EIR as a whole fails to provide the information required to alert the local decision-makers and the public about the potentially dire impacts of the proposed project, particularly with regard to the proposed northwest expansion of the City west of Highway 59.

E

CH. 2 – PROJECT DESCRIPTION.

The Project Description statement of objectives fails to comply with CEQA. (CEQA Guidelines § 15124(b).) An accurate, stable, and finite project description is the *sin qua non* of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

F

1. Sphere of Influence, Northwest Expansion: The first and foremost objective in the Project Description is significant expansion of the Sphere of Influence, including the four-square mile Castle Farms housing development to the northwest. (GPU EIR, p. 2-1, p. 2-17.) Yet the GPU projects a lower population of 155,000 by 2030 (GPU EIR, p. 2-15) than the Merced Vision 2015 General Plan (“prior GPU”) projected population of 240,000 by 2035 (GPU, p. 2-5.) The Sphere of Influence objective is driving the projected population growth, rather than being supported by it, and therefore must be revised to include substantial evidence as to why the GPU EIR would support any other project alternative than the Reduced Growth Alternative, which deletes Castle Farms from its Sphere of Influence. (GPU EIR, Fig. 4-1.)

G

2. Airport Protection, Castle Farms. Another objective in the Project Description is the protection of the Merced Regional Airport as an important community asset. (GPU EIR, p. 2-2, p. 2-28.) This objective omits protection of Castle Airport while at the same time proposing to annex and develop Castle Farms. Castle Farms threatens to severely impact airport operations and prevent it from fulfilling its potential to become the largest and busiest cargo, technology, business, manufacturing hub in the region, including full commercial passenger air service, and generating jobs and off-airport industrial and airport-related activity. Omitting Castle Airport from this objective presents a distorted view of the relative importance of Merced Regional Airport. This objective and the corresponding Goal Area S-5 Airport Safety should specifically include Castle Airport, and the GPU should support Castle Airport’s viability and growth, without which a major economic driver for the region will be missing, leaving the GPU’s projected growth without support. Considering, the city’s support for the development of the High Speed Rail Heavy Maintenance Facility at Castle Commerce Center and the expectation that its adjoining airport will be utilized as the means by which equipment and components will be flown in, the GPU should not compromise Castle’s aforementioned viability and growth opportunities.

H

CH. 3 – ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES IN GENERAL.

The adequacy of an EIR’s project description, discussed above, is closely linked to the adequacy of the impact analysis, discussed below, and if an EIR is inadequate because it fails to discuss a key aspect of the project, for example, the interface between Castle Farms and Castle Airport, then the environmental analysis will probably reflect the same mistake. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.app.3d 713, 722-723.) Just like the project description, the GPU EIR as a whole fails throughout the environmental analysis to include protection of Castle Airport where it would make logical sense to do so. This omission has produced a rippling effect, crippling the analysis of environmental impacts throughout the document in the areas of Hazards and Hazardous Materials, Land Use and Planning, Noise, and Transportation/Traffic.

I

Ch. 3.7 Hazards and Hazardous Materials, GPU EIR, p. 3.7-7 specifies Transportation Policies 3.1, 3.2, and 3.3, and Safety Policies S.5-1 and S.5-2, without mentioning the protection of Castle Airport from encroachment and incompatible development.

J

<p><u>Ch. 3.9 Land Use and Planning</u>, GPU EIR, pp. 3.9-12 specifies the protection of Merced Regional Airport but not Castle Airport as a important community asset, and GPU EIR, p. 3.9-15 specifies Transportation Policies 3.1 and 3.2, again, without mentioning the protection of Castle Airport from encroachment and incompatible development.</p>	K
<p><u>Ch. 3.11 Noise</u>, GPU EIR p. 3.11-20, Noise Policy N-1.1 specifies the minimization of aircraft noise, but without explaining the necessity of protecting the ability of Castle Airport to operate at maximum permitted levels, and Noise Policy N-1.5 specifies not locating noise-sensitive land uses near major noise source but does not delete the four square mile community of Castle Farms that would be directly under the downwind pattern for large aircraft flying 24 hours a day.</p>	L
<p><u>Ch. 3.15 Transportation/Traffic</u>, GPU EIR p. 3.15-21 specifies Transportation Policies T-3.1, T-3.2, and T-3.3 without mentioning the protection of Castle Airport from encroachment and incompatible development.</p>	M
<p>In addition to the setting, impact and mitigation measure analysis related to Castle Airport, the text in Chapter 3.2 Agriculture and Forest Resources does not fully recognize that the City's SUDP/SOI expansion area is located within the Williamson Act Agricultural Preserve. Specifically, Impact 3.2-2 recognizes the conflict with 71 acres of land under Williamson Act Contract, but does not identify the conflict in designating land for urban development when it is located within a Williamson Act Agricultural Preserve. Government Code Section 51235 identifies that the Agricultural Preserve shall continue in full effect following annexation to the City, so this should be recognized as part of the environmental setting and as a significant impact as the City would need to remove the land from the preserve upon annexation.</p>	N
<p>Finally, the GUP EIR does not adequately address the stated intention for annexation of the Rural Residential Center (RRC) area between the current City limits and the desired annexation of the UC Merced Campus and University Community Plan areas. While the City has established its interests in annexation of the Campus and University Community since adoption of Resolution #2006-89 (included under Implementing Action 1.4.b p. 2-30), the General Plan continues to defer development of policies and adequate planning for the transition of urban development through this RRC area. Implementation Action No. 1.5.d (Page 2-33) simply states the City will: "Establish annexation policies and outreach program regarding the annexation of the existing Rural Residential Centers (existing development on one-acre lots)." Similarly, in Chapter 3: "Land Use" the City does not include development of these policies and plans as part of the "Issues for Future Study" in Section 3.8. As a result, the Draft GPU EIR does not contain any analysis of the effects of the City incorporating and serving this RRC area with city services and facilities. This should be addressed in Impact 3.9-1 "Physically divide and established community" and in the Cumulative Impact analysis (GPU EIR p.3.9-17). The public utilities to serve the RRC should be included under Impact #3.16-2 related to water and wastewater treatment facilities, and Impact #3.16-5 related to providing wastewater treatment to the project's projected demand in addition to the provider's existing service commitments. (GPU EIR p. 3.16-8 and 3.16-13.)</p>	O

3.2 AGRICULTURE AND FOREST RESOURCES.

The conclusion that impacts upon agriculture are “significant and unavoidable” is flawed. CEQA requires an impact to be mitigated to the fullest extent possible. “CEQA compels government first to identify the [significant] environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures...” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal. 4th 1215, 1233.) Yet, there is no discussion of requiring agricultural conservation easements, or in-lieu fees for their purchase. The CEQA Guidelines recognize the use of fee payments as mitigation. CEQA Guidelines Section 15130, subd (a)(3); (*Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (6th Dist 2001) 87 Cal. App. 4th 99, 140.) This mitigation is used throughout the state by both cities and counties. Merced County has required mitigation of farmland loss in all of its community plans adopted since 2000, including within the University Community Plan which the City is proposing to incorporate into this General Plan Update. CEQA contains a “substantive mandate” not to approve projects when “there are feasible alternatives, or mitigation measures” to lessen or avoid impacts. (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal. 4th 105, 134.)

Without mitigating the loss of farmland, the city opens the door to the conversion of agriculture for urban uses such as would be the case in the development of Castle Farms and the University Community. As mentioned earlier, while the DEIR addresses the potential impacts upon land under Williamson Act Contract, it fails to analyze the potential impacts on the lands within the Merced County Agricultural Preserve. In addition, like contracted land, the agricultural preserve remains intact upon annexation, and becomes the responsibility of the City to administer. (Government Code, § 51235.)

3.7 HAZARDS AND HAZARDOUS MATERIALS.

The analysis of safety hazards associated with Castle Airport violates CEQA because it is based on a speculative environmental baseline rather than on existing physical conditions and realistic future conditions. (CEQA Guidelines § 15125(a).) The analysis of airport safety grossly underestimates the potential noise impacts of Castle Airport by stating that it is now used for civilian rather than military purposes, and because of differences in airplane technology, this may lead to the compatibility zones being significantly reduced. (GPU, p. 3.7-2.) Consistent with CEQA Guidelines § 15229, the environmental baseline for Castle Airport is the same operational level as its use as a military base at the time of closure, and impacts that do not exceed such baseline are not considered significant. (Final Subsequent EIR, Redevelopment Plan for Castle Airport Aviation and Development Center, SCH # 20077011123, December 2007, p. 1-4.) Castle Airport has no intention and no plans to modify its environmental baseline to accommodate residential communities on its borders. Castle Airport can at any time accommodate the same level of operations in terms of noise, land use, and physical requirements as when it operated as a military airport. It can not be overemphasized that Castle Airport has enormous regional economic potential and statutorily reserved environmental clearance to re-emerge once again as a regional aeronautic behemoth.

To suggest that Castle Airport compatibility zones will ever be reduced, let alone reduced sufficiently to make it compatible with a sprawling, four-square mile residential subdivision directly on its borders, is contrary to accepted standards of modern planning. An agency has discretion not to use an environmental baseline at the time the project is prepared, but not here where there is substantial evidence to support that baseline of historic aircraft operations within the meaning of CEQA Guidelines § 15384. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277.)

Q cont.

The GPU EIR analysis of Noise and Transportation/Traffic impacts also relies on a similarly flawed description of the environmental setting.

Ch. 3.11 Noise, GPU EIR p. 3.11-10 describes aviation noise levels generated by Castle Airport as primarily coming from single-engine fixed wing general aviation aircraft, but admitting that some twin-engine aircraft, business jets, and commercial jet airplanes “also utilize the airport.”

R

Ch. 3.15 Transportation/Traffic, GPU EIR, p. 3.15-7 casts the transportation setting at Castle Airport as a relic from its days as a military air force base, only serving in recent years, “businesses specializing in training foreign pilots.”

S

An EIR must describe the environmental setting correctly because it is used to determine the environmental baseline for evaluating whether impacts of the project are significant. (CEQA Guidelines § 15125.) As shown, the environmental setting used for Castle Airport describes operations closer to that of a regional airport of minor significance. As an analytical starting point this is seriously flawed and violates CEQA because it ignores the special baseline guidelines established for the reuse of a military base (CEQA Guidelines § 151125(b)) and the highly unique and regional position of Castle Airport (CEQA Guidelines § 15125(c)) and the future it holds for regional transportation and economic growth. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 125.)

T

Any findings regarding impacts and mitigation in the areas of Hazards and Hazardous Materials, Noise, and Transportation/Traffic that flow from a speculative or artificially diminished environmental baseline for Castle Airport, like the fruit of a poisonous tree, will be seriously flawed and violate CEQA for failure to support findings with substantial evidence. (CEQA § 21081.5, CEQA Guidelines § 15384.)

3.9 LAND USE.

The proposed action violates CEQA because it is inconsistent with the Merced County General Plan. (CEQA Guidelines § 15125(d).) The GPU EIR directly conflicts with the following objectives and policies of the Merced County General Plan (“County GP”), as summarized here:

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Land Use Element (County GP, pp. I-60, I-62, I-66, I-67.)

Objective 9.A: Locate recreational areas, institutional and public facilities, hazardous and non-hazardous waste facilities, power and communication towers and airports to minimize land-use conflicts while satisfying local or regional demands.

Policy 9: Recognize the importance Castle Airport by encouraging only compatible land uses in areas subject to safety or noise impacts from these facilities.

Policy 10: The unique status of Castle Airport will be recognized for its capacity for air cargo and transit service in addition to accommodating General Aviation.

Objective 12A: Accomplish the full economic reuse of the Castle property.

Objective 12B: Appropriately locate land uses to minimize conflicts and maximize reuse opportunities.

Circulation Element (County GP, pp. II-20.)

Objective 2.A: Support and protect the operation and use of public airports.

Objective 4: Encourage land uses which transport large quantities of goods or materials to locate in areas served by rail or air transportation.

Noise Element (County GP, pp. VI-23-24.)

Objective 2.A and 2.B: Expansion of existing and the location of new commercial and industrial land uses are not significantly impaired by the encroachment of new incompatible, noise sensitive uses.

Objectives 2.C: Protect operations of existing public use airports from significant impacts caused by the encroachment of new incompatible land uses.

Implementation of the County GP depends on attracting large industrial and commercial activities and discouraging incompatible uses, especially sensitive receptors, near Castle Airport. (County GP, p. II-21, p. IV-24.) Yet because of the inherent friction between the City's GPU expansion to include the Castle Farms project and the existing Castle Airport, the proposed project would permanently preclude the implementation of, and therefore violate, County General Plan policies intended to assist Castle Airport to reach its full economic potential as a regional magnet for business, industry, and technology.

The City has a parallel responsibility with the County to evaluate development activities for their consistency with airport compatibility zones identified in the ALUC's Airport Land Use

U cont.

V

Compatibility Plan. The County General Plan contains the following Implementation Measure to implement Policies 9 and 10 under Objective 9.A of the Land Use Chapter referenced earlier:

“Building permits and discretionary applications in identified areas subject to safety or noise impacts from public airports will be reviewed for compatibility with consideration of the Merced County Airport Land Use Commission Policy Plan or other adopted ALUC Plan.

The City must recognize this County General Plan requirement applies to the review of projects in the unincorporated area around all public airports in the County, including the City of Merced Airport. The GPU EIR should include objectives and policies and implementation measures consistent with the view that Castle Airport must be protected to preserve its regional position and the distinct competitive edge it offers because of its superior access to extremely large capacity, round-the-clock, air freight services that can reach international markets, and close proximity to two major domestic railways, and to the major Central Valley corridor, Highway 99. Castle deserves the same level of protection that the City is proposing for its own municipal airport, if not higher.

V cont.

As discussed below, the proposed action also violates CEQA § 15125(d) because it is inconsistent with the Merced County Airport Land Use Compatibility Plan.

3.11 NOISE.

The proposed action violates CEQA because conclusions regarding noise impacts are based on faulty assumptions and the omission of critical information, and because, as a result of inadequate impact analysis, the mitigation measures are based on unreasonable inferences or are so vague as to be unenforceable. (CEQA §§ 21002, 21100, 21081.6(b).)

W

1. Sensitive Receptors. An EIR must propose mitigation measures that will minimize a project’s significant impacts by reducing or eliminating them. (CEQA §§ 21002, 21100) Such measures must be supported by evidence in the record and reasonable inferences that may be drawn from such evidence. (*City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889.) As discussed above, the proper analysis under CEQA to determine the potential for significant noise impacts from Castle Airport on Castle Farms has been foreclosed by an incorrect description of the airport setting and by a speculative airport noise baseline. Nevertheless, the GPU EIR baselessly concludes that mitigation measures, applied through the implementation of GPU policies N-1.5d, N-1.6(a) and (b)(GPU, pp. 10.34 -35), would reduce the noise impacts to sensitive noise receptors from Castle Airport to a level below significance. (GPU EIR, p. 3.11-33.) This conclusion violates CEQA because it is based on an unreasonable assumption that the noise impacts to sensitive receptors, such as hospital and schools, which would be entirely under the downwind flight pattern of large aircraft flying 24 hours a day from a fully operational Castle Airport, can somehow be mitigated at all. Further, the noise mitigation policies proposed are so vague as to be unenforceable, recommending in the worst case scenario, “appropriate mitigation to achieve compliance with adopted policies,” and “best available noise

X

reduction measures” (GPU, pp. 10-35, 10-37.) These policies violate CEQA because mitigation measures must not only be effective but must be realistically enforceable. (CEQA § 21081.6(b), CEQA Guidelines § 15126.4(a)(2).) (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.) The GPU EIR fails to support that these noise mitigation policies for sensitive receptors are either.

X cont.

Finally, an EIR must be organized and written in a manner that will be meaningful and useful to decision-makers and to the public. (CEQA § 21003(b).) The Noise Element particularly violates this standard of clarity because it overly abbreviates mitigation measures in the GPU EIR, passing the details to the GP, having the effect of obscuring the lack of a clear analytical connection between the noise baseline, the noise impact analysis, and the evidence that would support the mitigation of noise impacts to a level below significance. Noise Policy N-1.4 states euphemistically, “Reduce noise levels at the receiver where noise reduction at the source is not possible.” (GPU EIR, p. 3.11-20.) The actions to implement this policy are clearly aimed at reducing noise levels at Castle Farms if reduction at Castle Airport is not possible. (GPU, p. 10-33, 10-34.)

Y

2. Non-sensitive Noise Receptors. Yet, the Noise Element simply omits any conclusion as to whether mitigation measures will adequately address noise impacts from Castle Airport to non sensitive noise receptors, such as the 1,775 acres of homes and 545 acres of businesses proposed at Castle Farms. This omission is a direct result of the failure of the GPU EIR to establish the correct environmental baseline for Castle Airport noise thus avoiding the reasonable conclusion that such impacts could be significant, thus requiring mitigation. That said, the GPU includes policies to mitigate for potential noise impacts from Castle Airport, even if those impacts have not been assessed in accordance with CEQA.

Z

GPU Policy N-1.1 includes a plethora of noise abatement techniques to minimize the impacts of aircraft noise. (GPU, p. 10-34.)

AA

Policy I.1.d calls for working with Merced County to minimize noise impacts from Castle Airport. (GPU, p. 10-31.) This policy should be deleted or modified to eliminate any suggestion that the County of Merced would be agreeable to any plan or policy that would curtail the nature, scope, and duration of operational activities at Castle Airport.

BB

Policy 1.1.e calls for updating the projected noise contours “as information becomes available.” (GPU, p. 10-31.) This policy should be deleted or modified to eliminate any suggestion that the County of Merced would be agreeable to any plan or policy that would reduce the reach of its compatibility contours.

CC

Policy N-1.4 includes a plethora of noise reduction policies to eliminate noise levels at the receiver when noise reduction at the source is not possible. (GPU, p. 10-33.)

DD

Policy 1.4.b calls for stringent noise standards as applied to other airports in the County. (GPU, p. 10-34.) This policy, like the other policies discussed here, should be amended

EE

<p>to ensure it does not compromise the full operational capacity of Castle Airport, because Castle Airport in is a unique position, with an operational baseline derived from its former use as a military base, that differentiates it from all other airports in the County.</p>	<p>EE cont.</p>
<p>Policy 1.4.c calls for the application of a broad set of standard noise reduction measures to specific projects but also urges the update of the Merced County Airport Land Use Compatibility Plan “to reflect the absence of military aircraft after the closing of Castle Air Force Base.” (GPU, p. 10-34.) In addition, the 1999 ALUCP was based on the status of Castle Airport as a civilian facility, not as an Air Force Base, and so this policy is incorrect. The listed noise reduction measures should be amended to require noise navigation easements and should delete the suggestion that the operational and environmental baseline of Castle Airport should be diminished to accommodate Castle Farms, in the next update of the Merced County Airport Land Use Compatibility Plan.</p>	<p>FF</p>
<p>3.15 TRANSPORTATION/TRAFFIC.</p>	
<p>1. <u>Major regional routes.</u> The Transportation/Traffic Element needs to include a revised discussion of certain major regional routes. First, Santa Fe Drive should be recognized as a major regional route. Accordingly, Figure 4.2 should be revised to include Santa Fe Drive and the associated text revised to reflect this change. (GPU, p. 4-8.)</p>	<p>GG</p>
<p>Second, Section 4.3.3 should include a discussion about the importance of Campus Parkway because it impacts circulation and access to the City. (GPU, p. 4-11.)</p>	<p>HH</p>
<p>Third, some type of discussion should be included regarding Caltrans’ long-term plan to finish construction of the one-way couplet frontage roads along SR 99 between R Street and G Street. This improvement could be very important to circulation and has the potential to impact existing land uses along the frontage roads. Further, Figure 4.1 shows the City’s functional classifications for various roadways extending beyond the proposed Sphere of Influence and needs to be clarified. (GPU, p. 4-5.) The functional classification of most of the roadways will change either at the edge of the Sphere of Influence or at a logical intersection before the edge of the Sphere of Influence.</p>	<p>II</p>
<p>2. <u>Transportation/Traffic Policies.</u> The GPU transportation and traffic policies need revision. First, a policy indicating that new development is required to provide its proportionate share of the cost of improvements should be added. Some discussion about the creation of fees to implement such a requirement should be considered. Second, a policy related to the impact of this project on roadways outside the City sphere of influence needs to be added. For instance, Santa Fe Drive west of SR 59 is shown as needing 6 lanes yet there is no indication of how the additional lanes will be funded. Development occurring in the City should pay its proportionate share.</p>	<p>JJ</p>
<p>3. <u>Technical Issues.</u> There appear to be significant inconsistencies between the traffic study prepared for the GPU EIR and the actual text and conclusions in the GPU. First, Appendix K of the GPU EIR does not include sufficient information describing how the traffic analysis was conducted nor does it present the information in a way that lends itself to review. Second, the difference between the No Project Conditions scenario and the General Plan Buildout</p>	<p>KK</p>
<p>the difference between the No Project Conditions scenario and the General Plan Buildout</p>	<p>LL</p>
<p>the difference between the No Project Conditions scenario and the General Plan Buildout</p>	<p>MM</p>
<p>the difference between the No Project Conditions scenario and the General Plan Buildout</p>	<p>NN</p>
<p>the difference between the No Project Conditions scenario and the General Plan Buildout</p>	<p>OO</p>

<p>Conditions Scenario is unclear. Appendix K only seems to show the results of the <u>No Project</u> scenario. Third, several roadways appear to be impacted by planned growth yet no improvement or other mitigation has been proposed to improve the calculated LOS to acceptable levels. One such example is McKee Road. The future level of service is shown to be LOS F. Another roadway not being mitigated includes Bellevue Road. Fourth, it appears the traffic modeling assumes Lake Road will extend southward. However, the circulation map does not support this assumption. This impacts how traffic is distributed by the model.</p>	<p>OO cont. PP QQ</p>
<p>Finally, the conclusions on Page 3.15-24 & 25 do not consistently conform to Table 3.15-4. For instance, Campus Parkway in the Table is shown as being widened to 6 lanes from Mission to Childs with LOS D. However, the conclusions indicate Campus Parkway to be 4 lanes with LOS F.</p>	<p>RR</p>
<p>It is possible the GPU EIR traffic study may include incorrect assumptions resulting in inappropriate conclusions. Therefore, we request the opportunity to review the “The City of Merced General Plan Update Traffic Analysis (Fehr and Peers, May 9, 2009) referenced at Section 3.15 of the GPU EIR.</p>	<p>SS</p>
<p style="text-align: center;">CH. 4 – PROJECT ALTERNATIVES.</p>	
<p>The discussion of Project Alternatives violates CEQA because it fails to adequately discuss why it rejected the Reduced Growth Alternative. (CEQA Guidelines § 15126.6(c).) This alternative, which deletes Castle Farms, was considered to be feasible, stating that the City of Merced may grow at a slower pace than is being planned for (GPU EIR, p. 4-10), and it was considered the environmentally superior alternative, incurring eleven fewer environmental impacts than the proposed action. (GPU EIR, p. 4-18) The GPU EIR rejection of alternatives analysis is cursory at six sentences long and does not directly discuss any of the alternatives. It only concludes in a vague manner that since the project consists of a plan update for a specific area, an alternative location of the project is not feasible. (GPU, p. 4-5) There is no meaningful detail and thus it clearly violates CEQA. (<i>Laurel Heights Improvement Assn. v. Regents of University of California</i> (1988) 47 Cal.3d 376, 404.)</p>	<p>TT UU</p>
<p>The lack of quantitative information on the alternatives, especially the “No-Project” alternative does not allow for an informed analysis or decision. (<i>Kings County Farm Bureau v. City of Hanford</i> (5th Dist. 1990) 221 Cal.App.3d 692.) The alternatives analysis presented, rather than providing viable alternatives, instead winnows the alternatives to the preferred plan of the city.</p>	<p>VV</p>
<p>The Reduced Growth Alternative meets all the basic project objectives as listed at GPU EIR, p. 4-5:</p> <ul style="list-style-type: none"> • Directing growth away from prime agricultural land. (GPU EIR, p. 4-11.) • Conserving water so as not to overtax or contaminate regional water supplies. (GPU EIR, p. 4-12.) • Preserves and protects important wildlife habitat. (GPU, p. 4-11.) 	<p>WW</p>

- Minimizes adverse growth impacts on air quality and climate change. (GPU, pp. 4-11, 4-13)
- Conserves non renewable energy resources. (GPU, p. 4-12.)
- Preserves important cultural and historic resources. (GPU, p. 4-11.)

The most fundamental mandate of CEQA is that decision-makers refrain from approving projects if there are feasible alternatives which would substantially lessen the significant environmental impacts of a project. (CEQA § 21002.) “CEQA compels government first to identify the significant effects of projects, and then to mitigate those adverse affects through the imposition of feasible mitigation measures or through the selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233.) “CEQA contains substantive provisions with which agencies must comply. The most important of these is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects.” (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.)

WW cont.

The Reduced Growth Alternative is a feasible alternative that would protect Castle Airport from the deleterious and irreversible effects of Castle Farms, and substantially lessen the significant environmental effects when compared to the proposed action. Yet GPU EIR fails to offer any clear and direct analysis as to why it was rejected. It is fundamentally inconsistent with the ALUCP because of the land use, noise, and aircraft overflight issues generated by Castle Farms. (ALUCP § 1.4.) In short, a four square mile, 2,600 acre mixed-use, village style, urban development cannot be compatibly located directly adjacent to a major airport facility.

XX

2. Airport Land Use Compatibility Plan.

Because Castle Farms is a major airport activity of particular concern the ALUC will have to review it independent of the GPU. (ALUCP § 1.2.14; Policy 1.5.3 (a)(1)(2)(3)(10).) It will have to be submitted to ALUC with detailed information on final land uses, residential densities, and the potential of the project to produce electrical interference and glare that would impede pilot navigation. (ALUCP § 2.3.1(d)(e)(g).) The GPU, however, provides enough information on Castle Farms (GPU, pp. 3-74-3.75, Figure 4-1.) to perform a preliminary analysis to assess its compatibility with Castle Airport relative to the ALUCP review criteria. (ALUCP § 2.4.)

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First, it would negatively affect the airport influence area because it places 1,775 acres of homes, and 545 acres of businesses directly under the downwind pattern for large aircraft. The assigned land-use for zone C includes low-density and low-density-medium residential, which is incompatible with zone C. (ALUCP, p. D-2) It also includes unspecified commercial and office uses, which are potentially incompatible with zone C. (ALUCP, p. D-3.)

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Second, it does not cluster housing and evenly distribute open space sufficiently, compared, for example, to Mission Lakes as proposed to be adjacent to Merced Airport. (GPU, p. 3-96.) This deficiency would deprive pilots the necessary range of choices of

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<p>where to make emergency aircraft landings. (GPU, p. 11-26) Castle Farms merely creates a thin open space belt at the project western edge. (GPU, Figure 4-1.)</p>	<p>AAA cont.</p>
<p>Third, because Castle Farms is a four-square mile community, there are numerous potential sensitive receptors, such as schools and medical facilities, that are likely to be required and to be proposed that would also present serious compatibility issues.</p>	<p>BBB</p>
<p>In short, as the GPU itself concedes, the ALUCP, “. . . calls for approach protection through land use restrictions . . . and the discouragement of residential land uses in the entire referral area [included Zone C].” (GPU, p. 11-26.) Even if the City of Merced were to adopt the Castle Farms project based on lower locally-adopted significance thresholds, the ALUC can not exempt the project for failure to comply with its own stricter standards. (Ops. Cal. Atty. Gen. 03-805 (2004).)</p>	<p>CCC</p>
<p>The ALUCP perspective is to protect for the maximum reasonably foreseeable level of activity. (ALUCP § 2.2.) Yet the GPU states that the airport conversion to civilian use may reduce the Castle Airport approach zones, removing barriers to “growth to the northwest . . . once limited by the noise and safety hazards” posed by military use. (GPU, p. 2-7.) Castle Airport fully plans to operate at maximum high growth levels of activity that will make it the largest and busiest cargo, technology, business, manufacturing hub in the region, including full commercial passenger air service, and generating jobs and off-airport industrial and airport-related activity. The GPU is overly speculative to conclude that compatibility zones will ever be reduced sufficient to make Castle Farms compatible with Castle Airport. Castle Farms is simply incompatible in every way with Castle Airport.</p>	<p>DDD</p>
<p>As the GPU concedes, Castle Farms is likely to generate nimby-type residential complaints about noise, safety, and other issues. (GPU, p. 10-32.) Given scope and character of Castle Farms, it is reasonably foreseeable that such complaints would be regular and from multiple sources, and eventually would coalesce into organized advocacy efforts to limit the operation of the airport to daytime hours, and reduce ability to co-locate heavy industrial and airport-dependent industries nearby. If successful, such efforts would have devastating affects on Castle Airport and on the regional economy.</p> <p>Indeed, even at this early stage, promoters of Castle Farms have already personally communicated to the County that it would expect flights to cease no later than 11:00 pm at night. Further, the GPU EIR suggests in no uncertain terms this would be pursued as a noise mitigation measure. (GPU EIR, p. 5-7.)</p>	<p>EEE</p>
<p>If the City of Merced were to adopt the Reduced Growth Alternative, at least to the extent it would delete Castle Farms, it would likely be consistent with ALUCP policies in most impacted areas as did the Merced Vision 2015 General Plan (April 1997). (ALUCP, p. 4-6.) On the other hand, if Castle Farms remains part of the GPU, the County will have no other choice but to vigorously request the ALUC determine that the GPU, for the foregoing reasons, is inconsistent with ALUCP. And if it becomes necessary, the County will just as vigorously oppose any</p>	<p>FFF</p>

attempt to reduce the Castle Airport compatibility zones, that would compromise the potential to accommodate the return of large military, commercial, cargo, and special mission aircraft.

FFF cont.

Conclusion

The County has an elevated role in reviewing projects that require annexation from the County to the City under the Property Tax Revenue Sharing Agreement (“Agreement”) between the City and the County (City of Merced Resolution No. 97 and County of Merced Resolution No. 97-35). Castle Farms is still almost entirely outside the City of Merced Sphere of Influence and would require annexation. Pursuant to Section VI(D) of the Agreement there must be mutual agreement between the City and County regarding any such annexations. The GPU EIR states that the “. . . agreement will need to be updated to reflect policies relating to the City’s new SUDP/Sphere of Influence . . .” The County has no intention of amending the Agreement in such a way that threatens the viability of Castle Airport, as discussed throughout this letter. Frankly, the City should consider these comments in light of the future durability of the Agreement.

GGG

Regional economic growth is dependent on the ability of the region to attract industry and businesses and create good paying jobs. The potential development of Castle Airport as a regional cargo hub, as a maintenance facility for the High-Speed rail project, and as a commercial airport, is the linchpin for regional economic growth. Its massive size, super long runway, and large protection zones capable of accommodating large aircraft in high numbers, make it absolutely unparalleled among regional airports, and accordingly, is paramount as an economic growth engine for the entire region. Its extraordinary and unique position must be fully protected. Frankly, the inclusion of Castle Farms in the GPU is severely detrimental to Castle Airport because it could restrict the nature and extent of flight operations which would have a cascading affect on the airport facility as a whole. As the GPU concedes:

HHH

When residential development is allowed to locate adjacent to airports, many times airport operations suffer due to noise, safety, and other complaints. (GPU, p. 10-32.)

Equally important, it would irreversibly preclude the enormous opportunity to concentrate airport-dependent industrial, technology, manufacturing, and commercial businesses adjacent to the airport. The County of Merced therefore urges the selection of the Reduced Growth Alternative, or a modified version thereof that would delete Castle Farms from the GPU.

The Board of Supervisors has reviewed this comment letter to ensure that the GPU EIR fulfills not only the analytical requirements but also the fundamental policies of CEQA. One of the major objectives of the CEQA process is to foster better, more environmentally sensitive projects, through revisions which are precipitated by the preparation of the EIR itself. (*County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 10.) The essence of these comments is that GPU EIR must be revised to include accurate, complete information on Castle Airport. EIRs facilitate the generation of concrete suggestions as to how projects can be modified to avoid or

III


mitigate significant environmental impacts, including revising a proposed project or choosing an environmentally superior project. (CEQA Guidelines § 15002(h).) Accordingly, the County urges the City to either:

1. Modify the proposed action to delete Castle Farms, as a residential community, and redesignate the area for industrial and commercial use, to create a genuine, long-term synergy with Castle Airport, or
2. Adopt the Reduced Growth Alternative because it does not include Castle Farms and therefore would avoid the presumably significant, unmitigable impacts caused by the basic incompatibility of a large residential development with Castle Airport.

In closing, while the County appreciates the opportunity to comment on the GPU EIR, the County welcomes further opportunities to enhance and reinforce our mutual, long-term interest if promoting land use that fosters regional economic growth for both the City and the County. If the City needs additional information or has any questions regarding this letter please contact any of us or Larry T. Combs, the Chief Executive Officer, at (209) 385-7637.



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Paul Fillebrown, Director
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JB/sf

cc: Greg Diaz, City Attorney
John Bramble, City Manager

Ill cont.

JJJ

Letter 5 Jim Brown, Director of Planning and Community Development; Mark Hendrickson, Director of Commerce, Aviation, Economic Development; Paul Fillebrown, Director of Public Works, Merced County Executive Office

Comment 5A: Introduction

The following comments are submitted on the City of Merced Vision 2030 General Plan Update, and Draft Environmental Impact Report. While a variety of issues and concerns are included in these comments, the most significant concerns center on how the General Plan Update ("GPU") may impact the future of Castle Airport. For the Merced region to provide a major platform for strong, diverse industrial and commercial business growth well into the future, the development of Castle Airport is paramount. Castle Airport features a uniquely massive infrastructure and is located in close proximity to highway and rail facilities such that the facility provides extraordinary opportunities found nowhere else. While recognizing a long history of working cooperatively to bring about other major transformative economic changes to the Merced region, the County of Merced ("County") finds itself in the discomforting but imperative position of having to express its vital concerns about the proposed northwest expansion of the Sphere of Influence in the Merced Vision 2030 General Plan. While the County fully respects the City of Merced ("City") in exercising its land use authority to create a General Plan that will serve its residents and businesses in the coming decade, the proposed northwest expansion, in its current form, would be so severely and irreversibly detrimental to Castle Airport that the County is compelled to submit these comments.

Response 5A: The City appreciates the opportunity to address concerns raised by the County of Merced. The commenters state that, in their opinion, the proposed northwesterly SOI expansion under the 2030 General Plan Update will be detrimental to the Castle Airport. The commenters raise a number of issues that reflect their interpretation of the facts or state their opinion. All such comments are duly noted. However, the City does not agree with all of these statements. The City respectfully disagrees that the proposed SOI expansion under the 2030 General Plan Update would be detrimental to Castle Airport based upon the current Airport Land Use Compatibility Plan (April 1999) ("ALUCP"), existing airport usage, the DEIR, and responses to comments in the Final EIR.

Comment 5B: *There are two major areas of concern that the County wishes the City to consider. First, with regards to CEQA, the GPU and GPU Draft Program Environmental Impact Report ("GPU EIR") do not adequately evaluate significant impacts, and do not fully mitigate such impacts, in the areas of Agriculture and Forest Resources, Hazards and Hazardous Materials, Land Use and Planning, Noise, and Transportation/Traffic. It also summarily and improperly rejects, without sufficient analysis, the alternative that is stated to be feasible and to be the environmentally superior project alternative, that would entirely eliminate impacts to Castle Airport, and still attain the basic project objectives. (CEQA 21002.1(a)(b).)*

Response 5B: The DEIR fully analyzes the project alternative that is environmentally superior (the Reduced Project Area Alternative). It does not "reject" the alternative. Impacts to

Agriculture and Forest Resources, Hazards and Hazardous Materials, Land Use and Planning, Noise, and Transportation/Traffic are addressed and mitigated as necessary in the DEIR.

Comment 5C: *Second, with regards to the Airport Land Use Compatibility Plan, the Airport Land Use Commission must review the GPU to ensure compatibility with Castle Airport. (Pub. Util. Code § 21674(a).) The County believes the GPU would be found to be inconsistent with the Merced County Airport Land Use Compatibility Plan (April 1 999)("ALUCP") because of the land use, noise, and other aircraft overflight issues generated by the northwest expansion of the City, known as Castle Farms. (ALUCP § 1.4.)*

Response 5C: Given the existing ALUCP and the proposed modifications in the General Plan relating to the Castle Farms area, the City disagrees that the Airport Land Use Commission would find the proposed General Plan inconsistent with the ALUCP. Less than one percent of the Castle Farms area is in Zone B-2; development, subject to ALUCP recommended restrictions is permitted in Zones C and D, in which the referenced development lies (see DEIR Figure 3.7-2).

Comment 5D: *The County would be delighted if upon review of these comments, the City would be interested to further explore these issues and to work towards building a common ground based on mutual interest and a wise resolution that serves the prosperity and critical planning interests of the entire Merced County region.*

This type of cooperation is referenced in the proposed GPU policies related to the University Community and the City's future annexation interests: Policy UE-1.4 "Continue Joint Planning Efforts on the UC Merced Campus and University Community Plans." The GPU also contains Implementing Action 1.3.f. (Page 2-29) which identifies the City's interest in negotiating a new "Property Tax Sharing Agreement" that reflects the SUDP/Sphere of Influence and Area of Interest proposed in the General Plan Update, which not only includes the University Community Plan, but also the future Community Plan areas for Castle Farms northwest of the City, Yosemite Lakes which is already identified as an "SUDP Study Area" in the County General Plan, and Mission Lakes located south of the Merced Regional Airport. Comments that follow include specific reference to the future negotiation of a new Property Tax Sharing Agreement.

Response 5D: The commenter supports proposed policy and implementing actions within the 2030 General Plan Update that support formation of a "Property Tax Sharing Agreement." The comment is noted.

Comment 5E:

1. CEQA Comments on the General Plan Update.

The EIR is the "heart of CEQA" and an "environmental alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached their ecological point of no return." (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392.) If the decision to approve a project is based on an EIR

that fails to provide the information required by CEQA, the decision becomes a nullity. (Santiago County Water District v. County of Orange (1981) 118 Clap. 3d 818, 829.) The GP EIR as a whole fails to provide the information required to alert the local decision-makers and the public about the potentially dire impacts of the proposed project, particularly with regard to the proposed northwest expansion of the City west of Highway 59.

Response 5E: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. No “potentially dire impacts” of the proposed General Plan with respect to the northwest expansion incorporated therein are evident. Full information for impact evaluation is in the DEIR and is supplemented by the responses to comments incorporated in the Final EIR.

Comment 5F: *CH. 2 - PROJECT DESCRIPTION.*

The Project Description statement of objectives fails to comply with CEQA. (CEQA Guidelines § 15124(b).) An accurate, stable, and finite project description is the sin qua non of an informative and legally sufficient EIR. (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193.)

Response 5F: The Comment is noted. No response is possible since it contains no specifics as to alleged project description deficiencies (but see responses 5G and 5H).

Comment 5G:

1. *Sphere of Influence, Northwest Expansion:* *The first and foremost objective in the Project Description is significant expansion of the Sphere of Influence, including the four-square mile Castle Farms housing development to the northwest. (GPU EIR, p. 2-1, p. 2-17.) Yet the GPU projects a lower population of 155,000 by 2030 (GPU EIR, p. 2-15) than the Merced Vision 2015 General Plan ("prior GPU") projected population of 240,000 by 2035 (GPU, p. 2-5.) The Sphere of Influence objective is driving the projected population growth, rather than being supported by it, and therefore must be revised to include substantial evidence as to why the GPU EIR would support any other project alternative than the Reduced Growth Alternative, which deletes Castle Farms from its Sphere of Influence. (GPU EIR, Fig. 4-1.)*

Response 5G: Response 5G: The commenter’s opinion is noted. The City respectfully disagrees with the statement that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the

plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 5H:

2. *Airport Protection, Castle Farms.* Another objective in the Project Description is the protection of the Merced Regional Airport as an important community asset. (GPU EIR, p. 2-2, p. 2-28.) This objective omits protection of Castle Airport while at the same time proposing to annex and develop Castle Farms. Castle Farms threatens to severely impact airport operations and prevent it from fulfilling its potential to become the largest and busiest cargo, technology, business, manufacturing hub in the region, including full commercial passenger air service, and generating jobs and off-airport industrial and airport-related activity. Omitting Castle Airport from this objective presents a distorted view of the relative importance of Merced Regional Airport. This objective and the corresponding Goal Area S-5 Airport Safety should specifically include Castle Airport, and the GPU should support Castle Airport's viability and growth, without which a major economic driver for the region will be missing, leaving the GPU's projected growth without support. Considering, the city's support for the development of the High Speed Rail Heavy Maintenance Facility at Castle Commerce Center and the expectation that its adjoining airport will be utilized as the means by which equipment and components will be flown in, the GPU should not compromise Castle's aforementioned viability and growth opportunities.

Response 5H: The commenter's opinion is noted. It is not evident, from evaluation of the ALUCP as requested by the commenter (see the response to Comment 5B) that implementation of the General Plan will have any impact on airport safety or on Castle Airport's viability and growth. The C and D ALUCP zones place very limited restrictions on development.

Comment 5I: CH. 3 ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES IN GENERAL.

The adequacy of an EIR's project description, discussed above, is closely linked to the adequacy of the impact analysis, discussed below, and if an EIR is inadequate because it fails to discuss a key aspect of the project, for example, the interface between Castle Farms and Castle Airport, then the environmental analysis will probably reflect the same mistake. (San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.app.3d 713, 722-723.) Just like the project description, the GPU EIR as a whole fails throughout the environmental analysis to include protection of Castle Airport where it would make logical sense to do so. This omission has produced a rippling effect, crippling the analysis of environmental impacts throughout the document in the areas of Hazards and Hazardous Materials, Land Use and Planning, Noise, and Transportation/Traffic.

Response 5I: Please see the response to Comment 5H.

Comment 5J: *Ch. 3.7 Hazards and Hazardous Materials, GPU EIR, p. 3.7-7 specifies Transportation Policies 3.1, 3.2, and 3.3, and Safety Policies S.5-1 and S.5-2, without mentioning the protection of Castle Airport from encroachment and incompatible development.*

Response 5J: As part of the proposed revisions to the Draft *Merced Vision 2030 General Plan* prior to adoption, City staff has proposed to add an additional Implementing Action under Safety Policy S-5.1 as follows:

5.1.d Work with the County of Merced on land use and master planning issues in the vicinity of Castle Airport and its Land Use Compatibility Zones.

The City of Merced recognizes that Castle Airport is a County asset with the potential to generate job growth within the County of Merced. Merced County is currently in the process of developing a new Castle Airport Master Plan, which would outline Castle's proposed development over the next 20 years. Merced County has expressed an interest in expanding Castle's current role as mostly a general aviation airport (the County's website in 2011 indicates that general aviation uses are 99% of current operations) to include air cargo, military exercises, and commercial air service. If such a Master Plan was approved, the Land Use Compatibility Zones for Castle Airport would need to be modified to reflect those changes. If modified, Castle Airport's Land Use Compatibility Zones could affect development within the existing City and the proposed SUDP/SOI. (Long time residents will remember the significant noise impacts of Castle's military operations until Castle Air Force Base closed in 1995.) Therefore, the City wants to continue to work with the County on ensuring that any adopted Castle Airport Master Plan contains realistic aircraft operation projections that do not hinder both existing and future development within the City.

Please also see the response to Comment 5H.

Comment 5K: *Ch. 3.9 Land Use and Planning, GPU EIR, pp. 3.9-12 specifies the protection of Merced Regional Airport but not Castle Airport as a important community asset, and GPU EIR, p. 3.9-15 specifies Transportation Policies 3.1 and 3.2, again, without mentioning the protection of Castle Airport from encroachment and incompatible development.*

Response 5K: Please see the responses to Comment 5H and 5J.

Comment 5L: *Ch. 3.11 Noise, GPU EIR p. 3.11-20, Noise Policy N-1.1 specifies the minimization of aircraft noise, but without explaining the necessity of protecting the ability of Castle Airport to operate at maximum permitted levels, and Noise Policy N-1.5 specifies not locating noise-sensitive land uses near major noise source but does not delete the four square mile community of Castle Farms that would be directly under the downwind pattern for large aircraft flying 24 hours a day.*

Response 5L: Please see the responses to Comment 5H and 5J. The ALUCP, page 3-4, states that the 60 dB CNEL contour falls within Castle Airport's B-2 Zone. The commenter referenced

parcel (see response to Comment 5B) lies almost wholly outside the B-2 Zone (in Zones C and D). Please see DEIR Section 3.11, p. 3.11-10 with respect to Castle Airport noise comments.

Comment 5M: *Ch. 3.15 Transportation/Traffic, GPU EIR p. 3.15-21 specifies Transportation Policies T-3.1, T -3.2, and T -3.3 without mentioning the protection of Castle Airport from encroachment and incompatible development.*

Response 5M: DEIR Section 3.15, p. 3.15-7 describes the present operation of Castle Airport. Section 3.7, p. 3.7-2, discusses airport safety hazards including those related to Castle Airport. No “encroachment or incompatible development” is proposed by the General Plan (Please see responses to Comments 5B, 5H, and 5J).

Comment 5N: *In addition to the setting, impact and mitigation measure analysis related to Castle Airport, the text in Chapter 3.2 Agriculture and Forest Resources does not fully recognize that the City's SUDP/SOI expansion area is located within the Williamson Act Agricultural Preserve. Specifically, Impact 3.2-2 recognizes the conflict with 71 acres of land under Williamson Act Contract, but does not identify the conflict in designating land for urban development when it is located within a Williamson Act Agricultural Preserve. Government Code Section 51235 identifies that the Agricultural Preserve shall continue in full effect following annexation to the City, so this should be recognized as part of the environmental setting and as a significant impact as the City would need to remove the land from the preserve upon annexation.*

Response 5N: The comment is noted. All annexations of Williamson Act land to the City would, of course, be subject to Government Code Section 51235. No additional environmental effect to those detailed in the DEIR is involved in such regulatory compliance.

Comment 5O: *Finally, the GUP EIR does not adequately address the stated intention for annexation of the Rural Residential Center (RRC) area between the current City limits and the desired annexation of the UC Merced Campus and University Community Plan areas. While the City has established its interests in annexation of the Campus and University Community since adoption of Resolution #2006-89 (included under Implementing Action 1.4.b p. 2-30), the General Plan continues to defer development of policies and adequate planning for the transition of urban development through this RRC area. Implementation Action No. 1.5.d (Page 2-33) simply states the City will: "Establish annexation policies and outreach program regarding the annexation of the existing Rural Residential Centers (existing development on one-acre lots)." Similarly, in Chapter 3: "Land Use" the City does not include development of these policies and plans as part of the "Issues for Future Study" in Section 3.8. As a result, the Draft GPU EIR does not contain any analysis of the effects of the City incorporating and serving this RRC area with city services and facilities. This should be addressed in Impact 3.9-1 "Physically divide and established community" and in the Cumulative Impact analysis (GPU EIR p.3.9-17). The public utilities to serve the RRC should be included under Impact #3.16-2 related to water and wastewater treatment facilities, and Impact #3.16-5 related to providing wastewater treatment to the project's projected demand in addition to the provider's existing service commitments. (GPU EIR p. 3.16-8 and 3.16-13.)*

Response 5O: The full implementation of the proposed General Plan is included in the DEIR's impacts analyses. There is no CEQA requirement that the development of public services and utilities for each area within the General Plan be separately addressed; such detailed analysis is the proper and routine function of private development project review and area specific plans.

Comment 5P: 3.2 AGRICULTURE AND FOREST RESOURCES.

The conclusion that impacts upon agriculture are "significant and unavoidable" is flawed. CEQA requires an impact to be mitigated to the fullest extent possible. "CEQA compels government first to identify the [significant] environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures ..." (Sierra Club v. State Board of Forestry (1994) 7 Cal. 4th 1215, 1233.) Yet, there is no discussion of requiring agricultural conservation easements, or in-lieu fees for their purchase. The CEQA Guidelines recognize the use of fee payments as mitigation. CEQA Guidelines Section 15130, subd (a)(3); (Save Our Peninsula Committee v. Monterey County Bd. of Supervisors (6th Dist 2001) 87 Cal. App. 4th 99, 140.) Ibis mitigation is used throughout the state by both cities and counties. Merced County has required mitigation of farmland loss in all of its community plans adopted since 2000, including within the University Community Plan which the City is proposing to incorporate into this General Plan Update. CEQA contains a "substantive mandate" not to approve projects when "there are feasible alternatives, or mitigation measures" to lessen or avoid impacts. (Mountain Lion Foundation v. Fish & Game Commission (1997) 16 Cal. 4th 105, 134.)

Without mitigating the loss of farmland, the city opens the door to the conversion of agriculture for urban uses such as would be the case in the development of Castle Farms and the University Community. As mentioned earlier, while the DEIR addresses the potential impacts upon land under Williamson Act Contract, it fails to analyze the potential impacts on the lands within the Merced County Agricultural Preserve. In addition, like contracted land, the agricultural preserve remains intact upon annexation, and becomes the responsibility of the City to administer. (Government Code, § 51235.)

Response 5P: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Mitigation to address loss of agricultural lands due to development in accordance with the land use designations established by the proposed 2030 General Plan, such as requiring agricultural conservation easements, or in-lieu fees for their purchase, are a matter of policy and law yet to be established by the City of Merced. To include such mitigation measures in the DEIR, as suggested by the commenter, would be speculative and unenforceable absent an established City policy or ordinance to ensure implementation.

The Draft *Merced Vision 2030 General Plan* addresses impacts on prime agricultural land through several Implementing Actions under Urban Expansion Policy UE-1.1, starting on page 2-24 through 2-26, which include directing growth away from prime soils, working with Merced County to establish policies to protect prime land, and exploring different techniques (such as easements, etc.) to preserve agricultural land. More specifically, in Implementing Action UE-1.1.f on page 2-26, the City states:

1.1.f Work with Merced County and the other cities in the County to develop a County-wide agricultural land preservation policy.

A number of years ago, there was an effort to establish a Countywide Agricultural Preservation Strategy (CAPS) in which the cities in Merced County and the County worked on ways to address preservation of prime agricultural land. That effort ultimately failed and the County of Merced has imposed agricultural mitigation on certain large development projects, such as the University Community, on a case-by-case basis. However, in order to assure fairness and to be truly effective, a comprehensive strategy for dealing with agricultural preservation needs to be established Countywide. The City of Merced is committed to working with the County and the other cities to resolve this issue.

The comment regarding management responsibility of Williamson Act Contracts and Agricultural Preserves upon annexation into the City of Merced is noted.

Comment 5Q: 3.7 HAZARDS AND HAZARDOUS MATERIALS.

The analysis of safety hazards associated with Castle Airport violates CEQA because it is based on a speculative environmental baseline rather than on existing physical conditions and realistic future conditions. (CEQA Guidelines § 1525(a).) The analysis of airport safety grossly underestimates the potential noise impacts of Castle Airport by stating that it is now used for civilian rather than military purposes, and because of differences in airplane technology, this may lead to the compatibility zones being significantly reduced. (GPU, p. 3.7-2.) Consistent with CEQA Guidelines § 15229, the environmental baseline for Castle Airport is the same operational level as its use as a military base at the time of closure, and impacts that do not exceed such baseline are not considered significant. (Final Subsequent EIR, Redevelopment Plan for Castle Airport Aviation and Development Center, SCH # 20077011123, December 2007, p.1-4.) Castle Airport has no intention and no plans to modify its environmental baseline to accommodate residential communities on its borders. Castle Airport can at any time accommodate the same level of operations in terms of noise, land use, and physical requirements as when it operated as a military airport. It can not be overemphasized that Castle Airport has enormous regional economic potential and statutorily reserved environmental clearance to reemerge once again as a regional aeronautic behemoth.

To suggest that Castle Airport compatibility zones will ever be reduced, let alone reduced sufficiently to make it compatible with a sprawling, four-square mile residential subdivision directly on its borders, is contrary to accepted standards of modern planning. An agency has discretion not to use an environmental baseline at the time the project is prepared, but not here where there is substantial evidence to support that baseline of historic aircraft operations within the meaning of CEQA Guidelines § 15384. (Fat v. County of Sacramento (2002) 97 Ca1.AppAth 1270, 1277.)

Response 5Q: The commenters overstate the ability of Castle Airport to indefinitely use the environmental baseline of a military airbase that closed in 1995 to accommodate the same level

of operations in terms of noise, land use and physical requirements at Castle Airport. CEQA Guidelines, Section 15229(d) places limitations on the baseline analysis for military base reuse plan EIRs, while Public Resources Code Section 21666 and CEQA Guidelines, Section 15162 and 15163 require additional environmental review if there are specific types of changes to a proposed project or the circumstances surrounding it. That being said, the environmental effects of the General Plan with respect to Castle Airport are based on existing conditions, including the County-adopted ALUCP regulatory environment to which the commenter has previously referred.

Comment 5R: *The GPU EIR analysis of Noise and Transportation/Traffic impacts also relies on a similarly flawed description of the environmental setting.*

Ch. 3.11 Noise, GPU EIR p. 3.11-10 describes aviation noise levels generated by Castle Airport as primarily coming from single-engine fixed wing general aviation aircraft, but admitting that some twin-engine aircraft, business jets, and commercial jet airplanes "also utilize the airport."

Response 5R: Please see the response to Comment 5Q.

Comment 5S: *Ch. 3.15 Transportation/Traffic, GPU EIR, p. 3 .IS-7 casts the transportation setting at Castle Airport as a relic from its days as a military air force base, only serving in recent years, "businesses specializing in training foreign pilots."*

Response 5S: Please see the response to Comment 5Q.

Comment 5T: *An EIR must describe the environmental setting correctly because it is used to determine the environmental baseline for evaluating whether impacts of the project are significant. (CEQA Guidelines § 15125.) As shown, the environmental setting used for Castle Airport describes operations closer to that of a regional airport of minor significance. As an analytical starting point this is seriously flawed and violates CEQA because it ignores the special baseline guidelines established for the reuse of a military base (CEQA Guidelines § 151125(b)) and the highly unique and regional position of Castle Airport (CEQA Guidelines § 15125(c)) and the future it holds for regional transportation and economic growth. (Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.AppAth 99, 125.)*

Any findings regarding impacts and mitigation in the areas of Hazards and Hazardous Materials, Noise, and Transportation/Traffic that flow from a speculative or artificially diminished environmental baseline for Castle Airport, like the fruit of a poisonous tree, will be seriously flawed and violate CEQA for failure to support findings with substantial evidence. (CEQA § 21081.S, CEQA Guidelines § 15384.)

Response 5T: The commenters incorrectly state the DEIR has failed to properly analyze the relationship of the proposed General Plan with Castle Airport. Cited CEQA Guidelines 15125(b) refers to Guideline 15229. These guidelines govern EIRs for preparing reuse of a military base, and "at the discretion of the lead agency" (for such a narrowly-defined EIR subject) may require usage of physical conditions at the time of base closure. Cited CEQA Guidelines 15125(c) has no specific relevance to the comment, but the DEIR has complied therewith.

Comment 5U: 3.9 LAND USE.

The proposed action violates CEQA because it is inconsistent with the Merced County General Plan. (CEQA Guidelines § 15125(d).) The GPU EIR directly conflicts with the following objectives and policies of the Merced County General Plan ("County GP"), as summarized here:

Land Use Element (County GP, pp. I-60, I-62, I-66, I-67.)

Objective 9.A: Locate recreational areas, institutional and public facilities, hazardous and non-hazardous waste facilities, power and communication towers and airports to minimize land-use conflicts while satisfying local or regional demands.

Policy 9: Recognize the importance Castle Airport by encouraging only compatible land uses in areas subject to safety or noise impacts from these facilities.

Policy 10: The unique status of Castle Airport will be recognized for its capacity for air cargo and transit service in addition to accommodating General Aviation.

Objective 12A: Accomplish the full economic reuse of the Castle property.

Objective 12B: Appropriately locate land uses to minimize conflicts and maximize reuse opportunities.

Circulation Element (County GP, pp. II-20.)

Objective 2.A: Support and protect the operation and use of public airports.

Objective 4: Encourage land uses which transport large quantities of goods or materials to locate in areas served by rail or air transportation.

Noise Element (County GP, pp. VI-23-24.)

Objective 2.A and 2.B: Expansion of existing and the location of new commercial and industrial land uses are not significantly impaired by the encroachment of new incompatible, noise sensitive uses.

Objectives 2.C: Protect operations of existing public use airports from significant impacts caused by the encroachment of new incompatible land uses.

Implementation of the County GP depends on attracting large industrial and commercial activities and discouraging incompatible uses, especially sensitive receptors, near Castle Airport. (County GP, p. II-21, p. IV-24.) Yet because of the inherent friction between the City's GPU expansion to include the Castle Farms project and the existing Castle Airport, the proposed project would permanently preclude the implementation of, and therefore violate, County General Plan policies intended to assist Castle Airport to reach its full economic potential as a regional magnet for business, industry, and technology.

Response 5U: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. It is often desirable for County General Plans to be coordinated with, and agree with, General Plans adopted by cities within the County. It is not legally required, however. Again, the proposed City of Merced General Plan does not preclude implementation of County General Plan policies intended to assist Castle Airport.

Comment 5V: *The City has a parallel responsibility with the County to evaluate development activities for their consistency with airport compatibility zones identified in the ALUC's Airport Land Use Compatibility Plan. The County General Plan contains the following Implementation Measure to implement Policies 9 and 10 under Objective 9.A of the Land Use Chapter referenced earlier:*

"Building permits and discretionary applications in identified areas subject to safety or noise impacts from public airports will be reviewed for compatibility with consideration of the Merced County Airport Land Use Commission Policy Plan or other adopted ALUC Plan."

The City must recognize this County General Plan requirement applies to the review of projects in the unincorporated area around all public airports in the County, including the City of Merced Airport. The GPU EIR should include objectives and policies and implementation measures consistent with the view that Castle Airport must be protected to preserve its regional position and the distinct competitive edge it offers because of its superior access to extremely large capacity, round-the-clock, air freight services that can reach international markets, and close proximity to two major domestic railways, and to the major Central Valley corridor, Highway 99. Castle deserves the same level of protection that the City is proposing for its own municipal airport, if not higher.

Response 5V: The proposed General Plan was submitted for County review. Development plans within the ACLUP defined zones would be similarly submitted. Please also refer to the responses to previous County comments with regard to Castle Airport.

Comment 5W: *As discussed below, the proposed action also violates CEQA § 15125(d) because it is inconsistent with the Merced County Airport Land Use Compatibility Plan.*

3.11 NOISE.

The proposed action violates CEQA because conclusions regarding noise impacts are based on faulty assumptions and the omission of critical information, and because, as a result of inadequate impact analysis, the mitigation measures are based on unreasonable inferences or are so vague as to be unenforceable. (CEQA §§ 21002, 21100, 21 081.6(b).)

Response 5W: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Essentially all of the land designated for ultimate development in the proposed General Plan is outside the ALUCP's 60 CNEL contour. Noise

impacts in such areas are, by definition in DEIR Section 3.11, not significant and thus do not engender a need for noise mitigation for development therein.

Comment 5X:

1. *Sensitive Receptors. An EIR must propose mitigation measures that will minimize a project's significant impacts by reducing or eliminating them. (CEQA §§ 21002, 21100) Such measures must be supported by evidence in the record and reasonable inferences that may be drawn from such evidence. (City of Long Beach v. Los Angeles Unified School District (2009) 176 Cal.App.4th 889.) As discussed above, the proper analysis under CEQA to determine the potential for significant noise impacts from Castle Airport on Castle Farms has been foreclosed by an incorrect description of the airport setting and by a speculative airport noise baseline.*

Nevertheless, the GPU EIR baselessly concludes that mitigation measures, applied through the implementation of GPU policies N-1.5d, N-1.6(a) and (b)(GPU, pp. 10.34 -35), would reduce the noise impacts to sensitive noise receptors from Castle Airport to a level below significance. (GPU EIR, p. 3.11-33.) This conclusion violates CEQA because it is based on an unreasonable assumption that the noise impacts to sensitive receptors, such as hospital and schools, which would be entirely under the downwind flight pattern of large aircraft flying 24 hours a day from a fully operational Castle Airport, can somehow be mitigated at all. Further, the noise mitigation policies proposed are so vague as to be unenforceable, recommending in the worst case scenario, "appropriate mitigation. to achieve compliance with adopted policies," and "best available noise reduction measures" (GPU, pp. 10-35, 10-37.) These policies violate CEQA because mitigation measures must not only be effective but must be realistically enforceable. (CEQA § 21081.6(b), CEQA Guidelines § 15126.4(a)(2).) (Gray v. County o/Madera (2008) 167 Cal.App.4th 1099.) The GPU EIR fails to support that these noise mitigation policies for sensitive receptors are either.

Response 5X: Please see response to Comment 5W.

Comment 5Y: *Finally, an EIR must be organized and written in a manner that will be meaningful and useful to decision-makers and to the public. (CEQA § 21003(b).) The Noise Element particularly violates this standard of clarity because it overly abbreviates mitigation measures in the GPU EIR, passing the details to the GP, having the effect of obscuring the lack of a clear analytical connection between the noise baseline, the noise impact analysis, and the evidence that would support the mitigation of noise impacts to a level below significance. Noise Policy N-I.4 states euphemistically, "Reduce noise levels at the receiver where noise reduction at the source is not possible." (GPU EIR, p. 3.11-20.) The actions to implement this policy are clearly aimed at reducing noise levels at Castle Farms if reduction at Castle Airport is not possible. (GPU, p. 10-33, 10-34.)*

Response 5Y: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. 2030 General Plan Noise Element Policy N-1.4 referenced by the commenter as requiring reduction of noise levels at the receptor when it is not possible to

reduce noise levels at the source, is not aimed at reducing noise levels within the proposed Castle Farms development if noise reduction from aircraft using Castle Airport is not possible at the source. Rather it is intended to apply citywide where applicable.

Comment 5Z:

2. *Non-sensitive Noise Receptors. Yet, the Noise Element simply omits any conclusion as to whether mitigation measures will adequately address noise impacts from Castle Airport to non sensitive noise receptors, such as the 1,775 acres of homes and 545 acres of businesses proposed at Castle Farms. This omission is a direct result of the failure of the GPU EIR to establish the correct environmental baseline for Castle Airport noise thus avoiding the reasonable conclusion that such impacts could be significant, thus requiring mitigation. That said, the GPU includes policies to mitigate for potential noise impacts from Castle Airport, even if those impacts have not been assessed in accordance with CEQA.*

Response 5Z: The commenter's opinion is noted. Noise contours for Castle Airport are shown by Figure 3.11-6 found after page 3.11-10 of the DEIR. As shown in the Figure, noise levels generated from Castle Airport would be in the 55 to 60 CNEL range at the location of the proposed Castle Farms project, which is less than significant for residential developments.

Comment 5AA: *GPU Policy N-1.1 includes a plethora of noise abatement techniques to minimize the impacts of aircraft noise. (GPU, p. 10-34.)*

Response 5AA: The DEIR assumes that the City would cooperate with the County, as reflected in the cited Policies, to evaluate and mitigate to the extent feasible any significant noise impacts that may at a later date become evident with respect to changes in Castle Airport configuration or operations. The cited Policies reflect the City of Merced's intentions regarding such issues and the County can choose to work with the City or not at its own discretion. The noise profile for Castle Airport in the DEIR (Figure 3.11-6) is reproduced from the County's ALUCP.

Comment 5BB: *Policy 1.1.d calls for working with Merced County to minimize noise impacts from Castle Airport. (GPU, p. 10-31.) This policy should be deleted or modified to eliminate any suggestion that the County of Merced would be agreeable to any plan or policy that would curtail the nature, scope, and duration of operational activities at Castle Airport.*

Response 5BB: Please see the response to Comment 5AA.

Comment 5CC: *Policy 1.1.e calls for updating the projected noise contours "as information becomes available." (GPU, p. 10-31.) This policy should be deleted or modified to eliminate any suggestion that the County of Merced would be agreeable to any plan or policy that would reduce the reach of its compatibility contours.*

Response 5CC: Please see the response to Comment 5AA.

Comment 5DD: *Policy N -1.4 includes a plethora of noise reduction policies to eliminate noise levels at the receiver when noise reduction at the source is not possible. (GPU, p. 10-33.)*

Response 5DD: Please see the response to Comment 5AA.

Comment 5EE: *Policy 1.4.b calls for stringent noise standards as applied to other airports in the County. (GPU, p. 10-34.) This policy, like the other policies 'discussed here, should be amended to ensure it does not compromise the full operational capacity of Castle Airport, because Castle Airport is in a unique position, with an operational baseline derived from its former use as a military base, that differentiates it from all other airports in the County.*

Response 5EE: Please see the response to Comment 5AA.

Comment 5FF: *Policy 1.4.c calls for the application of a broad set of standard noise reduction measures to specific projects but also urges the update of the Merced County Airport Land Use Compatibility Plan "to reflect the absence of military aircraft after the closing of Castle Air Force Base." (GPU, p. 10-34.) In addition, the 1999 ALUCP was based on the status of Castle Airport as a civilian facility, not as an Air Force Base, and so this policy is incorrect. The listed noise reduction measures should be amended to require noise navigation easements and should delete the suggestion that the operational and environmental baseline of Castle Airport should be diminished to accommodate Castle Farms, in the next update of the Merced County Airport Land Use Compatibility Plan.*

Response 5FF: Please see the response to Comment 5AA.

Please note that the following comments, 5GG through 5SS, do not relate to the DEIR and its environmental analysis but constitute opinion regarding or suggested corrections to the Transportation/Traffic Element of the proposed General Plan.

Comment 5GG: 3.15 TRANSPORTATION/TRAFFIC.

1. *Major regional routes. The Transportation/Traffic Element needs to include a revised discussion of certain major regional routes. First, Santa Fe Drive should be recognized as a major regional route.*

Response 5GG: This general comment will be addressed in the responses to succeeding comments.

Comment 5HH: *Accordingly, Figure 4.2 should be revised to include Santa Fe Drive and the associated text revised to reflect this change. (GPU, p. 4-8.)*

Response 5HH: Section 3.15, p. 3.15-2 states: "G Street and Santa Fe Drive play more limited regional roles by connecting Merced with the communities of Snelling and Atwater respectively". It's regional significance is less in comparison to the identified major regional routes and highways (S.R. 99, S.R. 59, and S.R. 140). The comment is noted.

Comment 5II: *Second, Section 4.3.3 should include a discussion about the importance of Campus Parkway because it impacts circulation and access to the City. (GPU, p. 4-11.)*

Response 5II: The comment is noted.

Comment 5JJ: *Third, some type of discussion should be included regarding Caltrans' long-term plan to finish construction of the one-way couplet frontage roads along SR 99 between R Street and G Street. This improvement could be very important to circulation and has the potential to impact existing land uses along the frontage roads.*

Response 5JJ: The comment is noted.

Comment 5KK: *Further, Figure 4.1 shows the City's functional classifications for various roadways extending beyond the proposed Sphere of Influence and needs to be clarified. (GPU, p. 4-5.) The functional classification of most of the roadways will change either at the edge of the Sphere of Influence or at a logical intersection before the edge of the Sphere of Influence.*

Response 5KK: The comment is noted.

Comment 5LL: *2. Transportation/Traffic Policies. The GPU transportation and traffic policies need revision. First, a policy indicating that new development is required to provide its proportionate share of the cost of improvements should be added. Some discussion about the creation of fees to implement such a requirement should be considered.*

Response 5LL: Policies relating to development paying for its proportionate share of transportation and other public infrastructure improvements and development impact fees are addressed in the Draft *Merced Vision 2030 General Plan's* Public Services and Facilities Chapter (Chapter 5). See Policies P-1.1, P-1.2, and P-1.3 on pages 5-21 through 5-24.

Comment 5MM: *Second, a policy related to the impact of this project on roadways outside the City sphere of influence needs to be added. For instance, Santa Fe Drive west of SR 59 is shown as needing 6 lanes yet there is no indication of how the additional lanes will be funded. Development occurring in the City should pay its proportionate share.*

Response 5MM: The comment is noted. The City currently participates in the adopted Merced County Regional Transportation Impact Fee program as described on page 5-47 of the Draft *Merced Vision 2030 General Plan*.

Comment 5NN: *3. Technical Issues. There appear to be significant inconsistencies between the traffic study prepared for the GPU EIR and the actual text and conclusions in the GPU. First, Appendix K of the GPU EIR does not include sufficient information describing how the traffic analysis was conducted nor does it present the information in a way that lends itself to review.*

Response 5NN: The commenter's opinion is noted, but cannot be addressed specifically since no specific inconsistencies are noted.

Comment 5OO: *Second, the difference between the No Project Conditions scenario 'and the General Plan Buildout Conditions Scenario is unclear. Appendix K only seems to show the results of the No Project scenario.*

Response 500: The commenter's opinion is noted.

Comment 5PP: *Third, several roadways appear to be impacted by planned growth yet no improvement or other mitigation has been proposed to improve the calculated LOS to acceptable levels. One such example is McKee Road. The future level of service is shown to be LOS F. Another roadway not being mitigated includes Bellevue Road.*

Response 5PP: It is noted in the Transportation Traffic Element of the proposed General Plan that (Note 3, Table 4.4, p. 4-92): "The number of lanes (in Table 4.4 listing General Plan Buildout Street Levels of Service) is the number of lanes planned in the circulation element; additional travel lanes, or provision of additional turn lanes at intersections may be needed to provide acceptable roadway operations with the planned level of development".

McKee Avenue is listed in that table as only having two lanes at buildout with a Level of Service F.

The General Plan does not purport to correct all potential, 2030, arterial or collector street problems: "Implementation of (the following) mitigation measures and the Goals, Policies, and Implementing Actions of the *Merced Vision 2030 General Plan* will reduce the impact of increased traffic on area roadways as the 2030 General Plan is implemented; however, absent funding guarantees for many of the roadway improvement projects identified in the traffic conditions analysis, and referenced in the mitigation measures below, the traffic impacts associated with build-out of the proposed *Merced Vision 2030 General Plan* are considered *significant and unavoidable*".

A portion of Bellevue Road, although mitigated by an increase to six lanes, will have a Level of Service F upon buildout.

Comment 5QQ: *Fourth, it appears the traffic modeling assumes Lake Road will extend southward. However, the circulation map does not support this assumption. This impacts how traffic is distributed by the model.*

Response 5QQ: The comment is noted. The traffic modeling assumes that Campus Parkway would function as the continuation of Lake Road south of Yosemite. (In earlier options prior to the Campus Parkway alignment being adopted, the Campus Parkway might have followed the alignment of the continuation of Lake Road south of Yosemite, but the preferred alternative is now located further east.)

Comment 5RR: *Finally, the conclusions on Page 3.15-24 & 25 do not consistently conform to Table 3.15-4. For instance, Campus Parkway in the Table is shown as being widened to 6 lanes from Mission to Childs with LOS D. However, the conclusions indicate Campus Parkway to be 4 lanes with LOS F.*

Response 5RR: The commentor correctly states that the road segment information listed on pages 3.15-24 and 3.15-25 differs from the information in Table 3.15-4. However, the document is correct as written given that the two sets of information are not intended to be identical. To

clarify, the road segment information listed on pages 3.15-24 and 3.15-25 is taken directly from the 2007 MCAG Regional Transportation Plan (Tier 1). The road segment information contained in Table 3.15-4 is taken from the General Plan Circulation Element and represents an ultimate buildout scenario. For instance, the segment of Campus Parkway – Mission to Childs (the example identified in the comment) is planned in the City's Circulation Element as a 6-lane roadway which would result in LOS D under the future General Plan buildout scenario. However, the same segment is shown in the 2007 MCAG Regional Transportation Plan as being built out to four lanes which would result in an LOS F. Therefore the determination of the DEIR is that absent funding guarantees for the roadway improvement project (to be built out to 6 lanes according to the General Plan), the impact is potentially significant.

Comment 5SS: *It is possible the GPU EIR traffic study may include incorrect assumptions resulting in inappropriate conclusions. Therefore, we request the opportunity to review the "The City of Merced General Plan Update Traffic Analysis (Fehr and Peers, May 9, 2009) referenced at Section 3.15 of the GPU EIR.*

Response 5SS: The County is welcome to review the analysis.

Comment 5TT: *CH. 4-PROJECT ALTERNATIVES.*

The discussion of Project Alternatives violates CEQA because it fails to adequately discuss why it rejected the Reduced Growth Alternative. (CEQA Guidelines § 15126.6(c).) This alternative, which deletes Castle Farms, was considered to be feasible, stating that the City of Merced may grow at a slower pace than is being planned for (GPU EIR, p. 4-10), and it was considered the environmentally superior alternative, incurring eleven fewer environmental impacts than the proposed action. (GPU EIR, p. 4-18)

Response 5TT: The DEIR does not reject the Reduced Growth Alternative. Please see the response to Comment 5G.

Comment 5UU: *The GPU EIR rejection of alternatives analysis is cursory at six sentences long and does not directly discuss any of the alternatives. It only concludes in a vague manner that since the project consists of a plan update for a specific area, an alternative location of the project is not feasible. (GPU, p. 4-5) There is no meaningful detail and thus it clearly violates CEQA. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 404.)*

Response 5UU: The cited case clearly does not apply to a General Plan for a total community as opposed to a location for a physical project. The DEIR rejection of a geographic change of venue as a basis for planning and analysis is appropriate and sufficient as stated.

Comment 5VV: *The lack of quantitative information on the alternatives, especially the "No-Project" alternative does not allow for an informed analysis or decision. (Kings County Farm Bureau v. City of Hanford (5th Dist. 1990) 221 Cal.App.3d 692.) The alternatives analysis presented, rather than providing viable alternatives, instead winnows the alternatives to the preferred plan of the city.*

Response 5VV: The comment is noted. The alternatives analyses are compliant with CEQA requirements. Again, the cited court case is not relevant to general planning for a community and the environmental analysis thereof.

Comment 5WW: *The Reduced Growth Alternative meets all the basic project objectives as listed at GPU EIR, p.4-5:*

- *Directing growth away from prime agricultural land. (GPU EIR, p. 4-11.)*
- *Conserving water so as not to overtax or contaminate regional water supplies. (GPU EIR, p. 4-12.)*
- *Preserves and protects important wildlife habitat. (GPU, p. 4-11.)*
- *Minimizes adverse growth impacts on air quality and climate change. (GPU, pp. 4-11, 4-13)*
- *Conserves non renewable energy resources. (GPU, p. 4-12.)*
- *Preserves important cultural and historic resources. (GPU, p. 4-11.)*

The most fundamental mandate of CEQA is that decision-makers refrain from approving projects if there are feasible alternatives which would substantially lessen the significant environmental impacts of a project. (CEQA § 21002.) "CEQA compels government first to identify the significant effects of projects, and then to mitigate those adverse affects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." (Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215, 1233.) "CEQA contains substantive provisions with which agencies must comply. The most important of these is the provision requiring public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects." (Sierra Club v. Gilroy City Council (1990) 222 Cal.App.3d 30, 41.)

Response 5WW: The comment is noted. It will be the responsibility of the governing board of the lead agency (the City Council of the City of Merced) to determine whether or not overriding considerations dictate the adoption of an alternative which has greater perceived impacts.

Comment 5XX: *The Reduced Growth Alternative is a feasible alternative that would protect Castle Airport from the deleterious and irreversible effects of Castle Farms, and substantially lessen the significant environmental effects when compared to the proposed action. Yet GPU EIR fails to offer any clear and direct analysis as to why it was rejected. It is fundamentally inconsistent with the ALUCP because of the land use, noise, and aircraft overflight issues generated by Castle Farms. (ALUCP § 1.4.) In short, a four square mile, 2,600 acre mixed-use, village style, urban development cannot be compatibly located directly adjacent to a major airport facility.*

Response 5XX: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Please see the responses to previous comments by the County including 5B, 5C, 5E, 5H, 5L, 5M, 5Q, 5T, and 5W.

Comment 5YY: 2. *Airport Land Use Compatibility Plan.*

Because Castle Farms is a major airport activity of particular concern the ALUC will have to review it independent of the GPU. (ALUCP § 1.2.14; Policy 1.5.3 (a)(1)(2)(3)(10).) It will have to be submitted to ALUC with detailed information on final land uses, residential densities, and the potential of the project to produce electrical interference and glare that would impede pilot navigation. (ALUCP § 2.3.1(d)(e)(g).) The GPU, however, provides enough information on Castle Farms (GPU, pp. 3-74-3.75, Figure 4-1.) to perform a preliminary analysis to assess its compatibility with Castle Airport relative to the ALUCP review criteria. (ALUCP § 2.4.)

Response 5YY: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements.

Comment 5ZZ: *First, it would negatively affect the airport influence area because it places 1,775 acres of homes, and 545 acres of businesses directly under the downwind pattern for large aircraft. The assigned land-use for zone C includes low-density and low-density-medium residential, which is incompatible with zone C. (ALUCP, p. D-2) It also includes unspecified commercial and office uses, which are potentially incompatible with zone C. (ALUCP, p. D-3.)*

Response 5ZZ: These comments are noted as reflecting the opinion of the County regarding preliminary analysis of the General Plan and its DEIR with respect to any perceived or potential environmental impacts to Castle Airport by the adoption of the General Plan and its implementation.

All of such environmental impacts have been addressed in the DEIR and references made thereto by responses to previous comments. The County will have further opportunity to review any proposed development under the General Plan when it occurs if it lies within the ALUCP's geographic purview. Some of the County's speculation and suppositions regarding impacts of development can be evaluated when development details are available. However, the 1999 ALUCP indicates that residential development of up to eight units per acre is allowed in Zone C and only hospitals, schools, daycare centers, and nursing homes are listed as incompatible commercial uses in Zone C (refer to Table 2A of the ALUCP on page 2-14).

The County may determine, upon such evaluation, that a proposed development within its ALUCP purview, but in the City, is not consistent with the Plan. The DEIR finds the General Plan as proposed to be consistent with the ALUCP. The City Council, if it agrees with this determination and the Airport Land Use Commission does not, may, if necessary, make a finding in accord with State Public Utilities Code Section 21676 of such consistency.

Comment 5AAA: *Second, it does not cluster housing and evenly distribute open space sufficiently, compared, for example, to Mission Lakes as proposed to be adjacent to Merced Airport. (GPU, p. 3-96.) This deficiency would deprive pilots the necessary range of choices of where to make emergency aircraft landings. (GPU, p. 11-26) Castle Farms merely creates a thin open space belt at the project western edge. (GPU, Figure 4-1.)*

Response 5AAA: Please see the response to Comment 5ZZ. In preliminary plans submitted for Castle Farms, the open space belt on the project's western edge ranges from ¼ to ½ mile or more in width. The City respectfully disagrees with the characterization of this as "thin." Details regarding this open space buffer and development within the Castle Farms area will be subject to subsequent environmental review and further analysis before a Community Plan is adopted for the area. The County will have ample opportunity to review and comment at that time.

Comment 5BBB: *Third, because Castle Farms is a four-square mile community, there are numerous potential sensitive receptors, such as schools and medical facilities, that are likely to be required and to be proposed that would also present serious compatibility issues.*

Response 5BBB: Please see the response to Comment 5ZZ.

Comment 5CCC: *In short, as the GPU itself concedes, the ALUCP, " ... calls for approach protection through land use restrictions ... and the discouragement of residential land uses in the entire referral area [included Zone C]." (GPU, p. 11-26.) Even if the City of Merced were to adopt the Castle Farms project based on lower locally-adopted significance thresholds, the ALUC can not exempt the project for failure to comply with its own stricter standards. (Ops. Cal. Atty. Gen. 03-805 (2004).)*

Response 5CCC: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Please see the response to Comment 5ZZ.

Comment 5DDD: *The ALUCP perspective is to protect for the maximum reasonably foreseeable level of activity. (ALUCP § 2.2.) Yet the GPU states that the airport conversion to civilian use may reduce the Castle Airport approach zones, removing barriers to "growth to the northwest ... once limited by the noise and safety hazards" posed by military use. (GPU, p. 2-7.) Castle Airport fully plans to operate at maximum high growth levels of activity that will make it the largest and busiest cargo, technology, business, manufacturing hub in the region, including full commercial passenger air service, and generating jobs and off-airport industrial and airport-related activity. The GPU is overly speculative to conclude that compatibility zones will ever be reduced sufficient to make Castle Farms compatible with Castle Airport. Castle Farms is simply incompatible in every way with Castle Airport.*

Response 5DDD: Please see Response 5ZZ.

Comment 5EEE: *As the GPU concedes, Castle Farms is likely to generate nimby-type residential complaints about noise, safety, and other issues. (GPU, p. 10-32.) Given scope and character of Castle Farms, it is reasonably foreseeable that such complaints would be regular and from multiple sources, and eventually would coalesce into organized advocacy efforts to limit the operation of the airport to daytime hours, and reduce ability to co-locate heavy industrial and airport-dependent industries nearby. If successful, such efforts would have devastating affects on Castle Airport and on the regional economy.*

Indeed, even at this early stage, promoters of Castle Farms have already personally communicated to the County that it would expect flights to cease no later than 11:00 pm at night. Further, the GPU EIR suggests in no uncertain terms this would be pursued as a noise mitigation measure. (GPU EIR, p. 5-7.)

Response 5EEE: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. On page 5-7, the DEIR discusses Cumulative Impacts regarding noise and simply makes note of City policies and standards “that minimize and mitigate noise impacts. Uses that generate noise and construction noise are time restricted to minimize impacts to adjacent land uses and have performance standards for noise levels at property lines.” This description applies to policies and standards applied by the City of Merced within its corporate limits and growth boundary. There is no such suggestion that this would apply to Castle Airport, which is outside the City’s boundaries, or to any specific mitigation measure that may or may not be pursued in the future. Please see also the response to Comment 5ZZ.

Comment 5FFF: *If the City of Merced were to adopt the Reduced Growth Alternative, at least to the extent it would delete Castle Farms, it would likely be consistent with ALUCP policies in most impacted areas as did the Merced Vision 2015 General Plan (April 1997). (ALUCP, p. 4-6.) On the other hand, if Castle Farms remains part of the GPU, the County will have no other choice but to vigorously request the ALUC determine that the GPU, for the foregoing reasons, is inconsistent with ALUCP. And if it becomes necessary, the County will just as vigorously oppose any attempt to reduce the Castle Airport compatibility zones, that would compromise the potential to accommodate the return of large military, commercial, cargo, and special mission aircraft.*

Response 5FFF: Please see Response 5ZZ.

Comment 5GGG: *Conclusion*

The County has an elevated role in reviewing projects that require annexation from the County to the City under the Property Tax Revenue Sharing Agreement ("Agreement") between the City and the County (City of Merced Resolution No. 97 and County of Merced Resolution No. 97-35). Castle Farms is still almost entirely outside the City of Merced Sphere of Influence and would require annexation. Pursuant to Section VI(D) of the Agreement there must be mutual agreement between the City and County regarding any such annexations. The GPU EIR states that the " ... agreement will need to be updated to reflect policies relating to the City's new SUDP/Sphere of Influence ... " The County has no intention of amending the Agreement in such a way that threatens the viability of Castle Airport, as discussed throughout this letter. Frankly, the City should consider these comments in light of the future durability of the Agreement.

Response 5GGG: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements.

Comment 5HHH: *Regional economic growth is dependent on the ability of the region to attract industry and businesses and create good paying jobs. The potential development of Castle Airport as a regional cargo hub, as a maintenance facility for the High-Speed rail project, and as a commercial airport, is the linchpin for regional economic growth. Its massive size, super long runway, and large protection zones capable of accommodating large aircraft in high numbers, make it absolutely unparalleled among regional airports, and accordingly, is paramount as an economic growth engine for the entire region. Its extraordinary and unique position must be fully protected. Frankly, the inclusion of Castle Farms in the GPU is severely detrimental to Castle Airport because it could restrict the nature and extent of flight operations which would have a cascading affect on the airport facility as a whole. As the GPU concedes:*

When residential development is allowed to locate adjacent to airports, many times airport operations suffer due to noise, safety, and other complaints. (GPU, p. 10-32.)

Equally important, it would irreversibly preclude the enormous opportunity to concentrate airport-dependent industrial, technology, manufacturing, and commercial businesses adjacent to the airport. The County of Merced therefore urges the selection of the Reduced Growth Alternative, or a modified version thereof that would delete Castle Farms from the GPU.

Response 5HHH: The commenters raise a number of issues that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Please refer to previous responses to County comments regarding the General Plan DEIR's evaluation of perceived or potential impacts of Plan adoption on Castle Airport.

Comment 5III: *The Board of Supervisors has reviewed this comment letter to ensure that the GPU EIR fulfills not only the analytical requirements but also the fundamental policies of CEQA. One of the major objectives of the CEQA process is to foster better, more environmentally sensitive projects, through revisions which are precipitated by the preparation of the EIR itself. (County of Orange v. Superior Court (2003) 113 Cal.App.4th 1,10.) The essence of these comments is that GPU EIR must be revised to include accurate, complete information on Castle Airport. EIRs facilitate the generation of concrete suggestions as to how projects can be modified to avoid or mitigate significant environmental impacts, including revising a proposed project or choosing an environmentally superior project. (CEQA Guidelines § 15002(h).) Accordingly, the County urges the City to either:*

- 1. Modify the proposed action to delete Castle Farms, as a residential community, and redesignate the area for industrial and commercial use, to create a genuine, long-term synergy with Castle Airport, or*
- 2. Adopt the Reduced Growth Alternative because it does not include Castle Farms and therefore would avoid the presumably significant, unmitigable impacts caused by the basic incompatibility of a large residential development with Castle Airport.*

Response 5III: The commenters make a number of suggestions that reflect their interpretation of the facts or states their opinion. All such comments are duly noted, but that does not mean

that the City agrees with those statements. The City of Merced reserves the right to set land use policies its own growth boundaries.

Comment 5JJJ: *In closing, while the County appreciates the opportunity to comment on the GPU EIR, the County welcomes further opportunities to enhance and reinforce our mutual, long-term interest in promoting land use that fosters regional economic growth for both the City and the County. If the City needs additional information or has any questions regarding this letter please contact any of us or Larry T. Combs, the Chief Executive Officer, at (209) 385-7637.*

Response 5JJJ: The comment is noted.



Castle Commerce Center, 3430 A Street, Atwater, California 95301
 Mailing: PO Box 2147, Merced, California 95344
 www.muhsd.k12.ca.us 209-385-6400 (Fax 209-385-6442)

Superintendent
 V. Scott Scambray

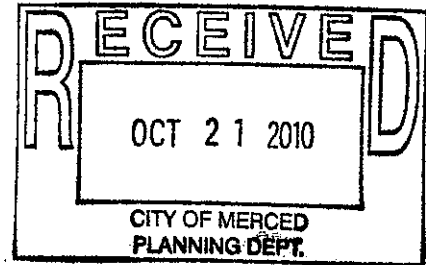
Deputy Superintendent
 Raynee J. Daley, Ed.D.

Assistant Superintendents
 George S. Sziraki, Jr.
 Sandra Schiber, Ed.D.

Board of Trustees
 Mike Carpenter
 Dave Honey
 Ida M. Johnson
 Tim O'Neill
 Sam Spangler

October 19, 2010

Kim Espinosa, Planning Manager
 City of Merced
 678 West 18th Street
 Merced, CA 95340



Re: Merced Vision 2030 General Plan

Dear Kim,

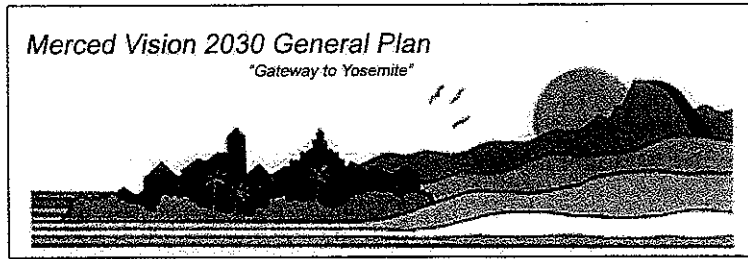
The Merced Union High School District received the draft Merced Vision 2030 General Plan which revises the current city general plan. The school district staff of Merced Elementary School District, Weaver School District, McSwain School District, Merced County Office of Education and the Merced Union High School District worked for many months with you and the city attorney to develop and refine the proposed general plan policies regarding schools. On February 13, 2008 the Merced Union High School District Board of Trustees approved the draft general plan policies that now are in the Merced Vision 2030 General Plan. The District understands that after the general plan is approved the school districts involved may meet with city staff to discuss a memorandum of understanding regarding more detailed planning procedures in regards to schools. The Merced Union High School District appreciates the cooperative working relationship with the city in the development of these general plan policies. The District urges the city council to approve the revised general plan goals and policies regarding schools.

A

Sincere regards,

Michael Belluomini
 Director of Facilities Planning

- cc: Raynee J. Daley, Ed.D.
- Rosemary Duran (MCSD)
- Stan Mollart (McSwain)
- Jamie Quintano (MCOE)
- John Curry (Weaver)
- Greg Diaz



Merced Vision 2030 General Plan

*Recommended for Adoption by the Merced City Planning Commission
on _____, 2010*

Prepared By

**The City of Merced Development Services Department
Planning & Permitting Division
&
Quad Knopf, Inc.**

Under the Direction of

**John M. Bramble, City Manager
David Gonzalves, Development Services Director
Kim Espinosa, Planning Manager**

Plan Prepared By

**Kim Espinosa, Planning Manager
Bill King, Principal Planner
Quad Knopf, Inc.**

In Cooperation With

**Merced City Council
Merced City Planning Commission
City of Merced General Plan Citizens Advisory Committee
City of Merced General Plan Technical Advisory Committee**

Merced Vision 2030 General Plan

Merced City Council

Bill Spriggs, *Mayor*
Bill Blake, *Mayor Pro Tempore*
Michele Gabriault-Acosta
John Carlisle
Noah Lor
Joshua Pedrozo
Mary-Michal Rawling

Merced City Planning Commission

Dwight Amey, *Chairperson*
Carole McCoy, *Vice Chairperson*
Robert Acheson
Richard Cervantes
Mary Ward
Travis Colby
Lawrence Zuercher

General Plan Citizens Advisory Committee

The Planning Commission served as the Citizens Advisory Committee.

General Plan Technical Advisory Committee

Steve Becker Weaver Union School District	Floyd Higdon Merced City Police Department	Masoud Niroumand Merced City Housing Division
Michael Belluomini Merced Union High School District	Daryl Jordan Merced City Engineer	Jamie Quintana Merced County Office of Education
Greg Diaz Merced City Attorney	Robert Lewis Merced County Development Services Department	Frank Quintero Merced City Redevelopment/ Economic Development
Tom Dumas California Dept of Transportation	Robert Lindsay Merced Irrigation District	Bob Smith Merced County Public Works Department
Ron Elliott Merced Regional Airport	Ken Mitten Merced City Fire Department	Ken Testa Merced City School District
Matt Fell Merced County Association of Governments	Stan Mollart McSwain Schools	Mike Wegley Merced City Public Works
Alexander Hall Merced City Parks & Community Services	Bill Nicholson Merced County Development Services Department	Janet Young UC Merced

5.2.7 Schools

PRIMARY AND SECONDARY EDUCATION

Public schools play an important role in the community. Schools educate the City's children, offer open space and playing fields, and give a sense of identity to the City's neighborhoods. High quality education produces future leaders and skilled workers and contributes to the City's cultural and social well being.



Public schools are operated by school districts, which are autonomous governmental agencies separate from the City. They have their own elected officials and source of funding. There has been a long tradition of support and cooperation between the school districts and the community because public schools are so important to Merced. The City coordinates with the school districts on the locations of future school sites, the collection of developer impact fees, and joint activities and facilities (i.e. school parks).

The public school system in the Merced SUDP/SOI is served by four districts:

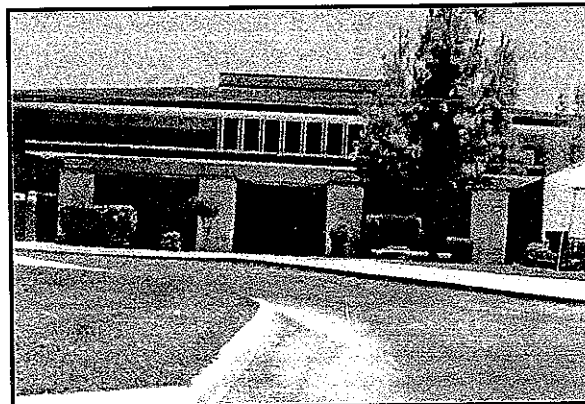
- 1) Merced City School District (elementary and middle schools);
- 2) Merced Union High School District (MUHSD);

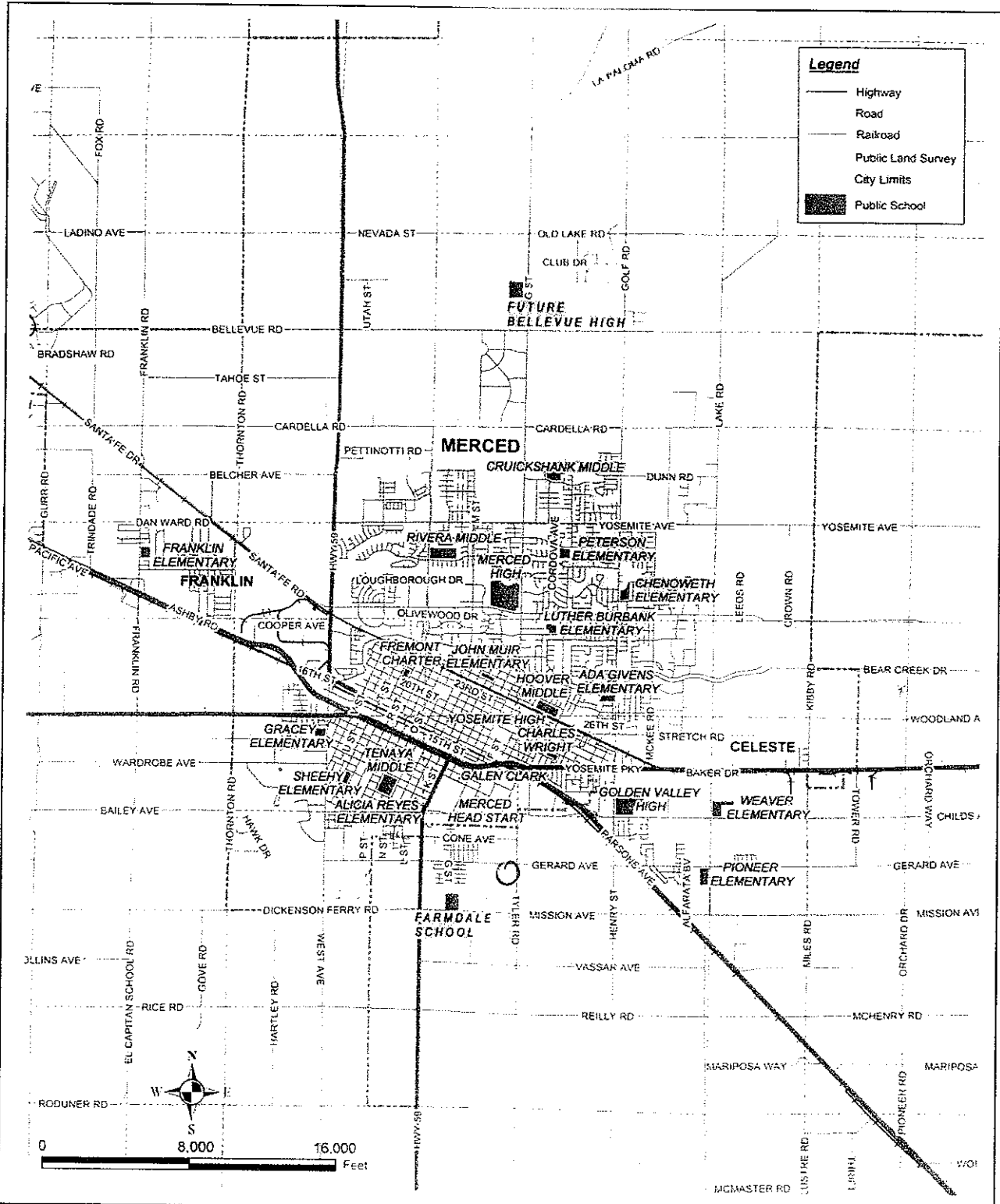
- 3) Weaver Union School District (serving a small area in the southeastern part of the City with elementary schools); and,
- 4) McSwain Union Elementary School District (serving a small area in the southwestern portion of the SUDP/SOI).

The districts include various elementary schools, middle (junior high) schools, and high schools (*Figure 5.4*).

As the City grows, new schools will need to be built to serve our growing population. From time to time, the school districts prepare development fee justification studies which show student generation rates for various types of development. The latest studies for each District are on file with the City.

On the General Plan Land Use Diagram, new school sites are indicated with green dots, which reflect a general location only based on projected need. In other words, a school should be located in the general area shown but not necessarily in the precise location of the dot. This is done in order to allow the school districts flexibility in locating specific school sites and negotiating with property owners.





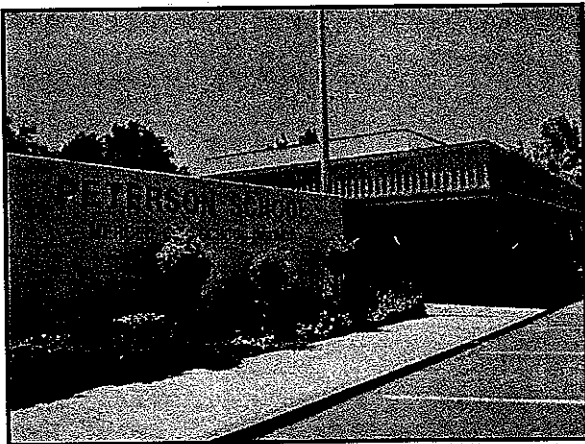
MERCED SCHOOLS

Figure 5.4

Financing New Schools Required for Growth

The City recognizes that education and public schools are an important and integral part of a well-balanced community—providing not only educational opportunities for our youth, but also vital recreation and open space for our community.

In addition to providing educational opportunity for our residents, quality public schools also serve as a foundation of long-term economic development and for a healthy local economy. The City also recognizes that public school districts are organized, funded, and established as distinct and separate legal entities having separately elected governing boards and missions while sharing many of the same constituents as the City. It is the primary responsibility of these school districts and their governing boards to provide for the budgetary priorities to address their needs.



State legislation has severely constrained and limited the ability of the City to require development interests to do more than the statutory minimums to mitigate development's impacts on the public schools systems. However, the City, in recognizing the importance of public education to the well balanced community we desire, will

look to those seeking entitlements from the City to be good trustees of the future and to go beyond the statutory minimums to address the impacts of their development on schools by entering into voluntary agreements with the relevant school districts.

While the City may not be able to deny a project because of its impact on schools, development interests can and should anticipate being asked what they have done to address those impacts. To this end, the City will seek to facilitate discussions between development interests and the relevant public school districts regarding these voluntary agreements to address the needs of the school districts.

HIGHER EDUCATION

Merced College



Merced College, one of the California Community Colleges, provides Merced County residents with the opportunities for educational development, cultural enrichment, and personal growth. The College's strong program of academic courses, combined with a wide variety of vocational programs, allows the College to serve the needs of a diverse student population. Two-year Associate in Arts or Sciences degrees as well as Certificates of Completion in selected vocational areas are available, along with other programs

Where feasible, intermediate waste processing facilities and materials recycling facilities should be sited in or adjacent to compatible heavy commercial or industrial areas, with access to major roadways.

6.2.b Cooperate with Merced County Regional Waste Management Authority to implement recommendations for source reduction programs which have the least environmental and economic impacts on the City and its residents.

The City development review process should incorporate policies and programs for waste collection points and waste transfer points which minimize traffic, noise, and other adverse impacts on surrounding areas. The City will cooperate with the Merced County Regional Waste Management Authority on implementing actions directed at reducing solid waste and to promote community awareness of recycling program activities and services available in the City.

6.2.c Continue implementation of programs in cooperation with the Merced County Regional Waste Management Authority to meet solid waste diversion goals.

The City's waste reduction efforts should be designed to complement the Authority's efforts.

(Note: Policies regarding hazardous materials disposal are included in the Safety Element, Chapter 11.)

Goal Area P-7: Schools

GOALS

- Adequate School Facilities for All Students in the Merced Urban Area
- Excellent Cooperative Relationships between the City, the School Districts, and the Development Community

POLICIES

P-7.1 Cooperate with Merced area school districts to provide elementary, intermediate and high school sites that are centrally located to the populations they serve and adequate to serve community growth.

P-7.2 Support higher educational opportunities.

Policy P-7.1

Cooperate With Merced Area School Districts to Provide Pre-Kindergarten, Elementary, Intermediate, And High School Sites That Are Centrally Located to the Populations They Serve and Adequate to Serve Community Growth.

While the primary responsibility of providing education services in the City of Merced belongs to the various school districts which operate in the community, the City can provide an important element of support to education service providers. In a time of limited resources, cooperative arrangements between all levels of local government are essential to maintaining and enhancing service levels. The City of Merced is committed to working cooperatively with local educational service providers, both

public and private, in the improvement of the educational resources available to City residents.

Implementing Actions:

- 7.1.a. The City recognizes that education and public schools are an important and integral part of a well balanced community—providing not only educational opportunities for our youth, but also vital recreation and open space for our community.**

In addition to providing educational opportunity for our residents, quality public schools also serve as a foundation of long-term economic development and for a healthy local economy. The City also recognizes that public school districts are organized, funded, and established as distinct and separate legal entities having separately elected governing boards and missions while sharing many of the same constituents as the City. It is the primary responsibility of these public school districts and their governing boards to provide for the budgetary priorities to address their needs.

State legislation has severely constrained and limited the ability of the City to require development interests to do more than the statutory minimums to mitigate development's impacts on the public school systems. However, the City, in recognizing the importance of public education to the well balanced community we desire, will look to those seeking entitlements from the City to be good trustees of the future and to go beyond the statutory minimums to address the impacts of their development on schools by entering into voluntary agreements with the relevant public school districts. While the City may not be able to deny a project because of its impact on schools, development interests can and should anticipate being asked what they have done to help address those impacts. To this end, the City will seek to facilitate discussions between development interests and the relevant public school districts to address at a global or project specific level the reaching of voluntary agreements to address the needs of public school districts.

- 7.1.b. The City of Merced will assist, support, collaborate and cooperate with the school districts having jurisdiction in planning for and providing of educational services and School Facilities to meet the needs of current and projected future students and employees. The City will work with the school districts to negotiate a memorandum of understanding (MOU)/cooperative agreement, which will address how the school impacts of development projects will be analyzed, the preparation of plans for services by developers, and school funding issues.**

Such memorandum(s) of understanding shall ensure that the relevant district is planning and developing new school sites which minimize negative impacts on the community and demonstrate recognition by the district(s) of its obligation to participate early in the City's development review process. Should a district fail to have such a memorandum of understanding with the City, the City will consider any input by the district, but the provisions of this implementing action shall not limit the City's ability to approve new development applications or projects.

The planning and site plan review for the development of new growth areas should involve school planners as early in the process as feasible. Where school districts have cooperative agreements with the City, the City will provide information and timely notification to the School Districts regarding Annexation applications, Master Plans, Specific Plans, General Plan Amendments, Zone Changes, and Development Agreements, so that the Districts can provide information to the City regarding the impacts of the applications on school facilities and that

information can be provided to the Planning Commission and City Council during the public hearing process. As part of the cooperative agreements, details regarding the level of analysis required for various development applications, the topic areas to be covered, and timelines for preparing the analysis will be negotiated between the City and the School Districts. The MOU should also address the preparation of a plan for services by the developers and various school funding issues, including the use of public tax exempt financing.

- 7.1.c. The City will promote the clustering of public and quasi-public uses such as schools, parks, child care facilities, and community activity centers. Joint-use of public facilities will be promoted and agreements for sharing costs and operational responsibilities by school districts and public entity partners will be encouraged.**

The purpose of developing "joint use" facilities is to reduce facility construction and operating costs for local public agencies. Joint use facilities may require development of joint use agreements between participating agencies. Normally a joint use facility would involve design components which would exceed individual agency needs and therefore increase overall facility costs; however, joint use facilities may reduce total costs for facility development and operation. Individual facility studies would need to be conducted on facility designs to assure a positive cost benefit to the agencies involved.

Exploration of new opportunities for joint use school facilities may include, but are not limited to, gymnasiums and/or multi-purpose buildings, libraries, play fields and nearby restrooms, child and/or senior care facilities, after school tutoring centers, and community meeting facilities. Efforts to create school facilities should reflect attractive design to serve as neighborhood and community gathering places, and contribute to neighborhood identity and pride. The City will cooperate with school districts to establish systems of planning and collaboration that result in effective communication and relationships leading to the creation, maintenance, and improvement of joint-use agreements which provide mutual benefits to their shared constituents. The City will continue to enter into memorandums of understanding with school districts for the shared planning, design, operation, and maintenance of facilities associated with adjoining parks and schools. Joint-use agreements should seek to maximize facility use, reduce overall costs of operation and maintenance, provide for the use of school facilities by City as well as school district sponsored recreational, athletic, and educational programs during non-school day operational times.

- 7.1.d. In general, schools should be located within residential neighborhoods near parks, bikeways, and other open space amenities. Schools should not be located within industrial areas. In urban village areas, schools should be located adjacent to Village Core Residential (higher density) areas.**

Schools should be sited near open space areas such as parks and bikeways in order to promote joint use of facilities and good bicycle and pedestrian access. In urban villages, schools should be located adjacent to the "Village Core Residential" areas where densities are higher.

- 7.1.e. The City and the School Districts will work together toward circulation and transportation systems within the City that provide for the movement of students from homes to schools, including considerations for pedestrian, bicycle, and overall safe routes to school.**

The City and the School Districts will work together to establish safe and convenient systems of public transportation and circulation linked to residential neighborhoods, business centers, parks, schools, and other public facilities which encourage walking or bicycling as an

alternative to driving. Overall designs for access/egress to schools should include student/passenger drop-off and pick-up areas whenever possible.

7.1.f. School Districts will select new school sites consistent with the Land Use Diagram in accordance with City policies and based on its own site selection studies in coordination with the City of Merced.

The City's General Plan Land Use Diagram identifies general areas where school facilities are expected to be needed based on proposed land uses. Implementing Actions P-7.1.c, P-7.1.d, P-7.1.f, P-7.1.g, and P-7.1.h address the City's preferences for locating school facilities. Specific sites would only be designated after the school district's site selection process has resulted in a site being obtained by the district to provide the district with maximum flexibility in obtaining new school sites. For the purposes of this section, "obtain" (above) means actual ownership or an agreement between the School Districts and the property owner to acquire or designate a school site.

7.1.g. Designate specific school site locations on the Land Use Diagram as needs and sites are identified and ensure their compatibility with adjacent development.

Once the school districts have selected and obtained school facility sites, the City will review existing land use plans to assure compatibility with the proposed site. Through the City's environmental review process, development permits adjacent to, or in the immediate vicinity of, a proposed school site will be reviewed to address any negative impacts on the school as long as the school site is located consistent with City policies.

The City of Merced will designate, in cooperative and ongoing dialogue with school district officials, adequate, appropriately located land for City and School Facilities, which the School Districts will verify compliance with the District's school facility plans and the requirements of the California Department of Education. Sites should be sized and sited to accommodate all grade levels that are required to be housed generated from the developing area. The City will support school districts in identifying school sites which are appropriately located and sized within attendance areas and appropriately distributed throughout the community. The design and site configuration of school facilities should be in accordance with the requirements and standards of school district master plans, inclusive of but not limited to net acreage requirements, access by the public and necessary off street parking, and safe routes of access/egress.

In the event, a district overrides the City's zoning for a site, any obligation the City has under this Implementing Action shall be inapplicable to that site.

7.1.h. Elementary school sites should be encouraged to locate on collector streets near but not directly on arterials.

New elementary school sites should not result in the creation of hazards for City residents or students. The City will assist by providing data as required by the school districts so the districts can ensure that safe, adequate access is provided to school sites. This will best be served by locating schools on collector streets where access is good but lower traffic speeds lead to a safer environment for students walking to school. At the same time, schools should be located near arterials but not on them, so that bus transportation to the school will not unnecessarily disrupt residential neighborhoods. Off-street passenger loading and unloading areas should be encouraged. Good pedestrian and bicycle access is also an important factor to be considered. Future school sites should have as many sides fronting on streets as possible.

- 7.1.i. Cooperate with the school districts to ensure that school facility impact fees are collected in accordance with State law. In addition, the City will work with the School Districts to coordinate discussions with developers of residential projects to enter into voluntary agreements with the school districts with provisions that child care and school facilities required by development are funded in a timely and adequate manner, concurrent with development, and in accordance with the standards and requirements of the school district having jurisdiction.**

The City will work closely with the school districts in the management of the School Impact Fee system and to encourage developers to enter into voluntary agreements with the school districts to fund child care and school facilities.

- 7.1.j. Work with the school districts to obtain adequate funding for infrastructure improvements on and adjacent to school sites.**

The City will work with the school districts so that funding for school construction includes mitigation of off-site impacts, such as traffic signals, sidewalks, and street improvements. All infrastructure utility systems should be provided to the property line of all school sites by private development where feasible at school district expense and should include water, gas, electricity, telephone, sewer, storm drainage, cable television and wiring and conduit for cabling systems to serve modern telephone and computer systems.

- 7.1.k. The City of Merced will support and cooperate with the School Districts in planning for and providing child care and educational services and School Facilities with sufficient capacity, to meet the needs of current and projected future student enrollments and employees. To this end, the City will work cooperatively with the School District(s) in monitoring housing, population and school enrollment trends to plan for future School Facility and Child Care Facility needs.**

In order to maintain an adequate and sufficient level of public facilities and services for child care the following should be considered and provided:

1. Public facilities and services for child care should be encouraged in any land use designation, except open space and heavy industrial designations.
2. The City will work with, assist and coordinate policing and public safety programs and activities with the local School District to enhance the safety, security, and protection of property and persons of the District's schools.
3. Encourage the use of public facilities for child care services, including collaboration between schools and parks, faith based institutions, community centers, and senior centers.
4. School Facilities, and education programs, including child care options for all City residents, should be an integral component of residential neighborhoods.
5. The site planning and design of developments, which include school sites, should provide efficient and effective pedestrian and vehicular access/egress to such sites and to utilities.
6. The City will work with local child care advocacy organizations including the Local Child Care and Development Planning Council and the Child Care Resource and Referral office to determine unmet community child care needs which will be considered in site plans and designs of developments.

- 7.1.1. Through the City's environmental review process, reasonable attempts will be made to reduce the effects of incompatible land uses and noise adjacent to or within a quarter mile of school facilities and other noise sensitive land uses.**

Land uses and developments which emit excessive noise, exceeding noise standards established in the City's General Plan, odors, particulates, light and/or glare, vibration, or other environmentally sensitive contaminants will need to address and reduce as much as feasible any negative impacts on school facilities within a quarter-mile of the proposed use when such school facilities are located on sites zoned for residential use. In the event, a school district overrides the City's zoning, the provisions of this implementing action will be inapplicable to that school site.

Policy P-7.2

Support Higher Educational Opportunities.

The City of Merced is fortunate to have well regarded institutions of higher education. The City is committed to promoting these institutions and facilitating their growth and development.

Implementing Actions:

- 7.2.a Work with Merced College to ensure that facilities and grounds are available to meet future student needs.**

The City will participate, as required, with Merced College planning efforts. The City will provide assistance in obtaining necessary campus development permits.

- 7.2.b Work closely with both the Merced Community College District and University of California Chancellor's Office to assure that adequate community infrastructure is available to meet their institutional needs.**

The City's street system, along with water, sewer, and drainage systems, serve the existing Merced College campus site and the UC Merced campus site. The City will work closely with Merced Community College and the UC system on future campus expansion and development plans, coordinate infrastructure extension, and upgrade programs to meet the development needs of these two campuses to the maximum extent feasible. The City anticipates and expects these institutions to pay their fair share of facility costs and to mitigate their impacts on the community.

- 7.2.c Work with the County and UC Merced planning staff in the preparation of necessary plans and studies for the expansion of the UC Merced campus site and grounds.**

Land use on the UC Merced campus site is under the jurisdiction of the Regents of the University of California with only limited review available to the City or the County. There is a need, however, to assure that infrastructure planning (sewer, water, drainage systems) and circulation system planning be well integrated with existing and planned City and County systems. The City will continue to work with UC staff, and the County of Merced, to provide assistance in matching campus needs with City resources. The City anticipates and expects these institutions to pay their fair share of facility costs and to mitigate their impacts on the community.

- 7.2.d Develop programs with UC Merced students, faculty, and employees to gain their prospective on future development goals for the City.**

8.2.e Promote the development of shared cultural and recreational facilities and programs between the community and local educational facilities.

Work with local school districts and secondary education institutions to develop cultural and recreational facilities and programs that can be available for local community purposes.

8.2.f Continue to encourage parks to be located adjacent to schools in order to promote the joint use of buildings and sports facilities.

Give priority consideration to sites located near school campuses. The City will work with local school districts to develop joint use sports facilities with shared development, operation and maintenance responsibilities.

Policy P-8.3

Work with Others to Study Innovative Ways of Delivering Library Services at the Neighborhood Level to Promote Community Education and Provide a Focus for Community Activity and Cultural Development.

Library services are an important element of any community's cultural resources. Technological developments have created new opportunities to deliver information at the neighborhood level in an efficient and cost effective manner. The community is committed to improving the quality of its cultural resources, such as library services, and will study and evaluate means by which this can be accomplished.

Implementing Actions:

8.3.a Explore ways to incorporate "information access" into public facilities and buildings.

Public facilities located in neighborhoods, such as fire stations, police stations, parks, etc., can provide important opportunities for providing public access to information resources. The location of computer terminals or kiosks in these facilities should be considered to allow ready public access to information on City business, library services, cultural and historical attractions, etc.

8.3.b Work with the County of Merced to define an efficient means of maintaining and delivering library services within the Merced urban area.

In early 1997, the City and County adopted a property tax sharing agreement in which the County will receive a share of the tax increment from Redevelopment Project Area #2 specifically for library purposes. The County could receive up to \$8 million from this source through the year 2014. The City will continue to work with the County to explore other options for maintaining library services for Merced residents.

Goal Area P-9: Telecommunications

GOAL

- **Development of Infrastructure and Service to Allow All Merced Residents to Utilize New Technologies to Communicate with the Region, the Nation, and the World**

Letter 6 Michael Belluomini, Director of Facilities Planning, Merced Union High School District

Comment 6A: *The Merced Union High School District received the draft Merced Vision 2030 General Plan which revises the current city general plan. The school district staff of Merced Elementary School District, Weaver School District, McSwain School District, Merced County Office of Education and the Merced Union High School District worked for many months with you and the city attorney to develop and refine the proposed general plan policies regarding schools. On February 13, 2008 the Merced Union High School District Board of Trustees approved the draft general plan policies that now are in the Merced Vision 2030 General Plan. The District understands that after the general plan is approved the school districts involved may meet with city staff to discuss a memorandum of understanding regarding more detailed planning procedures in regards to schools. The Merced Union High School District appreciates the cooperative working relationship with the city in the development of these general plan policies. The District urges the city council to approve the revised general plan goals and policies regarding schools.*

Response 6A: The City appreciates the opportunity to address concerns identified by the Merced Union High School District. The letter in support of the proposed 2030 General Plan Update and the policies contained therein regarding schools is noted.

Espinosa, Kim

From: Aerieways@aol.com
Sent: Wednesday, October 20, 2010 11:47 PM
To: Espinosa, Kim
Subject: City of Merced General Plan

Prior to commenting on the Draft General Plan an introduction of the Amah Mutsun Tribal Band is first warranted. The Amah are an agglomerate of the indigenous peoples gathered in Central California and taken to Mision de San Juan Bautista. Among those collected were many of the tribal people from present day Merced County including 75 Silelamne (Merced), 157 Quihuehs (Atwater), 141 Hualquemne (Hopeton), 13 Telehua (Le Grand) and 134 Uthrocus (El Nido). One of those taken was Sopatra my Grandmother's Grandmother's Grandmother. With the marriage of Sopatra and Junipero the Yokuts of the Central Valley were combined with the Coastal Mutsun. Many of the present day Amah are descendants of this union and draw their lineage to the Silelamne. We therefore have great interest in the development of Thrayapthre (the lands of the Silelamne). Unfortunately, our Yokuts ancestors left no record of their environs in the Central Valley so we have no specific sacred sites to share with you for the City of Merced.

A

I submit the following comments on behalf of the Amah Mutsun Tribal Band.

1. I am generally disappointed with the Appendix G of the Draft General Plan and its summary in Section 3.5 of the Draft General Plan. The information is so general that it could have been written by many eighth graders. Particularly poor are the archaeology and ethnology portions. It states



B

It may be true that the Central Valley may have been among the first to receive fieldwork, but I find little evidence of this fact in the document. Furthermore, the list of references stops in 2002 with the ethnology ending in 1984 hardly continuing to present day. If this statement was true there should be significant evidence of information gathered within the boundaries of the City of Merced up to 2010. Suggest you contact Mr. Randall Milliken to obtain more information on the subject areas cultural history.

2. We suggest the Draft General Plan include procedures for protecting Cultural resources found during any ground penetration. Suggest you look at the general plan for the County of San Diego.

C

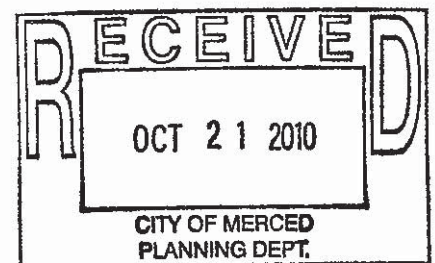
3. We would hope the city of Merced would find areas within the city to commemorate the indigenous people.

D

4. The Amah Mutsun Tribal Band wishes to now open consultation.

E

Ed Ketchum
Amah Mutsun Tribal Band Historian



Letter 7 Ed Ketchum, Amah Mutsun Tribal Band Historian

Comment 7A: *Prior to commenting on the Draft General Plan an introduction of the Amah Mutsun Tribal Band is first warranted. The Amah are an agglomerate of the indigenous peoples gathered in Central California and taken to Mision de San Juan Bautista. Among those collected were many of the tribal people from present day Merced County including 75 Silelamne (Merced), 157 Quihuehs (Atwater), 141 Hualquemne (Hopeton), 13 Telehua (Le Grand) and 134 Uthrocus (El Nido). One of those taken was Sopatra my Grandmother's Grandmother's Grandmother. With the marriage of Sopatra and Junipero the Yokuts of the Central Valley were combined with the Coastal Mutsun. Many of the present day Amah are descendants of this union and draw their lineage to the Silelamne. We therefore have great interest in the development of Thrayapthre (the lands of the Silelamne). Unfortunately, our Yokuts ancestors left no record of their environs in the Central Valley so we have no specific sacred sites to share with you for the City of Merced.*

Response 7A: The City appreciates the opportunity to address concerns raised by the Amah Mutsun Tribal Band. The comment stating that the Amah Mutsun Tribal Band has no specific sacred site information to share with the City of Merced is noted.

Comment 7B: *I submit the following comments on behalf of the Amah Mutsun Tribal Band.*

- I am generally disappointed with the Appendix G of the Draft General Plan and its summary in Section 3.5 of the Draft General Plan. The information is so general that it could have been written by many eighth graders. Particularly poor are the archaeology and ethnology portions. It states (TEXT MISSING FROM EMAIL)*

It may be true that the Central Valley may have been among the first to receive fieldwork, but I find little evidence of this fact in the document. Furthermore, the list of references stops in 2002 with the ethnology ending in 1984 hardly continuing to present day. If this statement was true there should be significant evidence of information gathered within the boundaries of the City of Merced up to 2010. Suggest you contact Mr. Randall Milliken to obtain more information on the subject areas cultural history.

Response 7B: The Cultural Resource Assessment prepared for the proposed 2030 General Plan Update is more broad and general in scope than a typical site specific development project assessment because it covers a large geographic area and is intended to provide general direction to be followed as specific development projects supported by the General Plan evolve over time. A summary of early Central Valley cultural resources fieldwork activity is provided in the Cultural Resources Survey found as Appendix G of the DEIR (see page 1).

As stated on page 3.5-3 of the DEIR a cultural resources records search was conducted by the Central California Information Center (CCIC) at California State University, Stanislaus for the Merced area on November 19, 2008 to identify previously recorded sites and previous cultural resources studies in and near the project area (IC#72431). This search included the most up to date CICC information included in their data base, including information that may have been placed in the system after the 1984 and 2002 dates referenced by the commenter. It should be

noted that as specific development occurs, such activity will be subject to site-specific cultural resource analysis.

Comment 7C: *2. We suggest the Draft General Plan include procedures for protecting Cultural resources found during any ground penetration. Suggest you look at the general plan for the County of San Diego.*

Response 7C: As stated at page 3.5-10 of the DEIR, Policies SD-2.1, SD-2.2 and SD-2-3 and related Implementing Actions of the proposed 2030 General Plan address measures for protecting Cultural resources found during ground penetration. These policies and implementing actions are generally comparable to those found at page X-88 through X-98 (Chapter 8 Cultural Sites) of the commenter referenced County of San Diego General Plan Conservation Element.

Comment 7D: *3. We would hope the city of Merced would find areas within the city to commemorate the indigenous people.*

Response 7D: The comment is noted.

Comment 7E: *4. The Amah Mutsun Tribal Band wishes to now open consultation.*

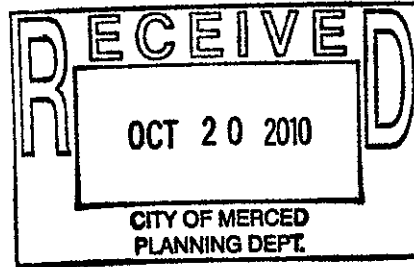
Response 7E: The City appreciates the opportunity to discuss issues with the Tribal Band. It should be noted that consultation was opened with the Amah Mutsun Tribal Band on September 28, 2006 by way of correspondence directed to Valentin Lopez, Chairperson and no response was received within the time frames prescribed in State law.

DEPARTMENT OF TRANSPORTATION

P.O. BOX 2048 STOCKTON, CA 95201
(1976 E. CHARTER WAY/1976 E. DR. MARTIN
LUTHER KING JR. BLVD. 95205)
TTY: California Relay Service (800) 735-2929
PHONE (209) 941-1921
FAX (209) 948-7194



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October 20, 2010

**10-MER-Variou
Merced Vision 2030 General Plan
SCH # 2008071069**

Kim Espinosa
City of Merced
Planning and Permitting Division
678 West 18th Street, 2nd Floor
Merced, CA 95340

Dear Ms. Espinosa,

The California Department of Transportation (Department) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Merced Vision 2030 General Plan, which is an update of the City of Merced's General Plan.

Upon review of the project, the Department has the following comments:

1. Any proposed development must be compatible with the proposed future improvements to SR-99, SR-140, and SR-59. The Department's Transportation Concept Reports for SR-99, SR-140, and SR-59 call for the concept facility and ultimate transportation concepts which establish right-of-way (ROW) restrictions on developments that are adjacent to the state highways. These ROW restrictions will need to be accommodated in order to ensure that the Level of Service (LOS) standard of "D" in urban areas and "C" in rural areas are maintained. Any developer would need to obtain from the Local Jurisdiction an Irrevocable Offer of Dedication (IOD) and a slope rights/drainage easement in order to preserve this ROW.
2. Any future proposed development should pay a "Traffic Impact Mitigation Fee". The cumulative impacts of proposed land use development will contribute to the degradation of the LOS on the State Highway System (SHS). This degradation will eventually require improvements to accommodate the increase in traffic volumes to SR-140, SR-99, and SR-59 in the City of Merced along mainline and intersection portions. Therefore, the Department recommends that the Lead Agency collect a transportation impact mitigation fee on a "proportional share" basis from the developer to hold until the fee can be contributed towards the local portion of funding for future improvements to these State Highway facilities.

A

B

3. The Department recognizes that there is a strong link between transportation and land use. Growth and development can have a significant impact on traffic and congestion on state transportation facilities. In particular, the pattern of land use can affect both total vehicle miles traveled and the number of trips per household. In order to create more efficient and livable communities, the Department encourages the applicant to work towards a safe, functional, interconnected, multi-modal system integrated with "smart growth" type land use planning. Also, a mixture of land uses creates opportunities to substitute walking or bicycling for driving.

C

4. The Department views all physical development and transportation improvements as opportunities to improve safety, access, and mobility for all travelers and recognizes bicycle, pedestrian, and transit modes as integral elements of the transportation system. By implementing Complete Streets policies, the local agencies play a vital role in revitalizing communities by providing a safe walking and bicycling environment.

Complete Streets are designed and operated to enable safe and efficient access for all legal users – pedestrians, bicyclists, motorists and transit riders of all ages and abilities – along and across corridors. This policy helps to address congestion, improve safety, foster strong and healthy communities, and provides health and economic benefits to families through the options of using transit, walking or bicycling as other means of transportation. As such, the Department encourages local agencies to partner with the Department in its effort to revitalize communities by incorporating Complete Streets in the General Plan.

D

5. An Encroachment Permit application is required prior to any commencement of work within the State ROW and upon any access (driveway) point onto the SHS. All work performed within/adjacent to the State ROW will be subject to Caltrans Highway Design Manual (HDM) and Standards and Specifications. Below are some of the guidelines from the HDM.

- In new developments, local road intersections should be located at minimum 500 feet (curb return to curb return) beyond interchange ramps. These standards may be found in Section 205 of the HDM.
- Private access openings should be located at minimum 100 feet (beyond the curb return) for urban areas and 300 feet for rural areas from all interchange ramps. These standards may be found in Section 504 of the HDM.
- AASHTO (2004) specifically states that "Driveways should not be situated within the functional boundary of an at-grade intersection". The functional boundary of an intersection should include all required storage lengths for separate turn lanes and for through-traffic plus any maneuvering distance for separate turn lanes or it can create conflict points.
- ~~Intersection spacing on expressways for local roads and other private access openings~~ more than 30 feet wide should be at minimum 2,642 feet. These standards may be found in Section 205 of the HDM.
- For a driveway of commercial facilities, the Department requires commercial standards for each driveway serving a commercial land use. Any new driveways, as well as any existing driveways if used as part of a proposed project, shall be built or upgraded to current Department standards. Where applicable, any sidewalk, curb and gutter, or ramp shall be in compliance with the American with Disabilities Act. Standards are available

E

both online at <http://www.dot.ca.gov/hq/traffops/developserv/permits/> and at the District 10 Encroachment Permits Office.

E cont.

6. While recognizing that topographic and environmental constraints may preclude a strict interconnected grid street network, roads which are routed in parallel can provide an alternative to using the interregional roads or highway, thereby helping to alleviate congestion on State facilities. A street system with minimal interconnectedness –where drivers are siphoned from local streets to major streets or highways – concentrates traffic, leaving few choices to drivers. An interconnected grid street system offers the traveler multiple paths to reach any destination, thereby alleviating potential congestion by providing alternative routes.

F

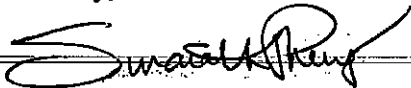
7. Please note that there was no mention of Goods Movement planning specific to trucks. When developing a Vision General Plan, Goods Movement issues should be incorporated into the plan, such as:

- Encourage planning for establishing rail line connectors at all new industrial park developments or other developments with significant goods movement activity.
- Provision for truck parking facilities (Truck Stops) that include adequate overnight parking, food, showers/restrooms, fueling and truck wash, and maintenance/repair services.
 - Encourage truck stops to include truck parking electrification options at truck parking facilities to reduce truck emissions and green house gases.
 - Establish provisions to encourage alternatives to diesel fuel for fueling trucks at truck stops, such as Hydrogen, Liquefied Natural Gas (LNG), and Biodiesel fuel types.
- Establish planning criteria for Surface Transportation Assistance Act (STAA)/truck routes to major industrial centers and shopping centers.
- Provision of a truck route map in the document, which includes plans to link major industrial and shopping centers to rail line distribution centers, STAA truck routes, and identifying all significant STAA truck route gaps. All gaps should be delineated on the map, and methodologies should be established, including funding, to address these gaps over a specified time period. Discussion should also include efforts that are being made with adjacent jurisdictions on providing connectivity for larger sized or STAA trucks.

G

If you have any questions, please contact Sinarath Pheng at (209) 942-6092 ([e-mail: Sinarath_Pheng@dot.ca.gov](mailto:Sinarath_Pheng@dot.ca.gov)) or myself at (209) 941-1921.

Sincerely,



for TOM DUMAS, CHIEF
OFFICE OF METROPOLITAN PLANNING

Espinosa, Kim

From: Sinarath Pheng [sinarath_pheng@dot.ca.gov]
Sent: Wednesday, October 20, 2010 3:09 PM
To: Espinosa, Kim
Subject: Merced Vision 2030 General Plan (SCH# 2008071069)
Attachments: Merced Vision 2030 General Plan letter 10-20-10.pdf

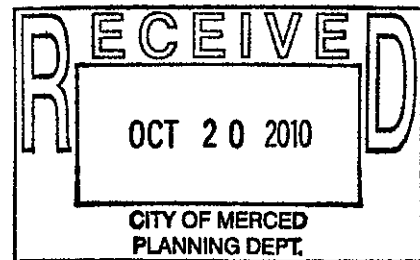
Good afternoon Kim,

Please see the attached letter for our comments on the DEIR for the Merced Vision 2030 General Plan.

Thank you,

Sinarath Pheng
Associate Transportation Planner
Department of Transportation, District 10
(209) 942-6092 Office
(209) 948-7194 Fax

(See attached file: Merced Vision 2030 General Plan letter 10-20-10.pdf)



Letter 8 Tom Dumas, Chief, Office of Metropolitan Planning, California Department of Transportation

Comment 8A: *The California Department of Transportation (Department) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Merced Vision 2030 General Plan, which is an update of the City of Merced's General Plan.*

Upon review of the project, the Department has the following comments:

- 1. Any proposed development must be compatible with the proposed future improvements to SR-99, SR-140, and SR-59. The Department's Transportation Concept Reports for SR-99, SR-140, and SR-59 call for the concept facility and ultimate transportation concepts which establish right-of-way (ROW) restrictions on developments that are adjacent to the state highways. These ROW restrictions will need to be accommodated in order to ensure that the Level of Service (LOS) standard of "D" in urban areas and "C" in rural areas are maintained. Any developer would need to obtain from the Local Jurisdiction an Irrevocable Offer of Dedication (IOD) and a slope rights/drainage easement in order to preserve this ROW.*

Response 8A: The City understands the role of the Department in ensuring compatibility with future improvements to State routes. The comment regarding City of Merced responsibility for obtaining appropriate right-of-way dedications and easements from developers to ensure maintenance of Caltrans Level of Service standards is noted. Future site-specific projects will be subject to Caltrans review.

Comment 8B:

- 2. Any future proposed development should pay a "Traffic Impact Mitigation Fee". The cumulative impacts of proposed land use development will contribute to the degradation of the LOS on the State Highway System (SHS). This degradation will eventually require improvements to accommodate the increase in traffic volumes to SR-140, SR-99, and SR-59 in the City of Merced along mainline and intersection portions. Therefore, the Department recommends that the Lead Agency collect a transportation mitigation fee on a "proportional share" basis from the developer to hold until the fee can be contributed towards the local portion of funding for future improvements to these State Highway facilities.*

Response 8B: The comment is noted. Prior to commencement of a land use development project, the City of Merced requires payment of a traffic mitigation fee on a "proportional share" basis that, when appropriate, can contribute to the local portion of funding for improvements on State Highway facilities.

Comment 8C:

- 3. The Department recognizes that there is a strong link between transportation and land use. Growth and development can have a significant impact on traffic and congestion on*

state transportation facilities. In particular, the pattern of land use can affect both total vehicle miles traveled and the number of trips per household. In order to create more efficient and livable communities, the Department encourages the applicant to work towards a safe, functional, interconnected, multi-modal system integrated with "smart growth" type land use planning. Also, a mixture of land uses creates opportunities to substitute walking or bicycling for driving.

Response 8C: The comment is noted. The Land Use, Urban Design, and Sustainable Development Elements of the proposed 2030 General Plan address the smart growth concepts encouraged by Caltrans.

Comment 8D:

4. *The Department views all physical development and transportation improvements as opportunities to improve safety, access, and mobility for all travelers and recognizes bicycle, pedestrian, and transit modes as integral elements of the transportation system. By implementing Complete Streets policies, the local agencies play a vital role in revitalizing communities by providing a safe walking and bicycling environment. Complete Streets are designed and operated to enable safe and efficient access for all legal users -pedestrians, bicyclists, motorists and transit riders of all ages and abilities - along and across corridors. This policy helps to address congestion, improve safety, foster strong and healthy communities, and provides health and economic benefits to families through the options of using transit, walking or bicycling as other means of transportation. As such, the Department encourages local agencies to partner with the Department in its effort to revitalize communities by incorporating Complete Streets in the General Plan.*

Response 8D: Beginning at page 3.15-15 of the DEIR, proposed City of Merced roadway cross-section standards demonstrate adherence to “complete streets” design. Additionally, numerous policies throughout the proposed 2030 General Plan reinforce this concept.

Comment 8E:

5. *An Encroachment Permit application is required prior to any commencement of work within the State ROW and upon any access (driveway) point onto the SHS. All work performed within/adjacent to the State ROW will be subject to Caltrans Highway Design Manual (HDM) and Standards and Specifications. Below are some of the guidelines from the HDM.*
 - *In new developments, local road intersections should be located at minimum 500 feet (curb return to curb return) beyond interchange ramps. These standards may be found in Section 205 of the HDM.*
 - *Private access openings should be located at minimum 100 feet (beyond the curb return) for urban areas and 300 feet for rural areas from all interchange ramps. These standards may be found in Section 504 of the HDM.*

- *AASHTO (2004) specifically states that "Driveways should not be situated within the functional boundary of an at-grade intersection". The functional boundary of an intersection should include all required storage lengths for separate turn lanes and for through-traffic plus any maneuvering distance for separate turn lanes or it can create conflict points.*
- *Intersection spacing on expressways for local roads and other private access openings more than 30 feet wide should be at minimum 2,642 feet. These standards may be found in Section 205 of the HDM.*
- *For a driveway of commercial facilities, the Department requires commercial standards for each driveway serving a commercial land use. Any new driveways, as well as any existing driveways if used as part of a proposed project, shall be built or upgraded to current Department standards. Where applicable, any sidewalk, curb and gutter, or ramp shall be in compliance with the American with Disabilities Act. Standards are available both online at <http://www.dot.ca.gov/hg/traffops/developserv/pelimits/> and at the District 10 Encroachment Permits Office.*

Response 8E: The comment regarding a requirement that all work within the State right-of-way requires an Encroachment Permit and that such work shall be in compliance with the Caltrans Highway Design Manual (HDM) and Standards and Specifications is noted. HDM standards pertaining to roadway development that is proximate to Caltrans facilities is also noted. Future site-specific projects will be subject to Caltrans review.

Comment 8F:

6. *While recognizing that topographic and environmental constraints may preclude a strict interconnected grid street network, roads which are routed in parallel can provide an alternative to using the interregional roads or highway, thereby helping to alleviate congestion on State facilities. A street system with minimal interconnectedness -where drivers are siphoned from local streets to major streets or highways -concentrates traffic, leaving few choices to drivers. An interconnected grid street system offers the traveler multiple paths to reach any destination, thereby alleviating potential congestion by providing alternative routes.*

Response 8F: The comment is noted. The proposed 2030 General Plan Circulation Element provides the interconnected grid street system that is supported by Caltrans.

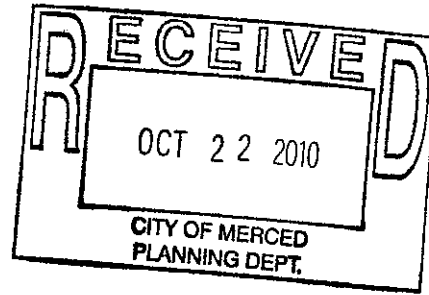
Comment 8G:

7. *Please note that there was no mention of Goods Movement planning specific to trucks. When developing a Vision General Plan, Goods Movement issues should be incorporated into the plan, such as:*

- *Encourage planning for establishing rail line connectors at all new industrial park developments 01' other developments with significant goods movement activity.*
- *Provision for truck parking facilities (Truck Stops) that include adequate overnight parking, food, showers/restrooms, fueling and truck wash, and maintenance/repair services.*
 - *Encourage truck stops to include truck parking electrification options at truck parking facilities to reduce truck emissions and green house gases.*
 - *Establish provisions to encourage alternatives to diesel fuel for fueling trucks at truck stops, such as Hydrogen, Liquefied Natural Gas (LNG), and Biodiesel fuel types.*
- *Establish planning criteria for Surface Transportation Assistance Act (STAA)/truck routes to major industrial centers and shopping centers.*
- *Provision of a truck route map in the document, which includes plans to link major industrial and shopping centers to rail line distribution centers, STAA truck routes, and identifying all significant STAA truck route gaps. All gaps should be delineated on the map, and methodologies should be established, including funding, to address these gaps over a specified time period. Discussion should also include efforts that are being made with adjacent jurisdictions on providing connectivity for larger sized or STAA trucks.*

Response 8G: Goods movement by rail and air is discussed, and several General Plan policies are provided, in Goal Area T-3: Air and Rail Services of the proposed 2030 General Plan Circulation Element. The interface of these services with truck transported goods movement is discussed and policy language provided to ensure desirable and appropriate linkage between air, rail and truck transport of goods.

Although not included in the proposed 2030 General Plan Circulation Element document, the City of Merced does have a STAA Truck Route Plan in place in accordance with Chapter 10.40 – Truck Routes of the Municipal Code. This plan is designed to ensure adequate and efficient movement of goods by truck throughout the City with interface to both air and rail goods movement hubs.



October 21, 2010

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, CA 95340

Dear Ms. Espinosa:

Merced County Association of Governments (MCAG) has reviewed the Draft Environmental Impact Report (DEIR) for the City of Merced Vision 2030 General Plan (Project). We provide the following comments.

Page ES-39, also Page 3.15-28: it is unclear what projects 33 and 34 are referring to. Bellevue Rd. from Highway 59 westward to Thornton Rd. will be superseded by the Atwater-Merced Expressway. The Atwater-Merced Expressway calls for a 4-lane (not 8-lane) divided expressway adjacent to the existing Bellevue Rd. A portion of the existing Bellevue Rd. would become a frontage road under the adopted project plans, but this frontage road would not serve through traffic and should not be counted as travel lanes.

A

Page 2-12, paragraph 3: the planning process for the Atwater-Merced Expressway is complete, the Final EIR was certified by the MCAG Board, and a preferred alignment has been adopted by both MCAG and the County of Merced. The project's first phase, Phase 1A, began design and right-of-way acquisition in July 2010.

B

Page 2-12, paragraph 4: on July 15, 2010, MCAG adopted the *2011 Regional Transportation Plan for Merced County* (RTP). All references to the RTP in the DEIR and in the General Plan should be updated accordingly.

C

Page 3.15-2, paragraph 3: the first phase of the Campus Parkway has begun construction – from the Mission Ave. / Highway 99 interchange to Childs Ave.

D

Page 3.15-3, paragraph 3, and Figures 3.15-4a, 4b, 4c, and 4d: the most up-to-date transit routes and schedules are available at <http://www.mercedthebus.com>

E

Page 3.15-22 and Table 3.15-5: a clear indication should be made between “Regional Transportation Plan (Tier 1)” projects, RTP Tier 2 projects (not noted in the DEIR), and “roadway improvements that would be constructed to support development of the proposed land use plan”. The DEIR makes it seem like all of these transportation projects can be assumed to exist in the buildout scenario, but that may not be the case, especially for very expensive major regional road projects (e.g. Highway 99 improvements).

F

RTP Tier 1 projects are “financially constrained” and can reasonably be assumed to be constructed within 20-25 years under the latest long-term revenue forecasts. These include the following projects from Table 3.15-5:

- a portion of #2 – widening SR 59 from 2 to 4 lanes from 16th St. to Olive Ave.
- #9 – Campus Parkway, to Yosemite Ave.
- #21 to #24 – Atwater-Merced Expressway from SR 99 to existing 59/Bellevue


RTP Tier 2 projects are “unconstrained” meaning that the revenue to construct them is not reasonably foreseeable or forthcoming. Additional revenues will have to be found to construct these, including the following from Table 3.15-5:

- #3 – SR 59 widening to 4 lanes south of Childs Ave.
- #15 – Santa Fe Ave. widening to 6 lanes west of 59/Olive
- #16 – SR 140 widening to 4 lanes from Bradley Overhead to Campus Parkway
- #17 and #18 – SR 99 widening from 4 to 6 lanes through the City of Merced

The rest of the projects in Table 3.15-5 (numbers 1, 4, 5, 6, 7, 8, 10, 12, 13, 14, 19, 20) are not regional; they are assumed by MCAG to support City of Merced development.

Thank you for the opportunity to comment on the DEIR. Should you have any questions or need supplemental information, please contact Matt Fell of my staff at 723-3153 x320 or matt.fell@mcagov.org

Sincerely,



Jesse B. Brown
Executive Director

F cont.

G

Letter 9 Jesse B. Brown, Executive Director, Merced County Association of Governments (MCAG)

Comment 9A: *Page ES-39, also Page 3.15-28: it is unclear what projects 33 and 34 are referring to. Bellevue Rd. from Highway 59 westward to Thornton Rd. will be superseded by the Atwater-Merced Expressway. The Atwater-Merced Expressway calls for a 4-lane (not 8-lane) divided expressway adjacent to the existing Bellevue Rd. A portion of the existing Bellevue Rd. would become a frontage road under the adopted project plans, but this frontage road would not serve through traffic and should not be counted as travel lanes.*

Response 9A: The City acknowledges that Bellevue Road between SR 59 and its westerly terminus at Franklin, as shown on the 2030 General Plan Circulation Element diagram (Figure 3.15-1 in the DEIR), will be superseded by the Atwater-Merced Expressway. Because the Atwater-Merced Expressway plan calls for a 4-lane divided expressway along this corridor, Projects 33 and 34 listed of Mitigation Measure #3.15-1a found at pages ES-39 and 3.15-26 of the DEIR are amended as follows:

- 33. Bellevue Road from ~~Atwater/Merced Expressway~~ Franklin to Thornton (2 lanes to ~~4~~ lanes Divided Expressway Existing LOS=C+ / Future LOS=~~C+~~F)
- 34. Bellevue Road (Atwater-Merced Expressway) from Thornton to SR 59 (2 lanes to ~~4~~ lanes (Divided Expressway) Existing LOS=C+ / Future LOS=~~D~~F)

Reduction in roadway carrying capacity from 8 lanes to 4 lanes will result in a future LOS F in lieu of the C+ and D indicated in the DEIR.

Additionally, Table 3.15-4 beginning on page 3.15-9 of the DEIR is amended as follows to reflect the Bellevue Road between Franklin and SR 59 modification:

Bellevue Road									
<u>Franklin</u>									
Atwater/Merced Expy to Thornton	2	3,800	C+				8	55,380	C+
Thornton to SR 59	2	3,800	C+				8	74,340	D
SR 59 to "R" St.	2	5,630	D	6	29,980	C+	6	58,400	F
"R" St. to "M" St.	2	5,460	D	6	32,350	C+	6	55,310	F
"M" St. to "G" St.	2	5,460	D	6	33,760	C+	6	57,470	F
"G" St. to Parsons/Gardner	2	6,620	D	6	39,360	C+	6	52,950	E
Parsons/Gardner to Campus Pkwy	2	3,700	C+	6	27,610	C+	6	50,120	D

Comment 9B: *Page 2-12, paragraph 3: the planning process for the Atwater-Merced Expressway is complete, the Final EIR was certified by the MCAG Board, and a preferred alignment has been adopted by both MCAG and the County of Merced. The project's first phase, Phase 1A, began design and right-of-way acquisition in July 2010.*

Response 9B: The comment regarding completion of the Atwater-Merced Expressway planning process is noted.

Comment 9C: *Page 2-12, paragraph 4: on July 15, 2010, MCAG adopted the 2011 Regional Transportation Plan/or Merced County (RTP). All references to the RTP in the DEIR and in the General Plan should be updated accordingly.*

Response 9C: The fourth paragraph on DEIR page 2-12 is amended as follows to reflect adoption of the 2011 Regional Transportation Plan for Merced County:

The City's General Plan has been amended to reflect the most current regional transportation information as outlined in the 2011 Merced County Regional Transportation Plan (RTP), prepared by the Merced County Association of Governments (MCAG). This includes planned improvements to State Highways and regionally significant roadways

Comment 9D: *Page 3.15-2, paragraph 3: the first phase of the Campus Parkway has begun construction - from the Mission Ave. / Highway 99 interchange to Childs Ave.*

Response 9D: The comment is noted.

Comment 9E: *Page 3.15-3, paragraph 3, and Figures 3.15-4a, 4b, 4c, and 4d: the most up-to-date transit routes and schedules are available at <http://www.mercedthebus.com>*

Response 9E: The comment is noted.

Comment 9F: *Page 3.15-22 and Table 3.15-5: a clear indication should be made between "Regional Transportation Plan (Tier 1)" projects, RTP Tier 2 projects (not noted in the DEIR), and "roadway improvements that would be constructed to support development of the proposed land use plan". The DEIR makes it seem like all of these transportation projects can be assumed to exist in the buildout scenario, but that may not be the case, especially for very expensive major regional road projects (e.g. Highway 99 improvements).*

RTP Tier 1 projects are "financially constrained" and can reasonably be assumed to be constructed within 20-25 years under the latest long-term revenue forecasts. These include the following projects from Table 3.15-5:

- *a portion of #2 - widening SR 59 from 2 to 4 lanes from 16th St. to Olive Ave.*
- *#9 - Campus Parkway, to Yosemite Ave.*
- *#21 to #24 - Atwater-Merced Expressway from SR 99 to existing 59/Bellevue*

RTP Tier 2 projects are "unconstrained" meaning that the revenue to construct them is not reasonably foreseeable or forthcoming. Additional revenues will have to be found to construct these, including the following from Table 3.15-5:

- *#3 - SR 59 widening to 4 lanes south of Childs Ave.*
- *#15 - Santa Fe Ave. widening to 6 lanes west of 59/Olive*

- #16 - SR 140 widening to 4 lanes from Bradley Overhead to Campus Parkway
- #17 and #18 - SR 99 widening from 4 to 6 lanes through the City of Merced

Response 9F: The comment regarding Tier 1 (financially constrained) and Tier 2 (unconstrained) roadway improvement projects listed in Table 3.15-5 found at page 3.15-22 of the DEIR is noted. The ultimate viability of completing the MCAG RTP projects is also noted. The text of the DEIR (page 3.15-22) is hereby amended to read as follows:

The Merced County Association of Governments (MCAG) regional travel demand model was modified to use as the tool to evaluate the impacts of the proposed General Plan on the local and regional transportation system. The MCAG model forecasts average weekday daily traffic volumes on the freeways, arterials, and major collector roads in the Merced region. Modifications were made to the model to better replicate the proposed circulation and land use plan. The General Plan buildout analysis considers roadway improvements contained in the 2007 MCAG Regional Transportation Plan (Tier 1), and roadway improvements that would be constructed to support development of the proposed land use plan (Table 3.15-5). It should be noted that although major street improvements are planned, such projects are subject to funding availability.

Comment 9G: *The rest of the projects in Table 3.15-5 (numbers 1, 4, 5, 6, 7, 8, 10, 12, 13, 14, 19, 20) are not regional; they are assumed by MCAG to support City of Merced development.*

Response 9G: See Response 9F.



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www.aopa.org

LETTER 10

October 21, 2010

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, CA 95340

Dear Ms. Espinosa:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of 405,000 members, more than two-thirds of the nation's pilots- including 46,900 members in the state of California. On behalf of our membership, AOPA is committed to ensuring the future viability and development of general aviation airports and their facilities as part of the national transportation system.

It is for this reason that we are seriously concerned with non-aeronautical residential encroachment around general aviation airports.

It has come to our attention that the City of Merced's draft *Merced Vision 2030 General Plan* and Draft EIR proposes residential development in close proximity to the Castle Airport. Figure 4-1 depicts this residential development as the Castle Farms Community Plan. We are very concerned with this plan to place residential development in such close proximity to the airport underneath the airport traffic pattern. Aircraft conducting normal operations at the airport may routinely over fly residential development in this location. We believe that if approved, the residential development could potentially have a significant impact on the airport. History clearly shows that some residents subjected to low altitude aircraft over flights and associated sound levels become annoyed and attempt to impose restrictions on the subject airport.

Because of AOPA's long experience with airport land use compatibility issues, we are opposed to residential development in close proximity to the airport. We strongly urge the City to explore alternatives which are compatible in cooperation with the County of Merced as they are the airport sponsor and have a vested interest in the continued safe operation of Castle Airport. It is evident in their letter of October 19, 2010 that they wish to work with the City in finding a land use that would foster regional economic growth that is compatible with the airport.

Thank you for your consideration of our views on this issue. If we can be of further assistance please contact our staff at 301-695-2200.

Sincerely,

John L. Collins
Manager
Airport Policy

cc: Scott Malta, Castle Airport

Letter 10 John L. Collins, Manager Airport Policy, Aircraft Owners and Pilots Association (AOPA)

Comment 10A: *The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of 405,000 members, more than two-thirds of the nation's pilots- including 46,900 members in the state of California. On behalf of our membership, AOPA is committed to ensuring the future viability and development of general aviation airports and their facilities as part of the national transportation system.*

It is for this reason that we are seriously concerned with non-aeronautical residential encroachment around general aviation airports.

It has come to our attention that the City of Merced's draft Merced Vision 2030 General Plan and Draft EIR proposes residential development in close proximity to the Castle Airport. Figure 4-1 depicts this residential development as the Castle Farms Community Plan. We are very concerned with this plan to place residential development in such close proximity to the airport underneath the airport traffic pattern. Aircraft conducting normal operations at the airport may routinely over fly residential development in this location. We believe that if approved, the residential development could potentially have a significant impact on the airport. History clearly shows that some residents subjected to low altitude aircraft over flights and associated sound levels become annoyed and attempt to impose restrictions on the subject airport.

Because of AOPA's long experience with airport land use compatibility issues, we are opposed to residential development in close proximity to the airport. We strongly urge the City to explore alternatives which are compatible in cooperation with the County of Merced as they are the airport sponsor and have a vested interest in the continued safe operation of Castle Airport. It is evident in their letter of October 19, 2010 that they wish to work with the City in finding a land use that would foster regional economic growth that is compatible with the airport.

Response 10A: Castle Farms is an area planned for inclusion in the expanded SUDP/SOI in the 2030 General Plan Update that was not included in the current 2015 General Plan. However, in order for this area to be annexed into the City in the future, several conditions must be met. Page 2-18 of the General Plan Update states that, "This area (Castle Farms) is also heavily influenced by Castle Airport and a Community Plan would not be adopted until the County completes an update to the Airport Land Use Compatibility Plan." It would be difficult for Castle Farms to be approved for annexation without the Airport and Castle Farms reaching an agreement on appropriate land use density, noise levels, and other issues that might potentially create friction from proximity of residential development to the airport.

Please also see the response to Castle Airport related comments by the County of Merced (Letter 5).

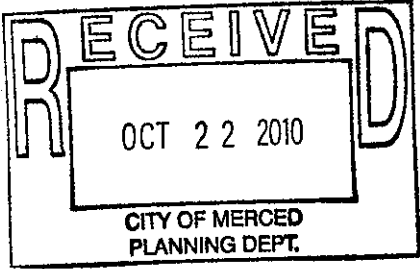


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October 21, 2010

Ms. Kim Espinosa, Planning Manager
City of Merced
678 West 18th Street
Merced, CA 95340

Re: General Plan Update EIR



Dear Kim,

In response to the public review comment period, I am submitting these comments for consideration in the preparation of the Final EIR. Thank you for your time meeting with me last week. We discussed a few of these comments, but as we discussed, I wanted to submit them for the official record.

Project Description: The General Plan EIR does a relatively good job of describing “the Project,” but the tables (ES-1; 3.9-1 and 3.9-3; see also Table 2-1 in the General plan) don’t seem to reconcile with one another and need to be reviewed and corrected or explained accordingly. Also, the significant reduction in the overall Planning Area with the reduction of the SOI, while addressed in text, isn’t very well reflected in the tables because the before-and-after numbers are not quite “apples to apples.” A clearer explanation of the comparison and reconciliation of the numbers is necessary to help the reader understand what the differences are in the existing and proposed General Plans.

A

Impact 3.1-4. The mitigation measure refers to “the following ‘guidelines’” and then statement #2 says “Complete avoidance of all outdoor up-lighting.” The words “complete” and “all” in this phrase changes the intent of the mitigation from guideline to standard. I suggest statement #2 be modified to read: “Avoidance of outdoor up-lighting except where necessary to enhance the visual and safety features of a building or landscape.”

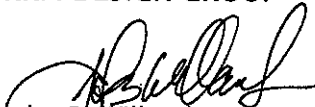
B

Impact 3.1-5. There doesn’t seem to be a clear threshold of significance that results in the impact conclusion of significant and unavoidable for this impact, but rather a suggestion that “some may see the loss of the area’s rural character as a negative change in visual quality.” Further, the General Plan will not result in additional light and glare, but only those subsequent projects that get built as a result of the General Plan. This raises a question, which applies to other “significant, unavoidable” impacts as well (e.g. Mitigation 3.2-1). How does the programmatic nature of the EIR apply to subsequent projects with regard to the Statement of Overriding Considerations that must be made for each of the significant unavoidable impacts?

C

Thank you for the opportunity to comment.

Sincerely,
RRM DESIGN GROUP


John B. Wilbanks, AICP, CNU-A
Principal

alw\Oak1-sr\on-site\2010\1010002-CastleFarms2010\Project-Management\Correspondence\Client\jbw-Ltr-Espinosa-10-21-10.doc

Letter 11 John B. Wilbanks, AICP, CNU-A, Principal, RRM Design Group

Comment 11A: *In response to the public review comment period, I am submitting these comments for consideration in the preparation of the Final EIR. Thank you for your time meeting with me last week. We discussed a few of these comments, but as we discussed, I wanted to submit them for the official record.*

Project Description: *The General Plan EIR does a relatively good job of describing "the Project," but the tables (ES-1; 3.9-1 and 3.9-3; see also Table 2-1 in the General plan) don't seem to reconcile with one another and need to be reviewed and corrected or explained accordingly. Also, the significant reduction in the overall Planning Area with the reduction of the 501, while addressed in text, isn't very well reflected in the tables because the before-and-after numbers are not quite "apples to apples." A clearer explanation of the comparison and reconciliation of the numbers is necessary to help the reader understand what the differences are in the existing and proposed General plans.*

Response 11A: The Commenter is correct in stating that there are discrepancies in acreage used in various tables to describe current land use designations within the City limits and SUDP. Upon review, the City determined that several of the tables in the DEIR and the 2030 General Plan Update were internally inconsistent. The City recalculated the land use classifications for the 2015 *Vision*, and has revised Tables ES-1, 2-1, 3.9-1 and 3.9-3 of the DEIR (as shown in Section 4 of this Final EIR), and Table 2-1 of the 2030 General Plan. Additionally, Table 3.1 of the General Plan Update was revised to be consistent with the DEIR. The most recent calculations were made using Geographic Information System (GIS), whereas the original figures were determined manually and are likely to have been less accurate.

Comment 11B: Impact 3.1-4. *The mitigation measure refers to "the following 'guidelines'" and then statement #2 says "Complete avoidance of all outdoor up-lighting." The words "complete" and "all" in this phrase changes the intent of the mitigation from guideline to standard. I suggest statement #2 be modified to read: "Avoidance of outdoor up-lighting except where necessary to enhance the visual and safety features of a building or landscape."*

Response 11B: In order to most effectively reduce potential impact of light and glare, the City determined that strict standards would be required. Although they understand the intent of the suggestion, the City has determined that #2 is a standard rather than a guideline. Mitigation Measure #3.1-4 (DEIR pages ES-9 and 3.1-7) has been revised as follows:

Mitigation Measure #3.1-4:

The following guidelines and standards will be followed in selecting and designing any outdoor lighting:

- 1. All outdoor lights including parking lot lights, landscaping, security, path and deck lights should be fully shielded, full cutoff luminaries.*

2. *Complete avoidance of all outdoor up-lighting for any purpose.*
3. *Avoidance of tree mounted lights unless they are fully shielded and pointing down towards the ground or shining into dense foliage. Ensure compliance over time.*
4. *Complete avoidance of up-lighting and unshielded lighting in water features such as fountains or ponds.*

Comment 11C: Impact 3.1-5. *There doesn't seem to be a clear threshold of Significance that results in the impact conclusion of significant and unavoidable for this impact, but rather a suggestion that "some may see the loss of the area's rural character as a negative change in visual quality." Further, the General Plan will not result in additional light and glare, but only those subsequent projects that get built as a result of the General Plan. This raises a question, which applies to other "significant, unavoidable" impacts as well (e.g. Mitigation 3.2-1). How does the programmatic nature of the EIR apply to subsequent projects with regard to the Statement of Overriding Considerations that must be made for each of the significant unavoidable impacts?*

Response 11C: Because evaluation of aesthetic impacts is oftentimes subjective, there is no "across the board" calculation or analysis that the City uses to determine whether a project will have a significant aesthetic impact. The City relies on General Plan Policies, zoning regulations, site plan review, environmental review and other methods (on a project by project basis) to determine the level of significance. Other impact areas such as Air Quality, Agricultural Resources, Biology, Noise, Traffic, etc., are able to be more objectively measured and thus have more definable thresholds of significance. The Eleventh Edition Guide to CEQA states: "Although most public agencies in California have not formally adopted thresholds of significance, staff at many agencies have compiled and developed, and routinely rely upon, informal administrative thresholds." This is the case for Merced. Subsequent projects are subject to individual review.

Espinosa, Kim

From: Stan Thurston [spthurston@sbcglobal.net]
Sent: Thursday, October 21, 2010 1:01 PM
To: Espinosa, Kim
Subject: Public Comment to Merced Vision 2030 General Plan

Dear Ms. Espinosa: Please consider this e-mail a comment from a member of the general public of the City of Merced to the Merced Vision 2030 General Plan.

I reference at page 4-27 Paragraph 4.3.10 Air Service and specifically the second sentence in the second paragraph "The airport is the only 'regionally significant' airport in the County according to criteria used by the Civil Aeronautics Board."

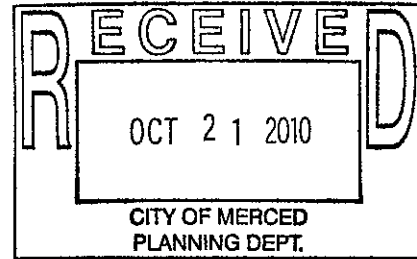
The Federal Aviation Act of 1958 took safety rulemaking from the Civil Aviation Board (CAB) and entrusted it to the new FAA. It also gave the FAA sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control. The CAB's remaining authority was to function as a public utilities commission, controlling the routes of airlines were allowed to run, and the fares they were allowed to charge. The Airline Deregulation Act of 1978 phased out these controls, resulting in the elimination of the CAB at the end of 1984.

Reference: http://www.centennialofflight.gov/essay/Government_Role/FAA_History/POL8.htm.

The above reference is outdated and inaccurate. I strongly suggest this sentence be removed to avoid the City of Merced the embarrassment of this inaccurate statement. Incidentally, the current use of the phrase "Regionally Significant" relates to the General Conformity Rule, when a Federal actions, direct and indirect emissions exceed 10 percent of the total inventory for a particular criteria pollutant in a nonattainment or maintenance area. See Air Quality Handbook published by the FAA and the United States Air Force, specifically Air Quality Procedures for Civilian Airport & Air Force Bases.

Respectfully submitted:

Stanley P. Thurston
1167 Tioga Ct.
Merced, CA 95340
209-725-1455



Letter 12 Stanley P. Thurston

Comment 12A: *Dear Ms. Espinosa: Please consider this e-mail a comment from a member of the general public of the City of Merced to the Merced Vision 2030 General Plan.*

I reference at page 4-27 Paragraph 4.3.10 Air Service and specifically the second sentence in the second paragraph "The airport is the only 'regionally significant' airport in the County according to criteria used by the Civil Aeronautics Board."

The Federal Aviation Act of 1958 took safety rulemaking from the Civil Aviation Board (CAB) and entrusted it to the new FAA. It also gave the FAA sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control. The CAB's remaining authority was to function as a public utilities commission, controlling the routes of airlines were allowed to run, and the fares they were allowed to charge. The Airline Deregulation Act of 1978 phased out these controls, resulting in the elimination of the CAB at the end of 1984.

Reference: <http://www.centennialofflight.gov/essay/GovernmentRole/FAAHistory/POL8.htm>.

The above reference is outdated and inaccurate. I strongly suggest this sentence be removed to avoid the City of Merced the embarrassment of this inaccurate statement. Incidentally, the current use of the phrase "Regionally Significant" relates to the General Conformity Rule, when a Federal actions, direct and indirect emissions exceed 10 percent of the total inventory for a particular criteria pollutant in a nonattainment or maintenance area. See Air Quality Handbook published by the FAA and the United States Air Force, specifically Air Quality Procedures for Civilian Airport & Air Force Bases.

Response 12A: The City appreciates the Commentor's updated information. The General Plan text (page 4-27) has been revised as follows:

In 2010, Great Lakes Aviation (in conjunction with the United Airlines) provides two daily roundtrip flights to Las Vegas, Nevada. The airport is the only "regionally significant" "General Aviation Airport" airport in the County according to criteria used by the Civil Aeronautics Board Federal Aviation Administration. A "General Aviation Airport" is one used for both private and commercial air transport.



21 October 22, 2010

Via e-mail to espinosak@cityofmerced.org and U.S. Mail

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, California 95340

**RE: City of Merced – Merced Vision 2030 General Plan
Clearinghouse No. 2008071069
Draft Environmental Impact Report (the "DEIR")**

Dear Ms. Espinosa:

On behalf of Brookfield Castle, ECORP Consulting, Inc. has reviewed the Draft Environmental Impact Report for the Merced Vision 2030 General Plan. Brookfield Castle supports the efforts the City has undertaken in preparing the Plan update and the associated draft environmental impact report. We offer the following comments regarding the DEIR:

Section 3.4.3 Biological Resources Impacts and Mitigation Measures:

3.4-1a: Vernal Pools and Vernal Pool Associates

"Surveys to detect vernal pools are most easily accomplished during the rainy season or during early spring when pools contain water."

Comment:

Surveys to detect the presence of vernal pools can be conducted at any time of the year and are based on the presence of vernal pool vegetation. This statement should be revised such that it does not limit or suggest limiting survey timing to the inundation period.

A

3.4-1b: Special-Status Plants

"These and other mitigations will only be considered successful if the populations of the affected species are sustained for a minimum of three years and are of a similar size and quality as the original population"

Comment:

This section bullet item should be removed. The success of mitigation will ultimately be determined based upon specific success criteria as defined in project specific species mitigation plans dictated by CDFG and/or USFWS. Additionally, this sentence implies that **ALL** mitigation measures in the EIR will only be considered successful if affected species are sustained for a minimum of 3 years.

B

3.4-1c: Valley Elderberry Longhorn Beetle

"If elderberry bushes are found, the project proponent shall implement the measures recommended by the biologist, which shall contain the standardized measures adopted **or otherwise authorized** by the USFWS."

Comment:

We suggest adding a provision (in bold) above that would allow for project specific conditions and circumstances that may result in a non standard approach/authorization from USFWS. Furthermore, the delisting of the Valley Elderberry Longhorn Beetle is currently being reviewed by the USFWS and this measure should include discussion of this fact and a provision for the eventual delisting of this species as mitigation measures may no longer be required.

C

3.4-1e: Special-Status Birds

"Trees **identified with occupied nests of special status birds which are** scheduled to be removed because **of** project implementation shall **should** be removed during the nonbreeding season (late September to the end of February) **to the extent possible.**"

Comment:

We suggest the changes (in bold and strike-through) to clarify the intent to only limit the removal of trees that have occupied special status bird nests. In addition, there may be occasions when juvenile birds have fledged and left the nest prior to then end of the breeding season. These changes work in concert with and support the language of the second measure.

D

"Prior to construction, but not more that 14 days before grading, demolition, or site preparation activities, a qualified biologist shall conduct a preconstruction nesting survey to determine the presence of nesting raptors. Activities taking place outside the breeding season (typically February 15 through August 31) do not require a survey. If active raptor nests are present in the construction zone ~~or within 250 feet of the construction zone,~~ temporary exclusion fencing shall be erected at a distance ~~of 250 feet~~ around the nest site **to be determined by a qualified raptor biologist in consultation with CDFG.** Clearing and construction operations within this area shall be postponed until juveniles have fledged ~~and there is no evidence of a second nesting attempt determined by the biologist.~~"

E

Comment:

We suggest the changes (bold and strike-through) to allow for flexibility in the size of the buffers by avoiding the specific reference to a 250-foot buffer so as to account for project specific variables such as: additional vegetation, topography, food sources, roadways, etc.

"To avoid impacts to common and special-status migratory birds pursuant to the Migratory Bird

Treaty Act and CDFG codes, a nesting survey shall be conducted prior to construction activities if the work is scheduled between March 15 and August 31. If migratory birds are identified nesting within the construction zone, a ~~100-foot~~ **temporary** buffer around

F

the nest site ~~must~~ **will** be designated **by a qualified biologist in consultation with CDFG**. No construction activity may occur within this buffer until a qualified biologist has determined that the young have fledged. A qualified biologist may modify the size of the buffer based on site conditions and the bird's apparent acclimation to human activities. If the buffer is modified, the biologist would be required to monitor stress levels of the nesting birds for at least one week after construction commences to ensure that project activities would not cause nest site abandonment or loss of eggs or young. At any time the biologist shall have the ~~right~~ **authority** to implement ~~the full 100-foot~~ **a larger** buffer if stress levels are elevated to the extent that could cause nest abandonment and/or loss of eggs or young."

F cont.

Comment:

We suggest the changes (bold and strike-through) to allow for flexibility in the size of the buffers by avoiding the specific reference to a 100-foot buffer in order to account for project specific variables such as: additional vegetation, topography, food sources, roadways, etc.

3.4-1h: Special-Status Fish

"To protect special-status fish, including hardhead, on proposed projects where suitable habitat exists, the following shall be implemented:

.....surveys shall be conducted by a qualified fish biologist at all project sites that contain appropriate habitat. If, during a pre-construction survey, special status fish are found to be present, the project proponent shall implement the measures recommended by the biologist and standardized measures adopted by the USFWS, National Marine Fisheries Service (NMFS) or the CDFG."

Comment:

We would recommend the measure be modified as it suggests doing fisheries surveys at all project sites. The following measure is suggested: **"To protect special-status fish, a habitat assessment will be conducted as ascertain whether suitable habitat for special status fish species is present. Should suitable habitat for special status fish species (such as hardhead) be identified, the California Department of Fish and Game will be consulted to determine whether pre-construction surveys are warranted."** This language would defer any survey, if required, to be more project-specific and would fall under a project specific environmental impact report.

G

3.4-1i: Special-Status Mammals

"To protect special-status mammals, preconstruction surveys shall be conducted by a qualified biologist at all project sites that contain appropriate habitat. If, during a pre-construction survey, special-status mammals are found to be present, the project proponent shall implement the measures recommended by the biologist and ~~standardized~~ measures adopted by the USFWS or the CDFG."

Comment:

We suggest the changes (in bold and strike-through) to allow for flexibility by removing the reference to standardize measures (that may or may not exist). Furthermore, the

H

sentence implies that the project (City General Plan) will conduct pre-construction surveys. Perhaps, language similar to the proposed language in 3.4-1h be incorporated to ascertain the extent, if any, of any potential habitat and future projects, through CEQA, will evaluate the impacts to special-status mammals in concert with CDFG and/or USFWS.

Thank you for your review of these concerns and our suggested modifications.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter S. Balfour". The signature is stylized with a large, sweeping initial "P" and a circular flourish at the end.

Peter S. Balfour
Vice President

Letter 13 Peter S. Balfour, Vice President, ECORP Consulting, Inc.

Comment 13A: *On behalf of Brookfield Castle, ECORP Consulting, Inc. has reviewed the Draft Environmental Impact Report for the Merced Vision 2030 General Plan. Brookfield Castle supports the efforts the City has undertaken in preparing the Plan update and the associated draft environmental impact report. We offer the following comments regarding the DEIR:*

Section 3.4.3 Biological Resources Impacts and Mitigation Measures:

3.4-1a: Vernal Pools and Vernal Pool Associates

"Surveys to detect vernal pools are most easily accomplished during the rainy season or during early spring when pools contain water."

Comment: Surveys to detect the presence of vernal pools can be conducted at any time of the year and are based on the presence of vernal pool vegetation. This statement should be revised such that it does not limit or suggest limiting survey timing to the inundation period.

Response 13A: Vernal pools can be identified during either the dry or wet periods of the year, although it is usually easier to detect the presence of vernal pools during the wet period. They can be identified by not only the presence of specific plant species, but also by hydrologic and soil conditions. As is noted in California Vernal Pool Assessment Preliminary Report (May 1998), "Vernal pools are unique and highly threatened wetlands of California's landscape. ...we define them as seasonally flooded landscape depressions underlain by a subsurface which limits drainage. They result from an unusual combination of soil conditions, summer-dry Mediterranean climate, topography and hydrology, and a support a specialized biota, including a relatively large number of threatened and endangered species. (Cheatham 1976, Zedler 1987, Holland and Jain 1988.)" Many, but not all of the plants associated with vernal pools are most easily identified during their flowering season, usually during the wetter months of the year. That point aside, the intent of the Mitigation Measure was not to limit periods of the year when surveys would be conducted, and therefore, Mitigation Measure #3.4-1a (DEIR pages ES-17 and 3.4-35) will be amended as follows:

Mitigation Measure #3.4-1a: Vernal Pools and Vernal Pool Associates

To protect vernal pools and species associated with vernal pools including vernal pool smallscale, succulent owl's-clover, pincushion navarretia, Colusa grass, hairy Orcutt grass, spiny-sepaled button celery, San Joaquin Orcutt grass, Greene's tuctoria, Conservancy fairy shrimp, vernal pool fairy shrimp, Midvalley fairy shrimp, vernal pool tadpole shrimp, California linderiella, and Molestan blister beetle, surveys shall be conducted to determine the presence of vernal pools prior to or concurrent with application for annexation in areas identified as having potential habitat.

Surveys to detect vernal pools are most easily accomplished during the rainy season or during early spring when pools contain water, although surveys shall not be limited to a particular season or condition. If vernal pools are found to occur on a project site, the pools and a 100 foot-wide buffer around each pool or group of pools will be observed. If the vernal pools and buffer areas cannot be avoided, then the project proponent must consult with and obtain authorizations from, but not limited to, the California Department of Fish and Game, the United States Fish and Wildlife Service, the Army Corps of Engineers, and the State Water Resources Quality Control Board. Consultation and authorizations may require that additional surveys for special-status species be completed. Because there is a federal policy of no net loss of wetlands, mitigation to reduce losses and compensation to offset losses to vernal pools and associated special-status species will be required.

Comment 13B: 3.4-1b: Special-Status Plants

"These and other mitigations will only be considered successful if the populations of the affected species are sustained for a minimum of three years and are of a similar size and quality as the original population"

*Comment: This section bullet item should be removed. The success of mitigation will ultimately be determined based upon specific success criteria as defined in project specific species mitigation plans dictated by CDFG and/or USFWS. Additionally, this sentence implies that **ALL** mitigation measures in the **EIR** will only be considered successful if affected species are sustained for a minimum of 3 years.*

Response 13B: The Commenter is correct in stating that the success of a specific special-status plant species will be determined on a project-by-project basis by the California Department of Fish and Game and/or the U.S. Fish and Wildlife Service. The 3rd bullet of Mitigation Measure #3.4-1b, pages ES-18 and 3.4-36 of the DEIR will be struck as follows:

Mitigation Measure #3.4-1b: Special-Status Plants

To protect special-status plants, the City shall ensure that a botanical survey be conducted for projects containing habitat suitable for special-status plant species. Surveys shall be conducted by a qualified biologist or botanist during the appropriate flowering season for the plants and shall be conducted prior to issuance of a grading or building permit for the project. If special-status plants are found to occur on the project site, the population of plants shall be avoided and protected. If avoidance and protection is not possible, then a qualified biologist will prepare a mitigation and monitoring plan for the affected species. The plan shall be submitted to the CDFG and/or the USFWS for review and comment. Details of the mitigation and monitoring plan shall include, but not be limited to:

- *Removing and stockpiling topsoil with intact roots and seed bank in the disturbance area, and either replacing the soil in the same location after construction is complete or in a different location with suitable habitat; or*
- *Collect plants, seeds, and other propagules from the affected area prior to disturbance. After construction is complete, then the restored habitat will be replanted with propagules or cultivated nursery stock; or*
- ~~*These and other mitigations will only be considered successful if the populations of the affected species are sustained for a minimum of three years and are of a similar size and quality as the original population.*~~

Comment 13C: 3.4-1c: Valley Elderberry Longhorn Beetle

*"If elderberry bushes are found, the project proponent shall implement the measures recommended by the biologist, which shall contain the standardized measures adopted **or otherwise authorized** by the USFWS."*

Comment: We suggest adding a provision (in bold) above that would allow for project specific conditions and circumstances that may result in a non standard approach/authorization from USFWS. Furthermore, the delisting of the Valley Elderberry Longhorn Beetle is currently being reviewed by the USFWS and this measure should include discussion of this fact and a provision for the eventual delisting of this species as mitigation measures may no longer be required.

Response 13C: In April 2011, a suit was brought against the U.S. Fish and Wildlife Service to have the agency formally remove the Valley elderberry longhorn beetle from the list of threatened species since the agency had found, in a 2006 status review, that the species had fully recovered. Although the delisting process began at that time, and the status of the species was known during the preparation of the DEIR, the Mitigation Measure was prepared to protect the species under its current status as “threatened.” Because its future status is unclear at this time, Mitigation Measure #3.4-1c will be revised to include the possibility of delisting the species as follows:

Mitigation Measure #3.4-1c: Valley Elderberry Longhorn Beetle

Until such time that the Valley elderberry longhorn beetle (VELB) is delisted as a federally threatened species, ~~To protect the Valley elderberry longhorn beetle (VELB) species,~~ the project proponent shall ensure that a survey for elderberry bushes be conducted by a qualified biologist at each project site containing habitat suitable for VELB prior to the issuance of a grading permit or building permit. If elderberry bushes are found, the project proponent shall implement the measures recommended by the biologist, which shall contain the standardized measures adopted or otherwise authorized by the USFWS.

Comment 13D: 3.4-1e: Special-Status Birds

*"Trees **identified with occupied nests of special status birds which are** scheduled to be removed because of project implementation ~~shall~~ **should** be removed during the nonbreeding season (late September to the end of February) **to the extent possible.**"*

Comment: We suggest the changes (in bold and strike-through) to clarify the intent to only limit the removal of trees that have occupied special status bird nests. In addition, there may be occasions when juvenile birds have fledged and left the nest prior to then end of the breeding season. These changes work in concert with and support the language of the second measure.

Response 13D: It is agreed that the suggested language clarifies the intent of this mitigation measure, except for the suggestion of limiting tree removal during the breeding period to "the extent possible". It is required by several statues and laws that occupied nests not be removed. Accordingly, the first bullet of Mitigation Measure #3.4-1e (DEIR page 3.4-37), is modified to:

Mitigation Measure #3.4-1e: Special-Status Birds

To protect raptors and other special-status birds on proposed projects where suitable habitat exists, the following measures shall be implemented:

- *Trees identified with occupied nests of special status birds which are scheduled to be removed because project implementation shall be removed only during the non-breeding season (~~late September to the end of February~~), or unless it is determined by a qualified biologist that the nest is no longer occupied.*

Comment 13E: *"Prior to construction, but not more than 14 days before grading, demolition, or site preparation activities, a qualified biologist shall conduct a preconstruction nesting survey to determine the presence of nesting raptors. Activities taking place outside the breeding season (typically February 15 through August 31) do not require a survey. If active raptor nests are present in the construction zone ~~or within 250 feet of the construction zone~~, temporary exclusion fencing shall be erected at a distance ~~of 250 feet around the nest site~~ **to be determined by a qualified raptor biologist in consultation with CDFG**. Clearing and construction operations within this area shall be postponed until juveniles have fledged ~~and there is no evidence of a second nesting attempt determined by the biologist.~~"*

Comment: We suggest the changes (bold and strike-through) to allow for flexibility in the size of the buffers by avoiding the specific reference to a 250-foot buffer so as to account for project specific variables such as: additional vegetation, topography, food sources, roadways, etc.

Response 13E: While it is agreed that there are instances where a buffer size can be reduced in size, it is more often the case that buffer sized need to be increased. Flexibility in buffer size is an important component for protecting nesting raptors and it is agreed that the size of buffers should be evaluated on a case by case basis. However, activities at a project site may affect nesting raptors that occur in close proximity to the site and eliminating the provision for

protecting nearby nesting raptors is not acceptable. Similarly, it is not acceptable for a project to interfere with nesting activities, regardless of whether those activities are for a first or second brood. The second bullet of Mitigation Measure #3.4-1e (DEIR page 3.4-37), is modified as follows:

- *Prior to construction, but not more than 14 days before grading, demolition, or site preparation activities, a qualified biologist shall conduct a preconstruction nesting survey to determine the presence of nesting raptors. Activities taking place outside of the breeding season (typically February 15 through August 31) do not require a survey. If active raptor nests are present ~~in~~ within the construction zone or within 250-feet of the construction zone, temporary exclusion fencing shall be erected at a distance ~~of 250-feet around the nest site~~ to be determined by a qualified raptor biologist in consultation with CDFG. Clearing and construction operations within this area shall be postponed until ~~breeding and rearing activities ceased and young juveniles have fledged~~ and there is no evidence of a second nesting attempt determined by the biologist.*

Comment 13F: *"To avoid impacts to common and special-status migratory birds pursuant to the Migratory Bird Treaty Act and CDFG codes, a nesting survey shall be conducted prior to construction activities if the work is scheduled between February 15 and August 31. If migratory birds are identified nesting within the construction zone, a ~~100-foot~~ **temporary** buffer around the nest site ~~must~~ **will** be designated by a **qualified biologist in consultation with CDFG**. No construction activity may occur within this buffer until a qualified biologist has determined that the young have fledged. A qualified biologist may modify the size of the buffer based on site conditions and the bird's apparent acclimation to human activities.*

*If the buffer is modified, the biologist would be required to monitor stress levels of the nesting birds for at least one week after construction commences to ensure that project activities would not cause nest site abandonment or loss of eggs or young. At any time the biologist shall have the **authority** to implement ~~the full 100-foot~~ **a larger** buffer if stress levels are elevated to the extent that could cause nest abandonment and/or loss of eggs or young."*

Comment: We suggest the changes (bold and strike-through) to allow for flexibility in the size of the buffers by avoiding the specific reference to a 100-foot buffer in order to account for project specific variables such as: additional vegetation, topography, food sources, roadways, etc.

Response 13F: It is agreed that flexibility in buffer sizes is an important component for protecting nesting birds and that the size of buffers should be evaluated on a case by case basis. It is also noted that the timing of nesting activity is generally considered to be from February 15 to August 31, not March 15 to August 31. The last bullet of Mitigation Measure #3.4-1e (DEIR page 3.4-38), is modified as follows:

- *To avoid impacts to common and special-status migratory birds pursuant to the Migratory Bird Treaty Act and CDFG codes, a nesting survey shall be conducted prior to construction activities if the work is scheduled between*

~~March-February 15 and August 31. If migratory birds are identified nesting within the construction zone, a 100-foot buffer around the nest site must be designated—a temporary buffer around the nest site will be designated by a qualified biologist in consultation with CDFG.~~ No construction activity may occur within this buffer until a qualified biologist has determined that the young have fledged. A qualified biologist may modify the size of the buffer based on site conditions and the bird's apparent acclimation to human activities. If the buffer is modified, the biologist would be required to monitor ~~the~~ stress levels of the nesting birds for at least one week after construction commences to ensure that project activities would not cause ~~nest-site~~ abandonment or loss of eggs or young. At any time the biologist shall have the right to implement ~~the full 100-foot~~ a larger buffer if stress levels are elevated to the extent that could cause nest abandonment and/or loss of eggs or young.

Comment 13G: 3.4-1h: Special-Status Fish

"To protect special-status fish, including hard head, on proposed projects where suitable habitat exists, the following shall be implemented:

..... surveys shall be conducted by a qualified fish biologist at all project sites that contain appropriate habitat. If, during a pre-construction survey, special status fish are found to be present, the project proponent shall implement the measures recommended by the biologist and standardized measures adopted by the USFWS, National Marine Fisheries Service (NMFS) or the CDFG."

Comment: We would recommend the measure be modified as it suggests doing fisheries surveys at all project sites. The following measure is suggested: "To protect special-status fish, a habitat assessment will be conducted as ascertain whether suitable habitat for special status fish species is present. Should suitable habitat for special status fish species (such as hardhead) be identified, the California Department of Fish and Game will be consulted to determine whether preconstruction surveys are warranted." This language would defer any survey, if required, to be more project-specific and would fall under a project specific environmental impact report.

Response 13G: Agreed. Mitigation Measure #3.4-1h (DEIR page 3.4-39), is modified as follows:

Mitigation Measure #3.4-1h: Special-Status Fish

To protect special-status fish, including hardhead on proposed projects where suitable habitat exists, the following shall be implemented:

- *To protect special-status fish, a habitat assessment will ~~preconstruction surveys shall be conducted~~ to ascertain whether suitable habitat for special-status fish species is present. Should suitable habitat for special-status fish species (such as hardhead) be identified, the California Department of Fish*

~~and Game will be consulted to determine whether preconstruction surveys are warranted. by a qualified fish biologist at all project sites that contain appropriate habitat. If, during a pre-construction survey, special status fish are found to be present, the project proponent shall implement the measures recommended by the biologist and standardized measures adopted by the USFWS, National Marine Fisheries Service (NMFS) or the CDFG.~~

Comment 13H: 3.4-1i: Special-Status Mammals

"To protect special-status mammals, preconstruction surveys shall be conducted by a qualified biologist at all project sites that contain appropriate habitat. If, during a preconstruction survey, special-status mammals are found to be present, the project proponent shall implement the measures recommended by the biologist and ~~standardized~~ measures adopted by the USFWS or the CDFG."

Comment: We suggest the changes (in bold and strike-through) to allow for flexibility by removing the reference to standardize measures (that may or may not exist). Furthermore, the sentence implies that the project (City General Plan) will conduct pre-construction surveys. Perhaps, language similar to the proposed language in 3.4-1h be incorporated to ascertain the extent, if any, of any potential habitat and future projects, through CEQA, will evaluate the impacts to special-status mammals in concert with CDFG and/or USFWS.

Response 13H: Agreed. Mitigation Measure #3.4-1i (DEIR page 3.4-39), is modified as follows:

Mitigation Measure #3.4-1i: Special-Status Mammals

To protect Merced kangaroo rat, western mastiff bat, western red bat, hoary bat, Yuma myotis, San Joaquin pocket mouse, American badger, and San Joaquin kit fox on proposed projects where suitable habitat exists, the following shall be implemented:

- To protect special-status mammals, a habitat assessment shall be conducted on each project site prior to construction to ascertain whether habitat suitable for supporting special status mammals exists on the project site. If suitable habitat is present, preconstruction surveys shall be conducted by a qualified biologist at all project sites that contain appropriate habitat according to established standards or protocols of the CDFG or USFWS, if available for that species. If during the preconstruction survey, special-status mammals are found to be present, the project proponent shall implement the measures recommended by the biologist and measures adopted by the USFWS or the CDFG.*



LETTER 14

AIRPORT LAND USE COMMISSION MEMBERS

<i>Tony Whitehurst</i>	<i>Chairman</i>
<i>Al Romero</i>	<i>Vice Chairman</i>
<i>Frederick Honore</i>	<i>Commissioner</i>
<i>Gail McCullough</i>	<i>Commissioner</i>
<i>Scott Malta</i>	<i>Commissioner</i>
<i>Ron Elliott</i>	<i>Commissioner</i>

James L. Brown, Interim Secretary
www.co.merced.ca.us

October 22, 2010

Kim Espinosa, Planning Manager
City of Merced
678 West 18th Street
Merced, CA 95340

RE: City of Merced Draft Environmental Impact Report on the Merced Vision 2030 General Plan

Dear Ms. Espinosa:

Thank you for providing a copy of the Draft Merced Vision 2030 General Plan and associated Draft Environmental Impact Report (Draft EIR). The following comments are submitted by the Merced County Airport Land Use Commission (ALUC), in its role as a "Responsible Agency" under the California Environmental Quality Act (CEQA). In addition, the City is required to refer the proposed General Plan amendment to the Commission for a review of the Plan's consistency with the Commission's plan in compliance with Section 21676 of the California Public Resources Code (PRC).

There are two other specific provisions in State law governing preparation of the General Plan and related EIR in relation to local ALUC plans, in this instance, the Merced County Airport Land Use Compatibility Plan. The first involves the requirement to use the adopted comprehensive or compatibility plan for the analysis of "airport related safety hazards and noise problems" in the EIR (in compliance with Section 21096 of the Public Resources Code). The second provision under Section 65302.3 of the Government Code is oriented to the General Plan, and it includes the following requirements:

- (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.
- (b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.
- (c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

An official Commission review in accordance with PRC Section 21676 has not been scheduled before the Commission at this time. However, if the City would like to request this review, please submit it in writing and it can be scheduled for the next regular ALUC Meeting set for December 16, 2010. In the mean time, the City should ensure the General Plan is consistent with the current Merced County Land Use Compatibility Plan adopted by the Commission in April 1999 for the proposed land uses and associated policies related to areas located within the Airport Compatibility Zones of both the Merced Regional Airport and Castle Airport.

C

In this regard, the Draft EIR contains a brief analysis of General Plan areas located within the airport land use plan boundary under Impact #3.7-5 on pages 3.7-11 and 12. Most of the analysis discusses impacts related to the Merced Regional Airport, and the third paragraph on Page 3.7-12 references the Castle Airport. The analysis contains the following conclusion: "Draft plans for the two Community Plan areas affected by the Merced and Castle Airports are consistent with the Land Use Compatibility Plan." However, there is no analysis presented to help the reader confirm this conclusion. This analysis needs to be presented to the ALUC when the formal review for consistency with the ALUCP is made.

D

Another draft community plan area is included in the General Plan which is located within the Merced Airport Compatibility Zone but it is not referenced in the Draft EIR: the South Thornton "Five Bridges" Community Plan. This plan is presented in Chapter 3 "Land Use" of the Draft Merced Vision 2030 General Plan, in Section 3.10 "Appendix." Also, in Section 3.7.6 of the same Chapter where this plan is discussed, there is no reference that the planning area is within the airport compatibility zone.

E

The Appendix notes that these plans are for "illustrative purposes only" and no land use entitlements are granted by including these conceptual plans in the General Plan. However, it is not clear whether the statement of consistency under Impact #3.7-5 in the Draft EIR will be the City's formal determination in accordance with Government Code Section 65302.3, or whether some further analysis will be provided.

F

In terms of airspace protection, Policy T-3.1 in Chapter 4 "Transportation and Circulation" clearly identifies the City's intention to "Preserve the Merced Regional Airport and its protective zones from incompatible encroachment and incompatible development..." but it does not provide the same intention for Castle Airport's "protective zones." Similarly, in Chapter 11 "Safety," Policy S-5.2 and related Implementing Actions 5.1.a through 5.1.c the safety concerns appear to only protect the Merced Regional Airport. If they were expanded to include Castle Airport it would help ensure the General Plan is in compliance with Government Code Section 65302.3.

G

Thank you again for the opportunity to review the Draft EIR on the Merced Vision 2030 General Plan, and please let me know if you have any questions about the contents of this letter or would like to schedule a Commission meeting to review the plan in accordance with PRC 21676.

Sincerely,

A handwritten signature in blue ink that reads "William Nicholson". The signature is written in a cursive style with a large initial "W".

William Nicholson,
ALUC Staff

cc: Anthony Whitehurst, ALUC Chairman
ALUC Commissioners
James L. Brown, ALUC Secretary
ALUC Counsel

Letter 14 William Nicholson, Merced County Airport Land Use Commission (ALUC)

Comment 14A: *Thank you for providing a copy of the Draft Merced Vision 2030 General Plan and associated Draft Environmental Impact Report (Draft EIR). The following comments are submitted by the Merced County Airport Land Use Commission (ALUC), in its role as a "Responsible Agency" under the California Environmental Quality Act (CEQA). In addition, the City is required to refer the proposed General Plan amendment to the Commission for a review of the Plan's consistency with the Commission's plan in compliance with Section 21676 of the California Public Utilities Code (PRC).*

Response 14A: The comment is noted. The ALUC is listed under Section 2.6 of the DEIR, along with other agencies to which the DEIR was provided for review and comment.

Comment 14B: *There are two other specific provisions in State law governing preparation of the General Plan and related EIR in relation to local ALUC plans, in this instance, the Merced County Airport Land Use Compatibility Plan. The first involves the requirement to use the adopted comprehensive or compatibility plan for the analysis of "airport related safety hazards and noise problems" in the EIR (in compliance with Section 21096 of the Public Resources Code).*

The second provision under Section 65302.3 of the Government Code is oriented to the General Plan, and it includes the following requirements:

- (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.*
- (b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.*
- (c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.*

Response 14B: The comment is noted. The DEIR utilized the local ALUC plans in its analysis.

Comment 14C: *An official Commission review in accordance with PRC Section 21676 has not been scheduled before the Commission at this time. However, if the City would like to request this review, please submit it in writing and it can be scheduled for the next regular ALUC Meeting set for December 16, 2010. In the mean time, the City should ensure the General Plan is consistent with the current Merced County Land Use Compatibility Plan adopted by the Commission in April 1999 for the proposed land uses and associated policies related to areas located within the Airport Compatibility Zones of both the Merced Regional Airport and Castle Airport.*

Response 14C: The comment is noted. The City Council will, based on the data and analysis in the EIR, evaluate such consistency and a formal review by the Airport Land Use Commission will be scheduled in the future after adoption of the General Plan.

Comment 14D: *In this regard, the Draft EIR contains a brief analysis of General Plan areas located within the airport land use plan boundary under Impact #3.7-5 on pages 3.7-11 and 12. Most of the analysis discusses impacts related to the Merced Regional Airport, and the third paragraph on Page 3.7-12 references the Castle Airport. The analysis contains the following conclusion: "Draft plans for the two Community Plan areas affected by the Merced and Castle Airports are consistent with the Land Use Compatibility Plan." However, there is no analysis presented to help the reader confirm this conclusion. This analysis needs to be presented to the ALUC when the formal review for consistency with the ALUCP is made.*

Response 14D: As explained in the General Plan Update (page 3-69), "The Community Plans are intended to recognize specific projects that have undergone significant developer-driven planning efforts but need to fit in with the *Merced Vision 2030* goals and objectives. These projects will undergo additional detailed planning and environmental review when formally proposed to the City for development." In other words, before a revised community plan can be approved by the City, it will be required to meet the objectives of the City's adopted policy documents, including noise and safety restrictions such as Policy S-5.1, "*Continue to protect approach areas and control zones for both existing and future runway systems through land use regulations and property acquisition where necessary.*" (p. 11-36). Future review and revision of any community plan requires a separate, environmental document as well, which will also address the community plan's compatibility with local, state, and federal requirements regarding safety and noise issues. The General Plan EIR is a programmatic document intended to ensure future compliance with ALUC plans.

Comment 14E: *Another draft community plan area is included in the General Plan which is located within the Merced Airport Compatibility Zone but it is not referenced in the Draft EIR: the South Thornton "Five Bridges" Community Plan. This plan is presented in Chapter 3 "Land Use" of the Draft Merced Vision 2030 General Plan, in Section 3.10 "Appendix." Also, in Section 3.7.6 of the same Chapter where this plan is discussed, there is no reference that the planning area is within the airport compatibility zone.*

Response 14E: The following text has been added to the end of the first paragraph on DEIR page 3.7-6:

Figure 3.7-2 shows these zones in relation to the City. Castle Airport impacts the northwest part of the proposed SUDP/SOI through the establishment of Compatibility Zones "C" and "D." The far northwest corner of the plan area is designated for a Community Plan, which will ultimately contain a mix of residential and commercial uses. Zone "C" will establish a density restriction, and a number of public uses will be prohibited. The area within Zone "D" lies along Highway 59, and is designated for a mix of residential, commercial, industrial and public uses. Occasional noise events are the primary effects within this zone. In

the same manner, the Merced Regional Airport impacts the southwest part of the proposed SUDP/SOI through the establishment of Compatibility Zones “C” and “D.” An area north of the airport is designated as the South Thornton (or Five Bridges) Community Plan located north of Highway 140, south of Highway 99 and east of the proposed SUDP/SOI boundary. The Community Plan for this area is currently on hold, and future discussion will include restrictions appropriate to comply with the Merced County Airport Land Use Compatibility Plan.

The second comment is noted; it addresses the content of the General Plan, not the DEIR.

Comment 14F: *The Appendix notes that these plans are for "illustrative purposes only" and no land use entitlements are granted by including these conceptual plans in the General Plan. However, it is not clear whether the statement of consistency under Impact #3.7-5 in the Draft EIR will be the City's formal determination in accordance with Government Code Section 65302.3, or whether some further analysis will be provided.*

Response 14F: As explained in Response 14D, further analysis of potential impacts is required in a separate project-level environmental document before approval of a community plan by the City Council.

The City will make no formal determination regarding General Plan-proposed land use compatibility until findings are required and made, in accord with State Public Utilities Code Section 21676, based on data and analysis in the Final EIR.

Comment 14G: *In terms of airspace protection, Policy T-3.1 in Chapter 4 "Transportation and Circulation" clearly identifies the City's intention to "Preserve the Merced Regional Airport and its protective zones from incompatible encroachment and incompatible development..." but it does not provide the same intention for Castle Airport's "protective zones." Similarly, in Chapter 11 "Safety," Policy S-5.2 and related Implementing Actions 5.1.a through 5.1.c the safety concerns appear to only protect the Merced Regional Airport. If they were expanded to include Castle Airport it would help ensure the General Plan is in compliance with Government Code Section 65302.3.*

Response 14G: The Final EIR presents additional data and analysis, involving no new impacts or mitigation measure requirements, regarding Castle Field ALUCP compatibility with the General Plan. Please see Comment 14F.

As part of the proposed revisions to the Draft *Merced Vision 2030 General Plan* prior to adoption, City staff has proposed to add an additional Implementing Action under Safety Policy S-5.1 as follows:

5.1.d Work with the County of Merced on land use and master planning issues in the vicinity of Castle Airport and its Land Use Compatibility Zones.

The City of Merced recognizes that Castle Airport is a County asset with the potential to generate job growth within the County of Merced. Merced County is currently in the process of developing a new Castle Airport Master Plan, which would outline Castle's proposed development over the next 20 years. Merced County has expressed an interest in expanding Castle's current role as mostly a general aviation airport (the County's website in 2011 indicates that general aviation uses are 99% of current operations) to include air cargo, military exercises, and commercial air service. If such a Master Plan was approved, the Land Use Compatibility Zones for Castle Airport would need to be modified to reflect those changes. If modified, Castle Airport's Land Use Compatibility Zones could affect development within the existing City and the proposed SUDP/SOI. (Long time residents will remember the significant noise impacts of Castle's military operations until Castle Air Force Base closed in 1995.) Therefore, the City wants to continue to work with the County on ensuring that any adopted Castle Airport Master Plan contains realistic aircraft operation projections that do not hinder both existing and future development within the City.

Comment 14H: *Thank you again for the opportunity to review the Draft EIR on the Merced Vision 2030 General Plan, and please let me know if you have any questions about the contents of this letter or would like to schedule a Commission meeting to review the plan in accordance with PRC 21676.*

Response 14H: The comment is noted.

October 22, 2010

Kim Espinosa
Planning Manager
City of Merced Planning Division
378 W. 18th Street
Merced, CA 95340

RE: The Draft Environmental Impact Report for the *Merced Vision 2030 General Plan*.

Ms. Espinosa,

Merced County Farm Bureau understands that the City of Merced will grow, and ag land on the periphery inevitably will have to be annexed into the City. With that being said we would like to officially submit comments for the City of Merced Draft Environmental Impact Report (DEIR) as it pertains to the *Merced Vision 2030 General Plan (Vision 2030)*.

A

Land Use

The DEIR includes *Guiding Principles* that which the *Vision 2030* is to maintain throughout the General Plan. We believe there are some contradictions that need to be addressed.

1. Expansion of the Sphere of Influence and City boundary with phasing of development to avoid premature conversion of agricultural land and to plan for cost-effective extension of municipal services. (pg. ES-3)

When looking at the population projection numbers, the General Plan was passed in 1997 with the City projecting to accommodate a population ranging between 139,899 and 298,614 persons by 2015 (pg. 4-6). Currently, the Merced County Association of Governments (MCAG) estimates the City's population is at 80,985 persons and is estimated to reach 89,400 by 2015 (pg. 3.12-2). If the City were to reach MCAG's projections our City's population would still only be approximately 64 percent of the low end of capacity (139,899) within the current Sphere of Influence. The City has not even reached the 2015 projections. Why would the City support more annexation for residential development for unrealistic projections of 152,063 to 328,956 persons by 2030(pg. 4-9)?

B

2. Foster compact and efficient development patterns. (pg. ES-3)

Despite of the population projects and the City's infill capacity for an estimated ten years, the *Vision 2015* includes two housing developments, 3,995 acres in Northwest Merced and 3,824

C

<p>acres south of Highway 99 (pg. ES-5). How can an additional 5,000 acres “foster compact and efficient development patterns?” Again our concern lies with the infill and low population numbers, so why is there such an urgent need to include more fertile ag land in the 2030 General Plan?</p>	<p>C cont. D</p>
<p>As a key component of the project the <i>Vision 2030</i> explicitly states that “Policies in the proposed General Plan limit leap-frog development and provide for an orderly transition from rural to urban land uses” (pg. ES-2). Yet, the Impact # 3.12-2 states that the City would encourage growth on undeveloped parcels, or on small parcels that can be subdivided instead of moving forward with “large scale redevelopment of already developed land and buildings.” This is a poor use of useful property already included in the City’s reach. Why would the City want to develop untouched possible prime ag land when redevelopment could aesthetically enhance the City, and the infrastructure that already exists in that location and would make it cheaper for the City?</p>	<p>E</p>
<p>MCFB appreciates the inclusion of pg. 5-5 regarding the rapid depletion of ag land in the Central Valley. Since there are only 6.3 million acres left in this region it should be understandable why we are so eager to convince the City to focus on the infill of residential and commercial development. We just hope that this is a major consideration as you evaluate every section of this document.</p>	<p>F</p>
<p><u>Hydrology and Water Quality</u> Since agriculture cannot exist without accessible and reliable water we are very concerned with the City’s assessment of the current status of the surface and groundwater and how they will be impacted as the General Plan moves forward. According to <i>Vision 2030</i> the City has found that between 1980 and 2007 the “average groundwater levels beneath the Merced Groundwater Basin (MGWB) have declined approximately 14 feet” and the total storage capacity had approximately decreased by 720,000 acre feet (AF) (pg. 3.8-4). The City is also projecting a dramatic increase in water usage from 15,000 AF in 1995 to an estimated 60,000 AF by 2030 (pg. 3.8-12). Although this is a trend occurring throughout the Central Valley it is the City’s duty to work with Merced Irrigation District to create a viable plan in your General Plan as well as in your Urban Water Management Plan to ensure that Merced will have safe and reliable water for the next generation.</p>	<p>G</p>
<p>In the <i>Vision 2030</i> the City shows preference for the continued usage of the groundwater, while also constructing new wells as needed, but any definite plans of attaining recharge levels dating back to 1992 are very vague (pg. 3.8-12). Although there has been success by the City to decrease the usage of millions of gallons per day from the mid-1980s to present day and MAGPI has made inroads with other agencies and Department of Water Resources (DWR) in the last decade, Merced’s population and development has and will continue to grow. The Impact #3.8-2 states that the rate of groundwater overdraft will “continue to increase with future urban development”(pg. 3.8-16). Again, water is such a precious resource we as an organization would like better mitigation measures by the City and local entities because the water supply is not only vital to the citizens of the City and County but also the economy.</p>	<p>H</p>

Transportation

Under *Mitigation Measure #3.15-1b* it states “Traffic studies should be performed to satisfy the requirements of the California Environmental Quality Act (CEQA) for all proposed General Plan Amendments which intensify development, proposed specific plans, annexations, and other projects at the discretion of the Development Services Department” (pg. 3.15-29). MCFB would like to recommend striking the “Traffic studies should be...” and replacing it with the “Traffic studies shall be...” The City needs to involve the public in any adjustments to the General Plan as a means to ensure plenty of transparency in the process.

MCFB understands that the General Plan can be compared to the Constitution in that it is vital to the planning and growth of this community. We ask the City to seriously review our areas of concern and look to further mitigate where needed. Although MCFB predominately representing farmers on the outskirts of the City we deeply care about the growth and success of the City and County as we look to pass it on to the next generation.

We thank you for the opportunity to comment on the DEIR and we look forward to further working with the City of Merced and the Planning Department on this important document.

Sincerely,

Amanda Carvajal
Executive Director

I

J

Letter 15 Amanda Carvajal, Executive Director, Merced County Farm Bureau

Comment 15A: *Merced County Farm Bureau understands that the City of Merced will grow, and ag land on the periphery inevitably will have to be annexed into the City. With that being said we would like to officially submit comments for the City of Merced Draft Environmental Impact Report (DEIR) as it pertains to the Merced Vision 2030 General Plan (Vision 2030).*

Response 15J: The City appreciates the MCFB, and welcomes the opportunity to address MCFB's concerns on behalf of the residents and neighbors of the City. The City understands the tremendous responsibility it has to avoid and minimize potential impacts of development, increased groundwater use, and circulation on the people and environment of the Central Valley.

Comment 15B: Land Use

The DEIR includes Guiding Principles that which the Vision 2030 is to maintain throughout the General Plan. We believe there are some contradictions that need to be addressed.

- 1. Expansion of the Sphere of Influence and City boundary with phasing of development to avoid premature conversion of agricultural land and to plan for cost-effective extension of municipal services. (pg. ES-3)*

When looking at the population projection numbers, the General Plan was passed in 1997 with the City projecting to accommodate a population ranging between 139,899 and 298,614 persons by 2015 (pg. 4-6). Currently, the Merced County Association of Governments (MCAG) estimates the City's population is at 80,985 persons and is estimated to reach 89,400 by 2015 (pg. 3.12-2). If the City were to reach MCAG's projections our City's population would still only be approximately 64 percent of the low end of capacity (139,899) within the current Sphere of Influence. The City has not even reached the 2015 projections. Why would the City support more annexation for residential development for unrealistic projections of 152,063 to 328,956 persons by 2030 (pg. 4-9)?

Response 15B: The Commentor is correct in stating that MCAG population estimates for the City were reduced from the 1997 projections, based on the then current population, recent economic conditions, and other indicators. As the Commentor noted, the MCAG population projection for 2015 was 89,400 within the City (Table 3.12-2, page 3.12-2), and the projected population in 2030 was 116,800. However, these figures are for the area within the current City limits only. The General Plan update must consider an increase in population to project an increase in land that will be incorporated into the City over time to ensure that they can accurately plan for infrastructure improvements including roadways and utilities, and police and fire protection, emergency services, and other community services. Therefore, it is important to base estimates on a population figure that includes areas adjacent to, but not within the City limits. For example, although 2010 U.S. Census data were not available at the time the Draft EIR was released to the public, some population figures have since been released. The U.S. Census determined that the 2010 population for the "Merced Census County Division" was 99,537. This figure is not only for those within the City limits but also for those adjacent to the

City who utilize City services and contribute to the City's economy. This figure, which is approximately 11 percent higher than the MCAG figure, could thus be considered the most accurate figure now available for determining future growth. However, the City utilized the best information available at the time the General Plan Update was drafted, and future, unpredicted events will continue to occur which will reduce or increase population rates.

The City respectfully disagrees with the comment that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 15C: 2. *Foster compact and efficient development patterns. (pg. ES-3)*

Despite of the population projects and the City's infill capacity for an estimated ten years, the Vision 2015 includes two housing developments, 3,995 acres in Northwest Merced and 3,824 acres south of Highway 99 (pg. ES-5). How can an additional 5,000 acres "foster compact and efficient development patterns?"

Response 15C: The *Merced Vision 2015 General Plan* Final Program EIR was completed in April 1997. The two proposed residential projects were based on the population projections available at that time. As noted in that document, "The Central Valley Region is seen by many as the focus for much of the growth expected to occur in California during the next fifty years. This growth pressure is expected to result from the lack of available urban expansion areas in the coastal urban centers of the state." (page 5.1). "In the event that these trends prove to be wrong and growth in California or the Central Valley does not occur at the expected rate, the plan will not need to be implemented. Development aspects of the plan, which have a potential to affect the physical environment, are driven by growth demand." (page 5.2). At the time the document was completed, residential development was expected to occur primarily as single-family, low density development, as that was the preference of many Central Valley residents. Since that document was completed, state legislation (i.e., SB 375) has been enacted to encourage higher density residential development in conjunction with alternative transportation and close proximity to jobs and services to reduce air pollutants from automobiles.

Comment 15D: *Again our concern lies with the infill and low population numbers, so why is there such an urgent need to include more fertile ag land in the 2030 General Plan?*

Response 15D: Much of the most agriculturally productive and fertile land in the Central Valley is adjacent to growing urban areas. As noted in Response 15B, a number of factors must be

considered when planning for future growth based upon increases to population. Section 5.3 of the *Merced Vision 2015 General Plan* Final Program EIR recognizes that the adoption and implementation of the document will include, “An expanded urban area which will consume land capable of producing food and/or fiber or providing natural wildlife habitat,” and that “The overall benefits derived from having a plan for the orderly development of the community outweighs potentially harmful effects that may be indirectly or directly induced from Plan adoption and implementation.” (Page 5.2). It should also be noted that one of the major goals of the 2015 General Plan was the “preservation of prime agricultural land around the City” and that policies were included to promote this goal in conjunction with meeting the other major goals. Many of these same policies remain in the 2030 General Plan.

Comment 15E: *As a key component of the project the Vision 2030 explicitly states that “Policies in the proposed General Plan limit leap-frog development and provide for an orderly transition from rural to ur-ban land uses” (pg. ES-2). Yet, the Impact # 3.12-2 states that the City would encourage growth on undeveloped parcels, or on small parcels that can be subdivided instead of moving forward with “large scale redevelopment of already developed land and buildings.” This is a poor use of useful property already included in the City’s reach. Why would the City want to develop un-touched possible prime ag land when redevelopment could aesthetically enhance the City, and the infrastructure that already exists in that location and would make it cheaper for the City?*

Response 15E: The City must consider requirements of state agencies when developing land use policies and plans, and must adhere to the LAFCO policies that “discourage annexation of prime agricultural land when significant areas of non-prime agricultural land is already available, and encourage the development of vacant/infill areas within cities before the annexation and development of fringe areas.” (DEIR page 3.9-11). The City is committed to ensuring orderly development and avoiding the premature conversion of prime agricultural land, as evidenced by a variety of General Plan policies. Specifically, Policy UE-1.2 calls for the City to foster compact and efficient development form and Policy LU-3.2 calls for the City to encourage infill development and a compact urban form.

Impact #3.12-2 concludes that implementation of the Merced 2030 General Plan would result in a less than significant impact to the displacement of a substantial number of existing housing units or people. “Large scale redevelopment of already developed land and building” may potentially occur in the future, but is not contemplated as a likely or economically feasible method of accommodating the City’s future population demands during the course of the 2030 General Plan’s plan horizon. However, as noted in implementing Action 1.2.d, the City will promote higher residential densities within the Merced urban area.

Comment 15F: *MCFB appreciates the inclusion of pg. 5-5 regarding the rapid depletion of ag land in the Central Valley. Since there are only 6.3 million acres left in this region it should be understandable why we are so eager to convince the City to focus on the infill of residential and commercial devel-opment. We just hope that this is a major consideration as you evaluate every section of this document.*

Response 15F: The comment is noted. See Response 15E.

Comments 15G: Hydrology and Water Quality

Since agriculture cannot exist without accessible and reliant water we are very concerned with the City's assessment of the current status of the surface and groundwater and how they will be impacted as the General Plan moves forward. According to Vision 2030 the City has found that between 1980 and 2007 the "average groundwater levels beneath the Merced Groundwater Basin (MGWB) have declined approximately 14 feet" and the total storage capacity had approximately decreased by 720,000 acre feet (AF) (pg. 3.8-4). The City is also projecting a dramatic increase in water usage from 15,000 AF in 1995 to an estimated 60,000 AF by 2030 (pg. 3.8-12). Although this is a trend occurring throughout the Central Valley it is the City's duty to work with Merced Irrigation District to create a viable plan in your General Plan as well as in your Urban Water Management Plan to ensure that Merced will have safe and reliable water for the next generation.

Response 15G: Page 3.8-13 of the DEIR includes the reference to the Public Services and Facilities Policy, P-3.2, stating, "In cooperation with the County and the Merced Irrigation District, work to stabilize the region's aquifer." The City currently works with the Merced Irrigation District on a number of issues and anticipates a continued cordial relationship with the District.

The DEIR notes the decrease of groundwater storage in the Merced groundwater subbasin of 720,000 acre feet between 1980 and 2007, a loss of approximately 1.7% of the subbasin's groundwater storage. It also notes the City's participation in the Merced Area Groundwater Pool Interests (MAGPI) program (p. 3.8-12). Page 3.8-15 details a drop in annual City water usage from 38.3 million gallons per day in 1984 to 21 million gallons per day in 2007, despite population growth.

While depths to groundwater under the City have decreased, and will continue to do so as the General Plan is implemented, it should be noted that the City's projected usage of 60,000 acre feet of groundwater by 2030 does not necessarily represent that quantity of net loss of the Merced subbasin's water supply. Any agricultural usage of surface water in the urbanizing area will be eliminated and surface water rights can then be transferred to other subbasin areas, decreasing their groundwater usage.

The City's dedication to the conservation of the subbasin's water resources is demonstrated both by its participation in UAGPI and by proposed General Plan Implementing Actions 3.2, 3.2.a, 3.2.b, 3.2.c, 3.2.d, and Policy P-4.2.

Comment 15H: *In the Vision 2030 the City shows preference for the continued usage of the groundwater, while also constructing new wells as needed, but any definite plans of attaining recharge levels dating back to 1992 are very vague (pg. 3.8-12). Although there has been success by the City to de-crease the usage of millions of gallons per day from the mid-1980s to present day and MAGPI has made inroads with other agencies and Department of Water Resources (DWR) in the last decade, Merced's population and development has and will continue to grow. The Impact #3.8-2 states that the rate of groundwater overdraft will "continue to increase with future urban development" (pg. 3.8-16). Again, water is such a precious*

resource we as an organization would like better mitigation measures by the City and local entities because the water supply is not only vital to the citizens of the City and County but also the economy.

Response 15H: The comment is noted. Please see Response 15G above.

Comment 15I: Transportation

Under Mitigation Measure #3.15-1b it states “Traffic studies should be performed to satisfy the requirements of the California Environmental Quality Act (CEQA) for all proposed General Plan Amendments which intensify development, proposed specific plans, annexations, and other projects at the discretion of the Development Services Department” (pg. 3.15-29). MCFB would like to recommend striking the “Traffic studies should be...” and replacing it with the “Traffic studies shall be...” The City needs to involve the public in any adjustments to the General Plan as a means to ensure plenty of transparency in the process.

Response 15I: CEQA requires that transportation studies be conducted that will provide information appropriate for each specific project. A project that will require a General Plan amendment that will “intensify development, proposed specific plans, annexations ...” typically will require an in-depth traffic study to meet CEQA requirements. Mitigation Measure #3.15-1b (DEIR pages ES-41 and 3.15-29) is hereby amended to read as follows:

Mitigation Measure #3.15-1b:

Traffic studies ~~should~~shall be performed to satisfy the requirements of the California Environmental Quality Act (CEQA) for all proposed General Plan Amendments which intensify development, proposed specific plans, annexations, and other projects at the discretion of the Development Services Department. Future traffic studies ~~should~~shall generally conform to any guidelines established by the City. The studies ~~should~~shall be performed to determine, at a minimum, opening-day impacts of proposed projects and as confirmation or revision of the General Plan. The studies ~~should~~shall address queue lengths and (at a minimum) peak-hour traffic signals warrants in addition to LOS and provide appropriate mitigations. At the discretion of the City, a complete warrant study in accordance with the most recent edition of the California Manual on Uniform Traffic Control Devices may be required to evaluate the need for traffic signals.

Comment 15J: *MCFB understands that the General Plan can be compared to the Constitution in that it is vital to the planning and growth of this community. We ask the City to seriously review our areas of concern and look to further mitigate where needed. Although MCFB predominately representing farmers on the outskirts of the City we deeply care about the growth and success of the City and County as we look to pass it on to the next generation.*

Response 15J: The City appreciates the MCFB, and welcomes the opportunity to address MCFB’s concerns on behalf of the residents and neighbors of the City. The City understands the

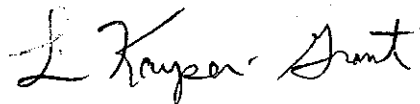
tremendous responsibility it has to avoid and minimize potential impacts of development, increased groundwater use, and circulation on the people and environment of the Central Valley.

To: City of Merced Planning Dept., 678 W. 18th Street, Merced, CA 95340. *October 22, 2010.*

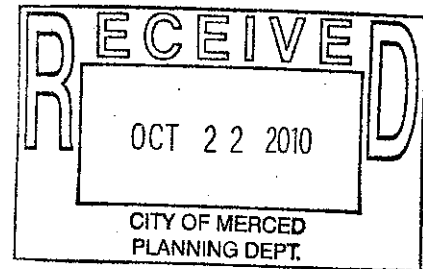
Thank you for the opportunity to comment on the Draft EIR for the Draft Merced Vision 2030 General Plan. Please provide a response to the following questions and concerns regarding this Draft EIR.

Thank you,

Sincerely,



Lisa Kayser-Grant
1425 W.N. Bear Creek Drive
Merced, CA 95348



Impact # 3.2.1: Conversion of Farmland, listed as “significant and unavoidable” after mitigation. An important mitigation that was omitted is the purchase or designation of farmland as permanently undevelopable, **in a ratio of at least 2:1 with 4:1 being preferred** (preserved to developed). This land could be outside the city SUDP if there is insufficient available within. If and when sufficient land is not found to be available anywhere then further development cannot occur.

Impact# 3.4: Biological Resources, numerous impacts on species and habitats, most listed as “potentially significant”. Considering the detrimental effects of urbanization on sensitive species and habitats **these impacts are more properly be listed as “significant”**.

The impact after mitigation for the majority of impacts is listed as “less than significant”. Because most of the mitigations involve follow-up surveys and studies to determine their effects over time, meaning their effectiveness cannot known beforehand, and because of the less than optimistic results of efforts to relocate or adapt sensitive species/habitats to urbanization, **a more accurate assessment of the impacts after mitigation should be “potentially significant” at best.**

Impact # 3.8.3: Proposed Project could substantially deplete the groundwater or interfere with groundwater recharge. The impact is listed as “significant”, with “no mitigations available”. This conclusion cannot be accepted as a downside to further development: insufficient water supply is an absolute barrier to further development. For the City to proceed with this General Plan, **sufficient mitigation measures must be identified or the Plan needs to be changed to fit the realities of water supply.**

Impact # 3.16.4: Project would require expanded water supply entitlements, listed as a “less than significant” impact. It violates common sense to believe that water supply entitlements will become available as needed to support growth when the City is experiencing groundwater overdraft and the surface water supply is scarce and unpredictable from year to year. **This impact needs to be listed as “significant” and sufficient effective mitigation measures developed, or City growth must be curtailed.**

Impact # 3.16.6 and 3.16.7: The project will have sufficient solid waste disposal capacity and will be able to comply with federal and state laws for solid waste, impact listed as “less than significant”. This assertion is barely credible and needs to be backed up with specific plans for landfill expansion – what land is available and affordable how likely to be granted a permit, along with specific figures detailing how the City will be able to comply with mandated diversion rates and other disposal laws.

Letter 16 Lisa Kayser-Grant

Comment 16A: *Thank you for the opportunity to comment on the Draft EIR for the Draft Merced Vision 2030 General Plan. Please provide a response to the following questions and concerns regarding this Draft EIR.*

Response 16A: The City appreciates the opportunity to address concerns of its citizens. Comment is noted.

Comment 16B: *Impact #3.2.1: Conversion of Farmland, listed as "significant and unavoidable" after mitigation. An important mitigation that was omitted is the purchase or designation of farmland as permanently undevelopable, in a ratio of at least 2:1 with 4:1 being preferred (preserved to developed). This land could be outside the city SUDP if there is insufficient available within. If and when sufficient land is not found to be available anywhere then further development cannot occur.*

Response 16B: The City has in place a number of policies and implementing actions to discourage development of agricultural lands whenever possible. As the Commenter noted, however, the potential exists for the conversion of Prime Farmland to have a potentially significant impact. The use of the policies and actions described on page 3.2-4 and 3.2-5 of the DEIR will minimize the impacts to the extent possible. The commenter suggests the purchase or designation of farmland that could not be developed in perpetuity at a ratio of 2:1 (with 4:1 preferred), to ensure that a net loss of agricultural land does not occur. This suggestion is one that is frequently exercised in a Farmland Trust agreement, which is included as a possibility in Implementing Action 2.1a.

Mitigation to address loss of agricultural lands due to development in accordance with the land use designations established by the proposed 2030 General Plan, such as requiring agricultural conservation easements, or in-lieu fees for their purchase, are a matter of policy and/or law yet to be established by the City of Merced. To include such mitigation measures in the DEIR, as suggested by the commenter, would be speculative and unenforceable absent established City policy or ordinance to ensure implementation.

Urban Expansion Implementing Action 1.1.f on page 2-26 of the Draft *Merced Vision 2030 General Plan* outlines the City's position on agricultural land preservation programs as follows:

1.1.f Work with Merced County and the other cities in the County to develop a County-wide agricultural land preservation policy.

A number of years ago, there was an effort to establish a Countywide Agricultural Preservation Strategy (CAPS) in which the cities in Merced County and the County worked on ways to address preservation of prime agricultural land. That effort ultimately failed and the County of Merced has imposed agricultural mitigation on certain large development projects, such as the University Community, on a case-by-case basis. However, in order to assure fairness and to be truly effective, a comprehensive strategy

for dealing with agricultural preservation needs to be established Countywide. The City of Merced is committed to working with the County and the other cities to resolve this issue.

Page 3.2-5, referenced above, states, “The General Plan includes Policies and Implementing Actions to ensure that the existing farmland within and surrounding the SUDP/SOI are not developed before needed by future growth. Policy UE-1.1 calls for the City to designate areas for new urban development that recognize the physical characteristics and environmental constraints of the planning area. With Implementing Action 1.1.a, the City shall direct development away from significant concentrations of “Prime” agricultural soils and give priority to the conversion of non-prime agricultural land if reasonable alternatives exist. With Implementing Action 1.1.d, the City shall work with Merced County to establish policies to protect prime agricultural areas around the SUDP/Sphere of Influence. With Implementing Action 1.1.b, the City shall limit development and development related impacts on agricultural lands along the City’s urban fringe. Policy L-3.2 encourages infill development and a compact urban form. With Implementing Action 3.2.a, the City encourages infill of vacant parcels. The General Plan includes policies and implementing actions to ensure that managed production of farmland within and surrounding the SUDP/SOI are protected. Policy OS-2.1 calls for the City to protect agricultural areas outside the City’s SUDP/SOI from urban impacts. With Implementing Action 2.1.a, the City shall continue to explore the use of Farmland Trusts, exclusive agricultural zoning, and the transfer of development rights to protect prime agricultural areas. Policy OS-2.2 calls for the City to relieve pressures on converting areas containing large concentrations of “Prime” Agricultural Soils to Urban Uses by providing adequate urban development land within the Merced City SUDP/SOI. This important policy will be carried out through several implementing actions found in the Land Use, Public Services and Facilities, and Urban Expansion Chapters of the Merced Vision 2030 General Plan.”

Comment 16C: Impact #3.4: Biological Resources, numerous impacts on species and habitats, most listed as "potentially significant". Considering the detrimental effects of urbanization on sensitive species and habitats *these impacts are more properly be listed as "significant"*.

The impact after mitigation for the majority of impacts is listed as "less than significant". Because most of the mitigations involve follow-up surveys and studies to determine their effects over time, meaning their effectiveness cannot known beforehand, and because of the less than optimistic results of efforts to relocate or adapt sensitive species/habitats to urbanization, a more accurate assessment of the impacts after mitigation should be "potentially significant" at best.

Response 16C: The proposed General Plan Update is a policy document that describes how land will be used, and under what circumstances certain land uses or changes to land uses can occur. The DEIR addresses only the potential impacts that will occur because of the policies and actions required in the General Plan Update. The DEIR is not intended to address potential impacts that might occur as the result of a specific project. To ensure that all potential impacts to resources are appropriately considered, an environmental document is required under CEQA for each proposed project. The designation of “less than significant” in the DEIR for the General Plan indicates that the policies and actions within the document will, in and of themselves, not

have potentially significant impact to that resource. Specific projects however, may have a potentially significant impact.

Comment 16D: *Impact #3.8.3: Proposed Project could substantially deplete the groundwater or interfere with groundwater recharge. The impact is listed as "significant", with "no mitigations available". This conclusion cannot be accepted as a downside to further development: insufficient water supply is an absolute barrier to further development. For the City to proceed with this General Plan, sufficient mitigation measures must be identified or the Plan needs to be changed to fit the realities of water supply.*

Response 16D: See Comment Letter 15, Responses 15G and 15H.

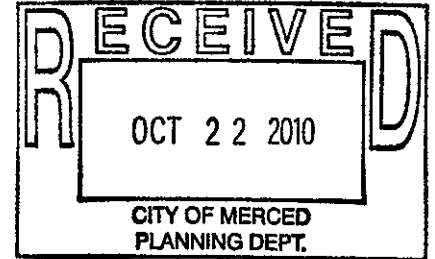
Comment 16E: *Impact #3.16.4: Project would require expanded water supply entitlements, listed as a "less than significant" impact. It violates common sense to believe that water supply entitlements will become available as needed to support growth when the City is experiencing groundwater overdraft and the surface water supply is scarce and unpredictable from year to year. This impact needs to be listed as "significant" and sufficient effective mitigation measures developed, or City growth must be curtailed.*

Response 16E: The City is required by State law to maintain an Urban Water Management Plan which must address current and future water use. The City has included a number of policies and actions intended to ensure that water use is not only monitored, but is used judiciously. These policies are described on pages 3.16-12 and 3.16-3 of the DEIR. As noted in response to Comment 16C, the General Plan Update is a policy document. As such, the DEIR addresses only the potential for impacts to occur as the result of the adoption of the General Plan. The General Plan policies and actions encourage the conservation of water for all existing and future development, and therefore impacts would be less than significant. To ensure that all potential impacts to resources are appropriately considered, an environmental document is required under CEQA for each proposed project.

Comment 16F: *Impact #3.16.6 and 3.16.7: The project will have sufficient solid waste disposal capacity and will be able to comply with federal and state laws for solid waste, impact listed as "less than significant". This assertion is barely credible and needs to be backed up with specific plans for landfill expansion - what land is available and affordable how likely to be granted a permit, along with specific figures detailing how the City will be able to comply with mandated diversion rates and other disposal laws.*

Response 16F: To meet CEQA requirements of a less than significant impact resulting from the adoption of the General Plan Update, the City must show that it would, “Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs.” The City must also comply with federal, state, and local statutes and regulations related to solid waste. The General Plan Update is intended to serve through the year 2030. As existing landfill facilities are available through that date, there is no requirement to show sufficient solid waste disposal capacity beyond that date.

Maureen McCorry, President
San Joaquin et al
P.O. Box 722
Merced, CA 95341
sanjoaquinetal@sbcglobal.net
(415) 816-8872



October 22, 2010

Ms. Kim Espinosa, Planning Manager
City of Merced Planning Department
678 West 18th Street
Merced, CA 95340
Facsimile: (209) 725-8775
E-mail: espinosak@cityofmerced.org

Re: Comments regarding the Programmatic Draft Environmental Impact Report (DEIR) for the Merced Vision 2030 General Plan (SCH No. 2008071069)

Via: Email 10.22.10

Dear Ms. Espinosa,

The Merced Vision 2030 General Plan and above referenced DEIR have serious flaws as outlined below. The most alarming is the decision to leave out a contemporaneous Housing Element. The legality of this omission is debatable. We request that the General Plan and the accompanying DEIR be re-circulated to include an updated 2010 Housing Element to be considered within the context of this General Plan Update so as to properly analyze population and housing needs in an integrated package.

A

The context for planning has changed so drastically that a 2004 stand alone Housing Element is useless; the legality of replacing this Housing Element after approval and certification of this General Plan and DEIR well after the 5 year state requirement is questionable. It is not appropriate to piecemeal environmental analysis and it is not sound policy.

B

The current plan proposes a coterminous SOI and SUDP that includes 33,463 acres. By adopting the 1997 SOI as the new SUDP, the city may well be committing us to future generations of partially built islands (formerly described as "Master Planned" Communities). The current growth boundary was created at a time where there were stars in the eyes of Merced Boosters (circa, 1997). Since 2008, we have been sharing the title of "foreclosure capital" of the nation with two other San Joaquin Valley cities/counties. This dramatic change in affairs is not at all considered in the General Plan nor addressed or analyzed in the DEIR. The city and county of Merced are in the throes of an economic

C

catastrophe— which has yet to be played out. Over the next 20 years, we believe it is necessary to absorb the current inventory of housing before expanding north and south (or east). There is no acknowledgement of this fact in these documents. There is no environmental analysis of urban decay – only “Urban Expansion.” Given the number of vacant homes within the current city limits, it makes no sense to create more islands of partially built homes. Unenforceable and vague policy and implementing action statements give lip –service to restoring our historic neighborhoods, but there is nothing specific within the either document.

C cont.

D

We therefore, ask the city to withdraw the addition of approximately 19,000 acres to create the proposed SUDP.

E

To further exacerbate the lack of alternatives analysis, the decision to extend the SUDP in this plan is predicated on antiquated and irrelevant population assumptions. Growth doubled in an approximately 40 year period; however, given the foreclosure disaster, it does not at all follow that these trends will continue. In fact, population declines would perhaps be more appropriate to reference and analyze. For example, the document disingenuously relies on Southeast Asian immigration as evidence of continued growth. The 1,300% spike referenced in this text is tied to one specific historic event, the end of the US -Vietnam War. In addition, projected growth at the University of California is not sustainable. As the recent budget battles have shown, K-12 education is seriously at risk – throughout the state and most certainly in Merced. The Valley, nor the state, will continue to provide UC eligible students if we can't educate our K-12 population. We dispute the figures the UC has touted as to the projected demand for its services. As is acknowledged in this document our underground aquifer, air quality, and basic infrastructure (traffic, sewer) are already at capacity.

According to a recent US Census Bureau survey of our county population is in decline (Merced Sun-Star, October 14, 2010). This very recent article concludes:

...The county's population actually shrank in the four years between 2006 and 2009. It went from 245,658 in 2006 to 245,321 in 2009. In 2006, Merced County saw 5,981 babies born. Only 3,714 were born in 2009 in Merced County. Demographic shifts in the population also included a downward trend in the number of foreign-born residents -- from 26 percent to 24 percent. In 2006, there were roughly 64,960 foreign-born residents in the county. By last year, that number was about 58,979. Of the foreign born, the largest number to leave were people who weren't naturalized.

F

The growth projections outlined in this General Plan and DEIR are not based on accurate data. The inflated and biased formulas touted by the Department of Finance and Great Valley Center have never been accurate. The unprecedented economic crisis we find ourselves in was created by the same interests that relied on faulty growth assumptions in 1997. This irony should not be lost on planners and decision-makers. The only redress is to re-circulate this document with relevant and realistic population data. At the very minimum, the public should be allowed to view the models and assumptions that form the

basis of these very optimistic projections (115,000? by 2020 and 155,000? by 2030) and create a new document that is built on data that has some relationship to our short and long term reality.

F cont.

Included in the proposed General Plan SOI/SUDP is the University of California's Community Plan (UCP). Both the University of California (UC) and UCP have separate land use authority from the City of Merced. Merced County and the UC have yet to complete the required state and federal environmental analysis to include the UC and the UCP in the SUDP for the City of Merced. In point of fact, it is impossible for the City to incorporate this project into its General Plan as the potential impacts are unknowable. In addition, if it is the City of Merced's intention to annex the UCP, then the UC needs to make good on its agreement with the city. The City needs to analyze the impacts to infrastructure when annexing the UCP and to identify its plans for collecting the fees for providing "temporary" sewer and water hook-ups to the University of California. This is a significant amount of money, but UC's total estimate of infrastructure commitments to Merced is \$200 million (see UC amicus brief in the Marina case, state Supreme Court).

G

In addition, other lands annexed by the city must also be approved by the Local Agency Formation Commission (LAFCO). Those annexations and their cumulative impacts on traffic, water, infrastructure, agricultural and habitat conversions must be analyzed.

H

Rhetoric that includes: "compact and efficient growth;" the "village concept;" "avoidance of leap frog development" lose all meaning in this proposed General Plan – the numbers reported don't line up with the compact and efficient use of land (not to mention that the Village concept has been dying a slow and painful death in Modesto for years).

I

In the last update, rural residential centers account for 296 acres, in the proposed document they represent 2,301 acres – an increase of 6.88%. Community Plans described in these documents account for 0 acres in 1997, while in the proposed document they account for 8,115 acres, for a total of 24.25% of the lands in this plan. High to medium density housing actually declined as a percentage of the lands categorized in the plan (3.92% in 1997 to 2.49% of the total for the current 2010 plan). A staggering 26% of the land in this plan is dedicated to low density residency. A quick glance at the color coded map shows large sections of differing shades of yellow for rural residential and low density residential. Finally, while only a small fraction in the 1997 plan, in this new plan, which anticipates a doubling of our population, parks and public open space gain a meager 153 acres of the proposed 33,463 acre proposed annexation.

J

Seven Community Plans are identified in this General Plan (six adopted and one proposed). Phasing policies and implementing actions are too vague to be intelligible to the public. There is nothing that requires city decision-makers from future, premature approvals for community plans that we do not need; rather it is encouraged. There is a curious momentum at work here. Reserve, Area of Interest, Study Area, annexation into an SOI and then fait accompli – part of an SUDP. Once an entitlement is bestowed on a future development – whether needed or not – regardless of consequences in the real estate

K

market or to the public, we are stuck with the results. Bellevue Community Plan serves as a daily reminder to locals, once an entitlement is bestowed, we have to live with the consequences. In this document we now have six additional Community Plans to compete for the most likely to get entitled and then rot award. These Community Plans siphon resources that we can no longer afford to waste and we have the carcass of many a master planned community to prove it (whether county or city planned – the wreckage becomes part of our community). The discussion and lack of analysis regarding Mission Lakes, Castle Farms, the Thornton or 5 Bridges plan all serve as potential contenders for this distinction.

K cont.

There is no analysis of the cumulative impacts of these developments or any other in terms of infrastructure (water and sewer), agricultural land conversion or impacts to biological resources. There is no meaningful or enforceable mitigation identified for areas that are known to possess irreplaceable habitat for threatened and endangered species. There is no comprehensive and cumulative analysis of the impacts or specifics to mitigate for these impacts.

Discussion of potential impacts to biological resources are limited to direct impacts to disturbing nests or in reference to observation during construction. All of these impacts are deemed to be potentially significant but are reduced to a level less than significant as long as construction protocol is followed for native plants, burrowing owls, tiger salamander, kit fox, gardener snake, raptors, etc... However, the cumulative impacts of the permanent removal of habitat are not addressed. Another concern that is not analyzed is the very real and disturbing pattern that has emerged with local land use authorities: projects have not triggered state or federal consultation with the appropriate regulatory agencies. In other words, the California Department of Fish and Game, the United States Fish and Wildlife Service, The US Army Corps of Engineers, and others are not consulted. It is the responsibility of the lead agency to initiate contact between a private landowner and the appropriate regulatory agency and appropriate department within that agency.

L

M

In addition, agricultural land throughout the General Plan is implied to be value only in relationship to being classified as "prime." This is problematic. There is no analysis of the valuable role and therefore impacts to the community for the loss of grazing land/open space plays in recharging our local drinking water. In addition, these lands are filled with the last significant contiguous vernal pools in the nation and provide the habitat necessary to sustain irreplaceable threatened and endangered species. The role of recharge that local creeks and tributaries provide is ignored and their potential loss or degradation is not available for analysis, yet is well known to Merced Area Groundwater Pool Interests, regularly attended by Merced City engineers since its inception nearly a decade ago.

N

O

Reliance on future interagency cooperation is seemingly offered as a substitute for mitigation. As the City knows well, (1) this is only as good as an accurate notification process and there are too many instances of inaccurate and failure to notice to be counted from Merced; (2) as agency behavior during the recent boom indicated (see the UC Merced "red and green teams" and Interior Department's two IOG reports on Julia MacDonald, for

P

example), the Merced public has no reason, based on experience, to count on the agencies to uphold environmental law and regulation automatically. Interagency cooperation can as equally well be a system for avoiding mitigation as for implementing it. Yet, interagency cooperation is referenced countless times to address significant impacts to groundwater, traffic and wastewater infrastructure and agricultural lands whether for farming or providing valuable recharge and habitat for threatened and or endangered species. For example, mitigation for potential farmland is deferred to a process called CAPS that fell apart years ago. The Merced County Notice of Preparation letter raises significant issues regarding the need for specific agricultural mitigation and habitat conservation, yet these issues are not addressed in the EIR or General Plan. If the County is in a position to lecture the City on wetlands and on the loss of habitat and absence of specific enforceable mitigation for specific projects such as the UCP, Yosemite Lakes Estates, and the Vista del Lago, this is a real cause for public concern.

P cont.

In addition, Areas of Interest (AOI) and RRC's are discussed in contradictory ways throughout the General Plan. The AOI is at once an area of planning or, in the case of farmland conversion adjacent to the proposed Campus Parkway, it is an area designate for protection. The RRC is criticized, but becomes a core of the City's annexation plans. There is no analysis of the impacts of adding these ranchette developments to the City sewer and water infrastructure.

Q

There is no traffic study to analyze. In fact, the traffic element and analysis is notable for what it doesn't include. If the City is relying on the Merced County Association of Governments for its "ring road" conceptual plans, those impacts must be analyzed in these documents.

R

There is no Climate Study Plan. This deferral provides no analysis of the impacts of this plan to air quality. There is no way for members of the public to assess whether or not the Climate Study Plan is in compliance with sound health policy and current state law. One member of the public took it upon herself to supply the City with a multitude of documents regarding the Attorney General's most recent guidelines for analyzing greenhouse gases and impacts to our already overburdened air basin. It would seem common sense, that the City of Merced, in the San Joaquin Valley air basin, would consider health impacts as a core component of its updated land use document. It would seem responsible, sound policy for the City *to get in front* of the minimum requirements of law and take an aggressive stance on protecting the health of community members and future generations. However, it does not appear that health or air quality considerations are required to foster the growth of housing developments. Whether or not there is a population willing to risk their health, and the health of their children, in order to move to Merced is not analyzed.

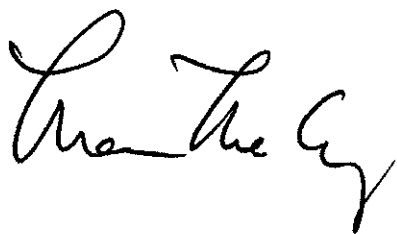
S

Finally, the 1,892 pages of the relevant appendices were not made available in paper form at the local library. Moreover, none of the information included on CD-Rom included an index to identify documents in this jumble of documents or a Table of Contents which is user friendly – i.e., includes page numbers.

T

Thank you for your thoughtful consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Maureen McCorry". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

Maureen McCorry

cc: Interested Parties

Letter 17 Maureen McCorry, President, San Joaquin et al

Comment 17A: *The Merced Vision 2030 General Plan and above referenced DEIR have serious flaws as outlined below. The most alarming is the decision to leave out a contemporaneous Housing Element. The legality of this omission is debatable. We request that the General Plan and the accompanying DEIR be re-circulated to include an updated 2010 Housing Element to be considered within the context of this General Plan Update so as to properly analyze population and housing needs in an integrated package.*

Response 17A: Unlike other elements of the General Plan, the Housing Element must be updated every seven years and that schedule often does not correspond to updates to other Elements of a General Plan. The most recent update of the Housing Element was due to the State Department of Housing and Community Development (HCD) on August 31, 2009. The City submitted a draft Housing Element to State HCD in August 2009. State HCD reviewed the document and determined that more detail in some areas was needed before it could be approved by the department. The City Council adopted a revised Housing Element on May 16, 2011 consistent with the Draft 2030 General Plan, and the document was subsequently submitted to HCD for final review. Although this might seem contrary to the intent of the General Plan, this approach was supported by the City so that recent legislation (e.g., providing land for residential development in close proximity to jobs and services to reduce traffic and improve air quality) could be considered in conjunction with other updates to the Housing Element, and that the Housing Element will be consistent with the General Plan as required by State law.

Comment 17B: *The context for planning has changed so drastically that a 2004 stand alone Housing Element is useless; the legality of replacing this Housing Element after approval and certification of this General Plan and DEIR well after the 5 year state requirement is questionable. It is not appropriate to piecemeal environmental analysis and it is not sound policy.*

Response 17B: Please see Response 17A.

Comment 17C: *The current plan proposes a coterminous SOI and SUDP that includes 33,463 acres. By adopting the 1997 SOI as the new SUDP, the city may well be committing us to future generations of partially built islands (formerly described as "Master Planned" Communities). The current growth boundary was created at a time where there were stars in the eyes of Merced Boosters (circa, 1997). Since 2008, we have been sharing the title of "foreclosure capital" of the nation with two other San Joaquin Valley cities/counties. This dramatic change in affairs is not at all considered in the General Plan nor addressed or analyzed in the DEIR. The city and county of Merced are in the throes of an economic catastrophe- which has yet to be played out. Over the next 20 years, we believe it is necessary to absorb the current inventory of housing before expanding north and south (or east). There is no acknowledgement of this fact in these documents.*

Response 17C: The General Plan discusses the progression of land development, and changes in the SOI and SUDP. The proposed coterminous SOI and SUDP are based upon anticipated downturns and upswings in the economy within the City, Merced County and the State. It is

anticipated that by 2030, housing needs and other development will require a substantial portion of the proposed 33,463 acres. Policies and actions included in the General Plan and other policy documents will ensure that residential, commercial, and industrial development, including infrastructure, occurs in appropriately designated areas, and meet City, state, and federal requirements.

The City respectfully disagrees with the idea that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 17D: *There is no environmental analysis of urban decay - only "Urban Expansion." Given the number of vacant homes within the current city limits, it makes no sense to create more islands of partially built homes. Unenforceable and vague policy and implementing action statements give lip -service to restoring our historic neighborhoods, but there is nothing specific within the either document.*

Response 17D: Please see Response 17C.

Comment 17E: *We therefore, ask the city to withdraw the addition of approximately 19,000 acres to create the proposed SUDP.*

Response 17E: The revised Housing Element (adopted on May 16, 2011) addresses economic and social conditions and appropriate land use designations that are consistent with the General Plan. Please also see Response 17C.

Comment 17F: *To further exacerbate the lack of alternatives analysis, the decision to extend the SUDP in this plan is predicated on antiquated and irrelevant population assumptions. Growth doubled in an approximately 40 year period; however, given the foreclosure disaster, it does not at all follow that these trends will continue. In fact, population declines would perhaps be more appropriate to reference and analyze. For example, the document disingenuously relies on Southeast Asian immigration as evidence of continued growth. The 1,300% spike referenced in this text is tied to one specific historic event, the end of the US -Vietnam War. In addition, projected growth at the University of California is not sustainable. As the recent budget battles have shown, K-12 education is seriously at risk throughout the state and most certainly in Merced. The Valley, nor the state, will continue to provide UC eligible students if we can't educate our K-12 population. We dispute the figures the UC has touted as to the projected*

demand for its services. As is acknowledged in this document our underground aquifer, air quality, and basic infrastructure (traffic, sewer) are already at capacity.

According to a recent US Census Bureau survey of our county population is in decline (Merced Sun-Star, October 14, 2010). This very recent article concludes:

...The county's population actually shrank in the four years between 2006 and 2009. It went from 245,658 in 2006 to 245,321 in 2009. In 2006, Merced County saw 5,981 babies born. Only 3,714 were born in 2009 in Merced County. Demographic shifts in the population also included a downward trend in the number of foreign born residents -- from 26 percent to 24 percent. In 2006, there were roughly 64,960 foreign-born residents in the county. By last year, that number was about 58,979. Of the foreign born, the largest number to leave were people who weren't naturalized.

The growth projections outlined in this General Plan and DEIR are not based on accurate data. The inflated and biased formulas touted by the Department of Finance and Great Valley Center have never been accurate. The unprecedented economic crisis we find ourselves in was created by the same interests that relied on faulty growth assumptions in 1997. This irony should not be lost on planners and decision-makers. The only redress is to re-circulate this document with relevant and realistic population data. At the very minimum, the public should be allowed to view the models and assumptions that form the basis of these very optimistic projections (115,000? by 2020 and 155,000? by 2030) and create a new document that is built on data that has some relationship to our short and long term reality.

Response 17F: Please see Comment Letter 15, Response 15B and Comment Letter 17, Response 17C. As noted there, estimated population growth was based on the best available information. Population growth rates will continue to fluctuate throughout the planning period, and may be higher or lower than those anticipated by the City. Additionally, the General Plan Update explains the benefits of planning for more population growth than is estimated on page 2-6. Also, see Response to Comment 2G.

Comment 17G: *Included in the proposed General Plan SOI/SUDP is the University of California's Community Plan (UCP). Both the University of California (UC) and UCP have separate land use authority from the City of Merced. Merced County and the UC have yet to complete the required state and federal environmental analysis to include the UC and the UCP in the SUDP for the City of Merced. In point of fact, it is impossible for the City to incorporate this project into its General Plan as the potential impacts are unknowable. In addition, if it is the City of Merced's intention to annex the UCP, then the UC needs to make good on its agreement with the city. The City needs to analyze the impacts to infrastructure when annexing the UCP and to identify its plans for collecting the fees for providing "temporary" sewer and water hook-ups to the University of California. This is a significant amount of money, but UC's total estimate of infrastructure commitments to Merced is \$200 million (see UC amicus brief in the Marina case, state Supreme Court).*

Response 17G: In response to the comment regarding the City's ability to incorporate "this project" into the General Plan, the DEIR assigns land uses and circulation patterns and project

impacts accordingly. The City agrees with the Commenter that they must analyze the impacts to infrastructure when annexing the UCP. During the annexation process, the City will work with the UC and the County to determine costs for providing services to the area. The City is unclear on the Commenter's reference that, "the UC needs to make good on its agreement with the City." This comment and other comments regarding the cost of infrastructure are outside the scope of the environmental document.

Comment 17H: *In addition, other lands annexed by the city must also be approved by the Local Agency Formation Commission (LAFCO). Those annexations and their cumulative impacts on traffic, water, infrastructure, agricultural and habitat conversions must be analyzed.*

Response 17H: The City recognizes that LAFCO's role in proposed annexation of lands is an important one, as described on page 3.9-19 of the DEIR. The comment is noted.

Comment 17I: *Rhetoric that includes: "compact and efficient growth;" the "village concept;" "avoidance of leap frog development" lose all meaning in this proposed General Plan - the numbers reported don't line up with the compact and efficient use of land (not to mention that the Village concept has been dying a slow and painful death in Modesto for years).*

Response 17I: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. The Commenter has, it appears, based this comment on the previous observation regarding a substantially lower population growth than was utilized by the City in the General Plan Update. However, the City is committed to promoting the "smart growth" practices embodied in the "Village Concept", which include compact and efficient growth and infill—principles increasingly promoted in State and federal law. Also, State law and good planning practices demand that land use designations, alternative transportation routes, utilities, and infill and similar policies/practices be in place before development occurs.

Comment 17J: *In the last update, rural residential centers account for 296 acres, in the proposed document they represent 2,301 acres - an increase of 6.88%. Community Plans described in these documents account for 0 acres in 1997, while in the proposed document they account for 8,115 acres, for a total of 24.25% of the lands in this plan. High to medium density housing actually declined as a percentage of the lands categorized in the plan (3.92% in 1997 to 2.49% of the total for the current 2010 plan). A staggering 26% of the land in this plan is dedicated to low density residency. A quick glance at the color coded map shows large sections of differing shades of yellow for rural residential and low density residential. Finally, while only a small fraction in the 1997 plan, in this new plan, which anticipates a doubling of our population, parks and public open space gain a meager 153 acres of the proposed 33,463 acre proposed annexation.*

Response 17J: The land use tables reflect total acreages for each land use in the 2015 General Plan Update have been revised as described in Response to Comment 11A. These revisions have changed the percentages as referenced by the commenter. For example, Rural Residential land use, including Agricultural residential was revised from a total of 410 acres to a total of 429.35

acres. The 2030 estimates for this land use are 2,434.26, an increase of 2,004.91 acres or 566% (up from the original estimated increase of 489%). The increase reflects the inclusion of the long-established Rural Residential Centers west of Lake Road within the City's proposed SUDP/SOI and does not reflect additional areas planned for such growth; the City simply is recognizing the current land use pattern in the area between the current City SUDP and the UC Merced campus and planned University Community.

Table 3-9.1, used by the commenter in determining the percentages used in the comment, groups several land use designations together as "other lands" which is misleading when determining actual acreage designated for Rural Residential use. A better comparison can be made when using Table 2-1, as this table lists "Village Residential," and "Residential Reserve" (which includes low-density as well as higher density residential development) for the 2015 period. In Table 2-1, the total of residential land designated within the existing City Limits/SUDP as low to low-medium density (single family) for the 2015 General Plan Update is 9,001.46 acres. The total acreage for the upcoming planning period (2030 General Plan Update) is an additional 321.04 acres, and there is no additional acreage for either the "Village Residential" or the "Residential Reserve" designation. Of the total of 12,864.30 acres of additional land proposed for the 2030 General Plan Update, approximately 2.49% is designated for low-density residential development, compared with the 43.46% of the total 20,711.33 acres estimated in the 2015 General Plan Update.

Additionally, much of the land referenced as Community Plan Areas is outside the current City limits and is planned for annexation into the City. As noted in Response 17I, the City is committed to compact and efficient growth and will continue to encourage higher density development. As described in Response 14D, Community Plans must describe how the existing community will meet the City's goals, standards, and ordinances before being considered for annexation.

Also, it should be noted that the City currently includes 152.91 acres of *additional* parks and open space lands (Table 2-1, page 2-6 of the DEIR), or approximately 1.2% of the 12,864 total acres proposed. The total acreage for parks and open space will then be 1,021.91 acres (or approximately 3.04%) of the total 33,575 acres proposed within the SUDP/SOI.

Comment 17K: *Seven Community Plans are identified in this General Plan (six adopted and one proposed). Phasing policies and implementing actions are too vague to be intelligible to the public. There is nothing that requires city decision-makers from future, premature approvals for community plans that we do not need; rather it is encouraged. There is a curious momentum at work here. Reserve, Area of Interest, Study Area, annexation into an SOI and then fait accompli - part of an SUDP. Once an entitlement is bestowed on a future development - whether needed or not - regardless of consequences in the real estate market or to the public, we are stuck with the results. Bellevue Community Plan serves as a daily reminder to locals, once an entitlement is bestowed, we have to live with the consequences. In this document we now have six additional Community Plans to compete for the most likely to get entitled and then rot award. These Community Plans siphon resources that we can no longer afford to waste and we have the carcass of many a master planned community to prove it (whether county or city planned - the wreckage becomes part of our community). The discussion and lack of analysis regarding*

Mission Lakes, Castle Farms, the Thornton or 5 Bridges plan all serve as potential contenders for this distinction.

There is no analysis of the cumulative impacts of these developments or any other in terms of infrastructure (water and sewer), agricultural land conversion or impacts to biological resources. There is no meaningful or enforceable mitigation identified for areas that are known to possess irreplaceable habitat for threatened and endangered species. There is no comprehensive and cumulative analysis of the impacts or specifics to mitigate for these impacts.

Response 17K: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Individual projects are subject to a case by case analysis wherein the City must weigh the impacts and benefits of a project. Pages 3.16-16 through 3.16-17 discuss cumulative impacts to water supply, wastewater, stormwater, and solid waste as the result of expansion of the City limits. Pages 3.2-7 and 3.2-8 discuss cumulative impacts to agricultural resources and acknowledge that impacts to this resource would be, despite efforts to limit development of agriculturally productive land, significantly, cumulatively, considerable and unavoidable. Cumulative impacts to biological resources are discussed on pages 3.4-42 and 3.4-43 of the DEIR. Impacts to biological resources are summarized as follows: "Although individual project impacts can be mitigated, based on the standards of significance with implementation of agency-mandated surveys and mitigation measures for special-status species, the cumulative impacts of development in accordance with the proposed General Plan and other General Plans in the County are significant, and the project's incremental contribution to this impact is itself *cumulatively considerable*. This impact cannot be mitigated to a less than cumulatively considerable level and thus is *significant and unavoidable*."

Comment 17L: *Discussion of potential impacts to biological resources are limited to direct impacts to disturbing nests or in reference to observation during construction. All of these impacts are deemed to be potentially significant but are reduced to a level less than significant as long as construction protocol is followed for native plants, burrowing owls, tiger salamander, kit fox, gardener snake, raptors, etc... However, the cumulative impacts of the permanent removal of habitat are not addressed.*

Response 17L: Please see Response to Comment 17K.

Comment 17M: *Another concern that is not analyzed is the very real and disturbing pattern that has emerged with local land use authorities: projects have not triggered state or federal consultation with the appropriate regulatory agencies. In other words, the California Department of Fish and Game, the United States Fish and Wildlife Service, The US Army Corps of Engineers, and others are not consulted. It is the responsibility of the lead agency to initiate contact between a private landowner and the appropriate regulatory agency and appropriate department within that agency.*

Response 17M: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that

does not mean that the City agrees with those statements. The comment does not identify any specific project, and therefore a specific response is not possible. The City follows appropriate protocol when consultation with regulatory agencies is required and the agencies mentioned above were all consulted during the General Plan Update process.

Comment 17N: *In addition, agricultural land throughout the General Plan is implied to be value only in relationship to being classified as "prime." This is problematic. There is no analysis of the valuable role and therefore impacts to the community for the loss of grazing land/open space plays in recharging our local drinking water.*

Response 17N: Agricultural land resources are evaluated according to CEQA Guidelines, Appendix G, which specifically requires an analysis of lands considered “prime.”

Comment 17O: *In addition, these lands are filled with the last significant contiguous vernal pools in the nation and provide the habitat necessary to sustain irreplaceable threatened and endangered species. The role of recharge that local creeks and tributaries provide is ignored and their potential loss or degradation is not available for analysis, yet is well known to Merced Area Groundwater Pool Interests, regularly attended by Merced City engineers since its inception nearly a decade ago.*

Response 17O: Vernal pools and biological resources located on agricultural lands must be addressed in environmental documents specific to future projects as they come before the City’s Planning Division as proposed development projects.

Comment 17P: *Reliance on future interagency cooperation is seemingly offered as a substitute for mitigation. As the City knows well, (1) this is only as good as an accurate notification process and there are too many instances of inaccurate and failure to notice to be counted from Merced; (2) as agency behavior during the recent boom indicated (see the UC Merced "red and green teams" and Interior Department's two IOG reports on Julia MacDonald, for example), the Merced public has no reason, based on experience, to count on the agencies to uphold environmental law and regulation automatically. Interagency cooperation can as equally well be a system for avoiding mitigation as for implementing it. Yet, interagency cooperation is referenced countless times to address significant impacts to groundwater, traffic and wastewater infrastructure and agricultural lands whether for farming or providing valuable recharge and habitat for threatened and or endangered species. For example, mitigation for potential farmland is deferred to a process called CAPS that fell apart years ago. The Merced County Notice of Preparation letter raises significant issues regarding the need for specific agricultural mitigation and habitat conservation, yet these issues are not addressed in the EIR or General Plan. If the County is in a position to lecture the City on wetlands and on the loss of habitat and absence of specific enforceable mitigation for specific projects such as the UCP, Yosemite Lakes Estates, and the Vista del Lago, this is a real cause for public concern.*

Response 17P: The commenter raises a number of issues that reflect the commenter’s interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. The City’s relationships with other agencies and organizations are vital. It is important to note that certain agencies have regulatory

authority beyond that of the City's and therefore must be relied upon for regulation. The Notice of Preparation (NOP) to which the Commenter refers was prepared and distributed prior to preparation of the DEIR to give agencies, residents, and other interested parties an opportunity to provide the City insight into issues that might warrant special attention in the DEIR. We believe it was the County's intent to notify the City that several areas that it was considering for expansion into the SUDP or were already in the SUDP had plans that should be incorporated into the General Plan Update 2030. The City appreciates the County's input on sensitive issues such as mitigation measures for agricultural lands and habitat and open space, as the County has had considerable experience with these important matters.

Comment 17Q: *In addition, Areas of Interest (AOI) and RRC's are discussed in contradictory ways throughout the General Plan. The AOI is at once an area of planning or, in the case of farmland conversion adjacent to the proposed Campus Parkway, it is an area designate for protection. The RRC is criticized, but becomes a core of the City's annexation plans. There is no analysis of the impacts of adding these ranchette developments to the City sewer and water infrastructure.*

Response 17Q: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. The Rural Residential Centers (RRCs) are typically residential areas currently within the County, and proposed for inclusion in the City SUDP/SOI. The County's General Plan recognizes that these areas, which have been either developed as low-density residential or remain as agricultural areas (or recreational or institutional areas) do not have full urban services. The Areas of Interest (AOI) are those areas currently in the County jurisdiction that are also proposed for inclusion in the City SUDP/SOI in the long-term, but which also have prior constraints that prevent them from becoming immediately available for development and thus are not included in the proposed SUDP/SOI for this General Plan Update. AOI areas are not being considered for development for at least the next 20 to 40 years, although the General Plan Update does allow for some flexibility. The City's concern with both AOI and RRC areas is that they have been at least partially built-out. This limits the City's ability to provide additional, improved services, to require development at increased density, or to reduce conversion of agricultural lands. The City will continue to work with the County, as well as residents in each of these areas to transition the areas into the City's SUDP/SOI.

Comment 17R: *There is no traffic study to analyze. In fact, the traffic element and analysis is notable for what it doesn't include. If the City is relying on the Merced County Association of Governments for its "ring road" conceptual plans, those impacts must be analyzed in these documents.*

Response 17R: A Traffic Analysis was prepared by Fehr and Peers in May 2009. Traffic data and a summary of the traffic impact modeling are included as Appendix K of the DEIR.

Comment 17S: *There is no Climate Study Plan. This deferral provides no analysis of the impacts of this plan to air quality. There is no way for members of the public to assess whether or not the Climate Study Plan is in compliance with sound health policy and current state law.*

One member of the public took it upon herself to supply the City with a multitude of documents regarding the Attorney General's most recent guidelines for analyzing greenhouse gases and impacts to our already overburdened air basin. It would seem common sense, that the City of Merced, in the San Joaquin Valley air basin, would consider health impacts as a core component of its updated land use document. It would seem responsible, sound policy for the City to get in front of the minimum requirements of law and take an aggressive stance on protecting the health of community members and future generations. However, it does not appear that health or air quality considerations are required to foster the growth of housing developments. Whether or not there is a population willing to risk their health, and the health of their children, in order to move to Merced is not analyzed.

Response 17S: The DEIR includes an analysis of Air Quality and Climate Change on pages 3.3-1 and 3.17-1 respectively. The City is in the process of preparing a Climate Action Plan as outlined in Sustainable Development Policy SD-1.7, beginning on page 8-29 of the Draft *Merced Vision 2030 General Plan*. A background report has already been prepared and is available for viewing on the City's website along with information about the City's Climate Action Plan Ad Hoc Advisory Committee.

Comment 17T: *Finally, the 1,892 pages of the relevant appendices were not made available in paper form at the local library. Moreover, none of the information included on CD-Rom included an index to identify documents in this jumble of documents or a Table of Contents which is user friendly - i.e., includes page numbers.*

Response 17T: Per the Notice of Availability for the General Plan Draft Environmental Impact Report, a hard copy of the appendices was available from the City Clerk's Office and the City Planning Division. The electronic copy included a Table of Contents following the title page. The Table of Contents for the appendices was located on page three of the 1,892 page document.

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October 22, 2010

Via Electronic Mail

Kim Espinosa, Planning Manager
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678 West 18th Street
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espinosak@cityofmerced.org

Re: *Draft Program Environmental Impact Report*
City of Merced – Merced Vision 2030 General Plan
SCH# 2008071069

Dear Ms. Espinosa:

This office represents the San Joaquin Raptor Rescue Center and Protect Our Water with respect to the above-referenced Merced Vision 2030 General Plan (“GP” or “Project”). Thank you for the opportunity to provide these comments on the Draft EIR (“DEIR”) for the Project on behalf of our clients.

As explained below, the DIER does not comply with the California Environmental Quality Act (“CEQA”) ¹ in certain essential respects. The GP also violates State Planning law.

The following represent the critical concerns:

- Faulty Assumptions Regarding Population Increases.

The City admits that the GP preferred alternative exceeds the potential population projections fro 2030. (DEIR, p. ES-8.) It is disturbing to note that the DEIR goes on to state that the Project will not induce growth, finding the impact to be less than significant with “no mitigation measure required.” (DEIR, p. ES-

¹ Public Resources Code § 2100 *et seq.*

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34.) Other sections of the DEIR admit that the GP will induce growth. (DEIR, p. 3.12-9.)

The City begins with a completely unrealistic population projection (116,800) that is based on historic growth rates during a housing boom, and then ignores the growth inducing nature of the decision to pursue a Project that will accommodate almost three times the population increase over the assumed projection. The DEIR stats that the "General Plan at buildout (between 152,063 and 328,956 persons) exceeds that projected for 2030 (116,800). Figure 4-1 shows the Reduced Project Area Alternative. (DEIR, p. 4-10.)

Designating more land than is necessary to accommodate the projected population increase is the definition of growth inducing, and the Reduced Growth Alternative provides an alternative that would avoid this significant impact. The DIER's analysis falls short of CEQA's requirements by failing to reveal to the public and the decision-makers that the over-expansion of the urban boundary will induce growth, and by failing to include adequate mitigation and/or pursue the reduced growth alternative as the preferred project. (A copy of a recent Merced County Superior Court decision addressing these very issues is attached for your reference. The Project and DEIR in their present form violate the same laws as those alleged to be violated by the challenged City of Livingston's general plan update.)

Additionally, the City admits that the updated "Housing Element is required to include an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs," and then goes on to say that the Housing Element is being prepared separately and will be finalized by the end of 2010. (DEIR, p. 3.12-5.) In other words, the City is analyzing the housing needs and inventory by adopting a land use map allowing for tremendous growth, without having the information necessary to support the analysis.

The City simply admits that the increased City SOI/SUDP is more than is necessary to accommodate population projections. This results in the unnecessary identification of farmland and open space for conversion to urban uses. This is an abuse of discretion and a violation of the State Planning Laws and of CEQA.

B. Impacts to agriculture

The DEIR states that "the Plan Update could result in conversion of approximately 8,750 acres of undeveloped land to developed urban land within the proposed SUDP/SOI and outside the City limits of Merced, of which 1,898 acres are Prime Farmland." (DEIR, p. 3.2-4.) The DEIR includes one mitigation measure in the form of a completely unenforceable "policy" of "encouraging" farming outside of the City limits, and "working cooperatively" with organizations endeavoring to preserve farmland in the region. (DEIR, p. 3.2-5.)

C cont.

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Upon finding a significant environmental effect, CEQA mandates mitigation unless no possible measures exist. (Pub. Res. Code § 21002.) Mitigation is divided into operative categories. (CEQA Guidelines §15370.) In general, mitigation includes avoiding or altering the causative action (§15370(a), (b)), attacking the resultant impact through restoration, rehabilitation or preservation (§15370(c), (d)) or compensating for impact through resource replacement or substitution (§15370(e)). The Legislature has found that conservation easements, which fall into the later category, may be used to mitigate impacts associated with conversion of unique land types. (Pub. Res. Code § 21083.4 (b) [Conversion of oak woodlands may be mitigated through direct purchase of oak woodland conservation easements or contribution of funds to a conservation easement acquisition program].)²

F cont.

The DEIR for the Project, however, does not include any specific measures to mitigate the adverse environmental impact of eliminating prime and Important Farmland. Mitigation Measure 3.2-1 includes a laundry list of possible mitigation measures. The measure contains no performance standards and is entirely unenforceable.

This is an example of an area of impact where the EIR concludes that the impact will be significant and unavoidable, and then improperly abandons the effort of development and adoption of mitigation measures. The requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures, and whether they will substantially lessen the significant environmental effects of the project. (Pub. Res. Code §§ 21002, 21081(a)(3); *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1790.) The requirement is not abated simply because the measures will not lessen the effects to below a level of significance. Accordingly, a statement of overriding considerations does not exempt a project from mitigation if there are feasible measures that would reduce substantially, albeit not eliminate, the significant environmental effects of the project

G

The protection of prime farmland in California occupies a central position in numerous state laws and CEQA itself. Mitigation may include “[c]ompensating for the impact by replacing or providing substitute resources or environments.” (CEQA Guidelines § 15370(e).) Conservation easements are an appropriate and desirable means of protecting agricultural lands against conversion to urban use. (Pub. Res. Code §§ 10201-10202.) The Legislature has determined that the preservation of the limited supply of agricultural land is necessary for the maintenance of California’s agricultural economy and the

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² Cases recognize the efficacy and legality of conservation easements as mitigation for conversion of unique land forms to development. See e.g., *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1409 (species); *A Local and Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1783 (developer was required to pay a fee to support open space in the area to be developed).

state's economy. (Govt. Code § 51220.) In 1979, the Legislature provided for the enforceability of conservation easements. (See Civ. Code §§ 815-816.) The Legislature found and declared that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California." (Civ. Code § 815.) The Agricultural Land Stewardship Program Act of 1995 establishes a state program to promote the establishment of agricultural easements. (Pub. Res. Code § 10200 *et seq.*)

H cont.

The Legislature also declared the intent, among other things, to "(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural economy of rural communities, as well as that of the state, for future generations of Californians. [¶] (d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land. [¶] (e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation...." (Pub. Res. Code § 10202.)

I

The DEIR concludes that the Project will result in the conversion of 1,898 acres of prime farmland. (DEIR, p. 3.2-4.) The direct effects of conversion include the loss of the land converted. The indirect effects of the instant Project, among others, include the resultant increased development pressures on remaining farmland. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 791.)

The DEIR fails to evaluate feasible, enforceable mitigation measures as required by CEQA.

Many jurisdictions require purchase of conservation easements as mitigation for the conversion of agricultural lands to urban uses. The following are references to policies from the general plans and agricultural mitigation programs showing that agricultural mitigation is feasible and widely accepted as effective:

1. City of Brentwood Municipal Code Chapter 17.730
2. City of Davis Municipal Code Chapter 40A.03.0
3. City of Gilroy Agricultural Mitigation Policy
4. Santa Clara County Local Agency Formation Council Agricultural Mitigation Policies
5. City of Winters Habitat Mitigation Policy
6. Yolo County Code (excerpts of Title 8: Land Development and Zoning, Chapter 2: Zoning, Article 24: General Provisions)
7. Yolo County Local Agency Formation Commission Agricultural Conservation Policy
8. Stanislaus County Agricultural Element
9. Stanislaus County Agricultural Mitigation Program Guidelines
10. South Livermore Valley Area Plan

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- 11. Napa County General Plan
- 12. Solano County General Plan
- 13. City of Stockton Public Facilities Fee Program

J cont.

C. Global Warming:

The City simply claims that there are no existing thresholds of significance applicable to the Project, nor are there regulatory requirements that presently exist that the Project would violate. (DEIR, p. 3.17-13.)

The City ignores the fact that for various impacts evaluated under CEQA there are no universally accepted thresholds of significance, and this does not excuse and agency from evaluating the impact and adopting feasible mitigation measures.

CEQA requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Res. Code § 21002.1 (b).) This requirement is the “core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.) Global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable. (See Pub. Res. Code, § 21083.05(a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.)

K

In a white paper on Global Warming Measures specifically for general plans, the Attorney General has provided information regarding feasible mitigation measures for the reduction in GHG emissions. (A copy of the January 22, 2010, white paper is attached.) The Project approval must include adoption of true mitigation measures that will be implemented (e.g, through ordinances, programs, development standards, or land use designations) to reduce or avoid environmental impacts. (See CEQA Guidelines, § 15126.4(a)(2).) Each mitigation measure should be paired with an enforceable, achievable standard.

1. Energy consumption

The California Natural Resources Agency recently reaffirmed that “CEQA’s requirement to analyze and mitigate energy impacts of a project is substantive, and is not merely procedural.” (http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf, p. 71.)

L

Pursuant to CEQA Greenhouse Gas Guidelines promulgated under SB 97, Appendix F of the Guidelines was revised to clarify that an EIR *shall* consider energy implications of the proposed project, and where applicable, items that should be considered include the energy supply and energy use patterns of the

region, the effects of the project on local and regional energy supplies, and measures to reduce energy consumption. (CEQA Guidelines, Appendix F.)

The DEIR fails to conform to Appendix F. To properly assess the Project's energy consumption, the City should provide information on the extent to which onsite renewable energy is being used in the City, and discuss whether the City currently has any programs or requirements relating to energy efficiency, renewable energy or green building requirements.

The FEIR does not address energy impacts directly, but the Project includes several permissive policies encouraging energy conservation.

The City is required by CEQA to adopt all feasible mitigation measures, and yet it relies entirely on a series of vague and aspirational measures aimed at reducing energy consumption. Given their vagueness, uncertainty and lack of enforceability, the DEIR does not, and cannot, quantify or describe the actual energy conservation benefits that will result from these measures. As noted by the Attorney General in "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions, California Attorney General's Office," "[w]hile a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented." (See attached.)

The City does not have a single specific and enforceable policy to reduce non-renewable energy consumption.

2. Proposed Mitigation for the Project's Greenhouse Gas Impacts is Vague, Unenforceable, and Improperly Deferred

While the DEIR properly acknowledges that Project greenhouse gas impacts are significant, it fails to adopt all feasible mitigation and alternatives to minimize this impact as required under CEQA. (Pub. Res. Code § 21002.) Like its treatment of energy impacts, mitigation for the full range of the Project's greenhouse gas impacts is improperly vague, unenforceable and deferred. As recently set forth by the Court of Appeal in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, "the novelty of greenhouse gas mitigation measures is one of the most important reasons that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena." (*Id.*)

Rather than propose meaningful mitigation for the Project's greenhouse gas impacts in the EIR, the City simply provides a list of hortatory policies that the City claims will mitigate greenhouse gas emissions. (DEIR, p. 3.7-10 to 3.7-12.) There is not even a commitment to the preparation of a climate action plan.

L cont.

M

In invalidating an EIR for improperly deferring mitigation of greenhouse gas impacts, the Court in *Communities For a Better Environment v. City of Richmond*, held that the “solution was not to defer the specification and adoption of mitigation measures until a year after Project approval; but, rather, to defer approval of the Project until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment.” In that case, the City of Richmond had included a commitment to develop a climate action plan. In this case, the City has not even come close to that type of commitment. If the City of Richmond’s promise to prepare a Climate Action Plan within a year was insufficient, the City of Merced’s vague analysis and permissive policies with no mention of a Climate Action Plan most certainly is not enough.

M cont.

With only vague, permissive policies as currently contemplated, land uses would be locked in that could frustrate attainment of emission reduction objectives. The time to analyze and commit to sustainable, low-carbon growth is when the General Plan is developed, not after.

D. Biological Resources

The DEIR’s analysis of impacts to biological resources is inadequate. For example, the bird list is incomplete. One missing piece is any discussion of rookeries. Merced County has significant problems associated with protecting rookeries, and yet they are not mentioned. Additionally, the DIER fails to mention that California tiger salamander, which is now listed as threatened by state of California.

N

E. Water supply

An EIR must inform decision-makers and the public of the intended sources of water for the project, and the environmental impacts of exploiting those sources. (*Vineyard Area Citizens for Responsible Growth, Inc. v. Rancho Cordova* (2007) 40 Cal.4th 412, 431, citing *Stanislaus Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206.) Such analysis cannot be deferred. (*Ibid.*) “An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.” (*Ibid.*)

O

The DEIR does not adequately analyze the impacts of the Project on water supply. Instead, it acknowledges that increased use of the aquifer would result in an impact that would be significant and that no mitigation is available. (DEIR, p. 3.8-16.)

The DEIR does not even attempt to mitigate the impacts, and abandons the DEIR’s reliance on GP goals and policies as mitigation, and simply determines that no mitigation is available.

This approach is insufficient. "An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an 'environmental alarm bell' (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392) before the project has taken on overwhelming 'bureaucratic and financial momentum.' (*Id.* at 395.)" (*Vineyard, supra*, 40 Cal.4th at 441.) Thus, the water supply analysis fails to comport with CEQA.

O cont.

F. Violation of State Planning Laws

1. GP is internally inconsistent

Under California law, a general plan must be integrated and internally consistent, both among the elements and within each element. (Govt. Code § 65300.5.) If there is internal inconsistency, the general plan is legally inadequate. For example, a general plan was found to be internally inconsistent where a portion of the circulation element concluded that existing roads were sufficient for projected traffic increases, while another section of the circulation element indicated that traffic conditions were deteriorating as a result of continued subdivision development. (*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 103.)

P

The GP has competing goals and policies, where one encourages infill and concentric growth adjacent to existing developed areas with little discussion in the General Plan or DEIR, but with vague references to open space and protection of farmland. The GP, however, allows for the unmitigated conversion of almost 2,000 acres of farmland when the area is not even necessary to accommodate projected population increases.

California law requires internal consistency in a general plan. This legal requirement is mandatory, and not up to a discretionary determination by the decision makers of a willingness to comply.

2. Open Space Lands Act of 1972 (Govt. Code § 65560 et seq.)

The GP also violates the Open Space Lands Act of 1972. (Govt. Code § 65560 et seq.) There are multiple Government Code sections contained in the Act that require a City to provide for protection of open space. (See Govt. Code §§ 65561, 65562, 65563, 65566 and 65567.) The City must have an open space preservation plan, and any action taken by the City to update its general plan must be consistent with the required plan. (*Id.*) The GP violates this statutory scheme and the EIR failed to account for the requirements.

Q

Because of the issues raised above, we believe that the DEIR fails to meet the requirements of the California Environmental Quality Act and the State Planning Laws.

The Plan and the DEIR should be substantially revised to comply with these laws.

Q cont.

Very truly yours,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: SJRRC
Protect Our Water
Donald B. Mooney, Esq.

List of Enclosures:

1. Order Granting Petition for Writ of Mandate, *Merced County Farm Bureau v. City of Livingston*, Merced County Superior Court Case No. CU151754
2. Sustainability and General Plans: Examples of Policies to Address Climate Change California Attorney General's Office (January 22, 2010)
3. Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions California Attorney General's Office (September 9, 2009)
4. Farmland Protection Action Guide, Institute for Local Self-Government
5. California Department of Fish and Game California Tiger Salamander Habitat Range
6. July 2010 California Department of Fish and Game listing decision for California Tiger Salamander

MERCED COUNTY
2020 NOV 30 11:01 AM
CLERK OF THE SUPERIOR COURT
MELANIE MIGLIAZZO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MERCED

MERCED COUNTY FARM BUREAU,) Case No. CU151754
Petitioner,)
vs.) ORDER GRANTING PETITION FOR WRIT
CITY OF LIVINGSTON et al.,) OF MANDATE
Respondents)
_____)

At issue in this writ is the City of Livingston's (City) approval of a 2025 General Plan Update (GPU) increasing the City's sphere of influence and certification of the EIR relating to that GPU.

The 2025 GPU includes a proposal to expand the City's sphere of influence by approximately 2,905 acres. The purpose of the 2025 GPU is to provide policy direction regarding elements contained in the general plan, including policy direction on the City's projected growth and to designate land use of the areas for the City's projected growth. As no specific projects were included as part of the GPU, the intent of the City was that the EIR would be a programmatic or tiered EIR, allowing for future environmental analysis regarding specific projects. Petitioner asserts several flaws in the GPU and EIR that they argue show a prejudicial abuse of discretion by Respondent City in that it failed to comply with CEQA in approving the

1 GPU and certifying the EIR. Petitioner also asserts the City's approval of the Project violated
2 state Planning and Zoning Law.

3 Respondent replied that the City met and exceeded the requirements of CEQA and
4 Petitioner is expressing their dissatisfaction with the policy decision of the City to expand its
5 boundaries in bringing this lawsuit. Further it is not up to Petitioner or the Court to second guess
6 the legislative land use decisions of the City. Respondent claims there was no abuse of
7 discretion and the City reached an informed decision in certifying the EIR and their adoption of
8 the GPU was not arbitrary, capricious or entirely lacking in evidentiary support.

9 I. REQUEST FOR JUDICIAL NOTICE

10 Petitioner requested the court take judicial notice of extra-record evidence of the Senate Bill
11 Analysis for SB 97 and the California State Governor's Office of Planning and Research
12 Technical Advisory: CEQA and Climate Change: Addressing Climate Change through
13 California Environmental Quality Act (CEQA) Review." June 19, 2008. Extra-record evidence
14 is generally not admissible in a traditional mandamus action in determining whether a respondent
15 agency failed to proceed in the manner required by law or whether substantial evidence supports
16 their decision. Western States Petroleum (1995) 9 Cal. 4th 559. However, in this particular
17 instance, the request for judicial notice is not based upon evidence that should or could have
18 been consider by the City, but rather is offered in support of Petitioner's argument that
19 greenhouse gas emissions and global warming impacts are impacts requiring analysis under
20 CEQA. The court will take judicial notice as requested for the limited purpose of aiding the
21 court in interpreting the law regarding greenhouse gas emission and their analysis under CEQA.
22 and not as extra-record evidence regarding the City's actual decision making process

23 II STANDARD OF REVIEW

24 In reviewing the City's decision to certify the EIR, this court is to review de novo any issues
25 regarding procedural compliance with CEQA, using its independent judgment, while factual

1 determinations are governed by the substantial evidence test with deference to be given the
2 agency's determinations of the evidence. Of course, in this case, the argument raised by
3 Petitioner is that the decision to defer analysis of reasonably foreseeable significant
4 environmental impacts to later specific projects was a failure to procedurally comply with the
5 requirements of CEQA as opposed to a lack of evidence to support the City's decision, and thus
6 it is a question of law requiring independent determination by this court. Vineyard Area Citizens
7 for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412. The Court
8 agrees that the City's decision to defer analysis of loss of prime agricultural land to future
9 project specific EIRs is a procedural decision subject to the less deferential standard of de novo
10 review.

11 III. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

12 Petitioner did exhaust their administrative remedies as to the following issues:

13 A) Insufficiency of Statement of Overriding Considerations: Many citizen comments raised
14 concerns regarding the projected population growth (See the comments section 2 AR starting at
15 948).

16 B) Project objectives and descriptions: Concerns were raised by County of Merced in the
17 letter from Richard Lewis, the County's Development Services Director (Letter AM, 2 AR
18 1134).

19 C) Air Quality and Greenhouse Gas Emissions (GGH): Raised by Petitioner's letter (3 AR
20 6859, Mr. Harriman's letter (2 AR 1102), and a citizen letter (2 AR 1033).

21 D) Adequacy of Response to Comments: Concerns were raised at the public hearing (9 AR
22 4778-4779 and 4783) and by Petitioner's letter (3 AR 6859).

23 E) Inadequacy of GPU that it is internally inconsistent or otherwise inadequate: Concerns
24 were raised regarding the agriculture policies, lack of inclusion of the master plans by a citizen
25

1 letter (2AR 1168). Merced County Farm Bureau Letter (2AR 1122) and Mr. Harriman's letter
2 (2AR 1102).

3 IV. STATEMENT OF OVERRIDING CONSIDERATIONS

4 The statement of overriding considerations reflects a policy decision by the City as to
5 why the project should be approved even with significant environmental impacts that cannot be
6 mitigated. This policy decision is at the "core of the lead agency's discretionary responsibility
7 under CEQA and is, for that reason, not lightly to be overturned." City of Marina v. Board of
8 Trustees of the Cal.State Univ. (2006) 39 Cal. 4th 341. However, in determining whether the
9 environmental impacts can be mitigated, the agency is required to analyze all mitigation
10 measures unless a measure is infeasible on its face.

11 "A statement of overriding considerations is required, and offers a proper basis for
12 approving a project despite the existence of unmitigated environmental effects, only when the
13 measures necessary to mitigate or avoid those effects have properly been found to be infeasible.
14 (Pub. Resources Code, § 21081, subd. (b).) As addressed more fully below, the City failed to
15 analyze all potential reasonable mitigation measures regarding prime farmland or make a finding
16 of infeasibility, thus the statement of overriding considerations is flawed.

17 Further, in the present case, the City's reliance on an unsupported population growth
18 figure to support a statement of overriding considerations as to the numerous unmitigated
19 impacts is unreasonable and appears to be a random leap from "evidence to conclusions."
20 Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506
21 For these reasons the Court finds the statement deficient and not supported by substantial
22 evidence. The assertions of economic and social objectives/benefits in the statement of
23 overriding considerations used to support the policy choice by the City to expand its boundaries
24 are not supported by the record Sierra Club v. Contra Costa County(1992) 10 Cal App 4th
25 1212, at 1223.

1 V. PROJECT DESCRIPTION, MASTER PLANS and ADEQUACY OF ALTERNATIVES
2 ANALYSIS

3 Petitioner asserts the project description is deficient in misstating the need for and
4 objectives of the Project and that there is no substantial evidence in the record to support the
5 growth rates resulting in the expanded Planning Boundaries. This court agrees.

6 "An accurate description of the proposed project is 'the heart of the EIR process.' "A
7 curtailed or distorted project description may stultify the objective of the reporting process. Only
8 through an accurate view of the project may affected outsider and public decision-makers
9 balance the proposal's benefit against its environmental costs, consider mitigation measures,
10 assess the advantage of terminating the proposal...and weigh other alternatives in the balance.
11 An accurate, stable and finite project description is the *sine qua non* of an informative and
12 legally sufficient EIR.'" Rio Vista Farm Bureau Center v. County of Solano (1992) 5 Cal
13 App. 4th 351 citing Sacramento Old City Assn. V. City Council (1991) 229 Cal. App. 3d 1011
14 In the present case the GPU's rationale to accommodate growth is self-inducing. There is no
15 evidence the growth rate will be as described in the GPU, rather the population projections are,
16 as Petitioner argues, fictional factors.

17 Further, this projected growth rate is not supported by substantial evidence and is
18 internally inconsistent. For example, the GPU (section 1.3 Issues of Importance, section 5.1
19 Agriculture, Objectives), the Project Objectives in the EIR (I AR 00032) and the Statement of
20 Overriding Considerations name preservation of agricultural land as a major objective of the
21 GPU Yet this objective is seemingly disregarded in favor of a self-induced population pressure
22 created by the City's own desire to expand the SOI to fit particular boundaries, in essence
23 generating the population pressure by its own boundary description. Rather than considering a
24 reasonable estimate of population growth as provided by MCAG and expanding to fit that
25 estimate, the City decided how large it wanted the expansion to be and then backfilled that area

1 with a worst case scenario population growth to justify an expansion that would result in the
2 disappearance of prime agricultural lands without adequate mitigation measures.

3 In conjunction with this faulty project description is the fact there was no real meaningful
4 analysis or consideration of the alternatives, as the proposed Project was found to be the only
5 feasible alternative. The City decided that it was the only one that met the objectives for future
6 growth, based upon a faulty estimate. There was no real analysis of the alternatives that were
7 based on a smaller SOI, less population growth and less conversion of prime farmland, and thus
8 the City Council made their decision without really considering feasible alternatives in violation
9 of CEQA.

10 An additional deficit in the project description is the reference to "master plans" that were
11 not incorporated by reference into the EIR, and were not circulated with the EIR causing a
12 failure to comply with the informational requirements of CEQA. A further problem is that some
13 of the master plans referenced were never prepared or approved, i.e. a Waste Water Management
14 Plan or an Urban Water Management Plan.

15 VI. ANALYSES OF AIR QUALITY AND GREENHOUSE GAS EMISSIONS

16 While the court agrees with Petitioner that Greenhouse Gas Emissions are environmental
17 impacts requiring analysis under CEQA, the court notes Respondent did include an analysis of
18 greenhouse gas emissions in the EIR. Petitioner argues this analysis was inadequate and
19 improperly defers mitigation to the future, but the Court finds the analysis to be sufficient and
20 also finds the mitigation measures set forth in the EIR regarding air quality to be adequate.
21 Specific policies and measures are contained within the analysis that are enforceable and not
22 merely hortatory. (IAR 319-332.)

23 VII. IMPACTS TO AGRICULTURE

24 The EIR recognizes the GPU will result in conversion of agricultural resources that is a
25 significant and unavoidable impact but then impermissibly defers mitigation measures to future

1 projects. This is an improper deferral as there is no clear performance standard for any future
2 mitigation measures. A review of mitigation measures contained in section 4.2 of the EIR (1AR
3 182-211) show broad policy requirements that would "encourage" certain mitigation measures,
4 but nothing assuring mitigation measures would actually be implemented or what the standard
5 for conservation would be. An example is the policy to "encourage the use of buffers", but as
6 the County pointed out in their letter (2AR 1134) there are many details lacking regarding
7 implementation of those buffers--details that could reasonably be addressed even in this
8 programmatic EIR. Similarly, the use of Agricultural Conservations Easements are referred to in
9 the comments but their analysis as a mitigation measure is improperly deferred to future projects.
10 There is no analysis as to why such easements would be infeasible or could not be analyzed in
11 this EIR. Rather, the Response just states the mitigation measures are not general plan-level
12 mitigations and in any even the conversion of agricultural land cannot be mitigated to less than
13 significant. Such deferral of a feasible mitigation measure violates CEQA. [Guidelines
14 15002(a)(3)]

15 VIII. RESPONSES TO COMMENTS

16 The Court finds that in responding to comments on the DEIR, the City did provide a good
17 faith, reasoned response, although obviously disagreeing with the analysis contained in some of
18 those responses.

19 IX. OPEN SPACE LANDS ACT.

20 Petitioner argues the City failed to comply with the Open Space Lands Act by failing to
21 include agricultural lands or provide for their protection in Chapter 5 of the GPU governing open
22 space plan. A review of Chapter 5 shows the City did state preservation of prime farmland
23 within the proposed SOI was an objective and does set forth polices regarding preservation
24 This is followed by the recognition that agricultural uses are anticipated to be phased out within
25 the city limits. Unfortunately, the Land Use Map itself does not have a designation for

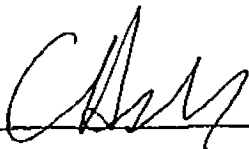
1 agricultural land even outside the city limits but within the SOI, thus the Court finds the City did
2 not comply with the Open Space Lands Act as there is no attempt to designate or protect
3 agricultural land as required by CA Govt sections 65560, 65561, 65563, and 65564.

4
5 **CONCLUSION**

6 In summary, the Court finds the City's approval of the GPU and certification of the EIR
7 violated CEQA and the Open Space Plans Act for the reasons stated herein, and orders a
8 peremptory writ of mandate issue directing the City to set aside its approval and certification of
9 those documents. Petitioner to prepare the peremptory writ.

10
11 **IT IS SO ORDERED.**

12 Dated: 11/30/09

13 
14 _____
15 Carol K. Ash, Superior Court Judge
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PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P)

STATE OF CALIFORNIA)
)
COUNTY OF MERCED) Case No. CU151754

I am a citizen of the United States and a resident of the county aforesaid. I am over the age of eighteen years and not a party to the within entitled action, my business address is Merced County Superior Court, 627 West 21st Street. Merced. California 95340.

On **November 30, 2009**, I served the within **ORDER GRANTING PETITION FOR WRIT OF MANDATE**, on the person(s) named below and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's outgoing mail addressed as follows:

Donald B. Mooney, Esq.
Marsh A. Burch, Esq
Law Offices of Donald B. Mooney
129 C Street, Suite 2
Davis, CA 95616


Jonathan P. Hobbs, Esq
KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

and then placing a true copy thereof in an envelope and then placing in the Merced County Superior Court/Clerk's office for the following department(s) or person(s).

N/a

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **November 30, 2009** at Merced, California.



Melanie Migliazzo, Declarant

**Sustainability and General Plans:
Examples of Policies to Address Climate Change
California Attorney General's Office**



Right now, many cities and counties are taking the first steps toward addressing climate change and sustainability at the general plan level. These local governments recognize the substantial benefits of taking a programmatic approach to reducing greenhouse gas emissions and preparing for the impacts of climate change. Among other things, a local government has a greater number of mitigation and adaptation options when it looks at the “big picture” than if the analysis is done only at the project-specific level. Moreover, if the program-level analysis and mitigation is done well, subsequent projects will benefit from streamlining under the California Environmental Quality Act (CEQA) and from the predictability that results when a local government sets forth a clear plan of action.

Since sustainability and climate action plans, integrated into general plans and local ordinances, are a relatively new concept, cities and counties are looking for good examples. Fortunately, there are many resources that local governments can use as a starting point for creating their own tailored, community-specific plan.

(For more information on project-specific mitigation measures, please see the Attorney General's fact sheet, “Addressing Climate Change at the Project Level,” available at http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.)

General Overviews

The following resources may assist local governments in thinking about how sustainability and climate change fit into general planning and local land use regulation:

- CoolCalifornia.org, [Climate Action Planning](#) (website). CoolCalifornia.org, created by several expert state agencies and non-profit organizations, has a section devoted to local governments. The website includes informative [Tips to Develop a Climate Action Plan](#).
- Local Government Commission (LGC), [Ahwahnee Principles for Climate Change](#) (2008). LGC's concise document sets forth seven recommendations related to the content of, and process for adopting, local climate action plans; outlines a climate action plan implementation strategy; and lists five regional principles emphasizing the need for coordination and cooperation at the city, county and regional level.
- Attorney General's Office, [Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions](#). This document answers some of the most frequently asked questions related to climate change, general plan updates, and compliance with CEQA.

- Natural Resources Agency, [CEQA Guidelines](#). By law, the Natural Resources Agency must adopt CEQA guidelines for the “feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions” by January 1, 2010. Resource’s current draft of the proposed guidelines includes a new section, [Section 15183.5](#), entitled “Tiering and Streamlining the Analysis of Greenhouse Gas Emissions.” The section sets forth the broad elements that a programmatic reduction plan should contain in order to reduce or avoid further analysis at the project level. The current draft also notes in [Section 15126.2\(a\)](#) that in approving projects, agencies should consider the impact of locating projects in areas that may be susceptible to the current and projected effects of climate change, such as flooding, coastline erosion, and wildfire.

Compilations of Specific Policies and Implementation Measures

The following resources may be useful to local governments in compiling a list of potential policies and implementation measures for further consideration and refinement:

- California Air Pollution Control Officers Association (CAPCOA), [Model Policies for Greenhouse Gases in General Plans](#) (June 2009). This white paper sets out objectives, goals, and well over 350 general plan policies designed to reduce greenhouse gas emissions and create more sustainable, livable communities. The white paper includes a convenient worksheet that allows a community to evaluate each policy for its effectiveness, ease of implementation, timing of reductions, and relative cost.
- California Department of Housing and Community Development (HCD), [Housing Element Policies and Programs Addressing Climate Change](#) (Feb. 2009). As HCD states, “The housing element update can provide an effective mechanism to adopt new efficient land-use strategies such as infill, mixed-use, or downtown revitalization” and thereby “significantly contribute to reductions in greenhouse gas emissions.” HCD’s table lists programs and strategies that can help the community meet housing and climate objectives and, in addition, highlights potential environmental co-benefits.
- California Public Utilities Commission, [Long Term Energy Efficiency Strategic Plan](#) (Sept. 2008; updated Oct. 2009). Section 12 of the report focuses on the role of local governments as leaders in using energy efficiency to reduce energy use and greenhouse gas emissions. The section includes numerous specific suggestions for local government policies designed to conserve energy.
- California Energy Commission (CEC), [2006 Integrated Energy Policy Report Update](#). In this document (see pp. 82-87), the CEC summarizes the successful energy-related efforts of Humboldt County, City of Pleasanton, City of Pasadena, City and County of San Francisco, the Los Angeles area, City of Chula Vista, the San Diego region, City of San Diego, City and County of San Luis Obispo, and City of Santa Monica.

- Institute for Local Government (ILG), [Best Practices Framework](#). ILG has compiled 16 pages of “best practices” to assist cities and counties in climate action planning. The document is organized into ten Climate Leadership Opportunity Areas, specifically: Energy Efficiency and Conservation; Water and Wastewater Systems; Green Building; Waste Reduction and Recycling; Climate-Friendly Purchasing; Renewable Energy and Low-Carbon Fuels; Efficient Transportation; Land Use and Community Design; Storing and Offsetting Carbon Emissions; and Promoting Community and Individual Action.
- Local Government Commission, [General Plan Policy Options for Energy Efficiency in New and Existing Development](#) (2002). This document sets forth energy saving policies suitable for inclusion in general plans. Policies range from exceeding State minimum building efficiency standards, to retrofitting buildings to reduce energy consumption, to implementing energy conservation strategies for roofs, pavement and landscaping. The report also contains suggested general plan language.
- Sacramento Area Council of Governments, [Rural-Urban Connections Strategy / Land Use Working Paper](#) (Aug. 2009 (draft)). This draft paper, styled as a “wiki,” discusses policies, programs and the unique issues that affect rural land use in the Sacramento Region. The paper includes innovative land use policies and programs designed to support economic viability and environmental sustainability that may be applicable to many rural and semi-rural cities and counties across California.
- Natural Capitalism Solutions (NCS), [Climate Protection Manual for Cities](#). NCS, a non-profit group, states that its mission is “to educate senior decision-makers in business, government and civil society about the principles of sustainability.” The Climate Protection Manual includes a section on “[Best Bets](#)” – measures that in the group’s view are efficient and can result in substantial greenhouse gas reductions. The manual supports its “Best Bets” with case studies across the U.S. It also includes a section entitled “[Adapting to Climate Change](#).”
- StopWaste.Org, [Climate Action Plan Template](#) (2007). StopWaste.Org is a program of the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board. StopWaste has created a template Climate Action Plan. The template includes a [list of model policies](#) that may be implemented through general plan policies and local ordinances.
- California Local Energy Efficiency Program (CALeep), [Energy Workbook](#) (March 2006). The Workbook lays out a process for instituting local energy efficiency programs based in part on information developed in six California pilot projects (Inland Empire Utilities Agency, City of Oakland, San Joaquin Valley, Sonoma

County, South Bay Cities Council of Governments, and Ventura County Regional Energy Alliance). The Workbook is designed to be used by local officials to initiate, plan, organize, implement, and assess energy efficiency activities at the local and regional level.

- Natural Resources Agency, [California Climate Adaptation Strategy](#) (Dec. 2009). This document summarizes the best known science on climate change impacts in seven specific sectors and provides recommendations on how to manage against those threats.

Additional Resources and Examples of Innovative Local Planning Efforts

The Governor’s Office of Planning and Research maintains a regularly updated [list of cities and counties](#) that have adopted sustainability or climate action plans.

Any local government seeking to adopt a fully enforceable sustainability or climate action plan has the benefit of being able to survey what others already have considered. Two excellent sources of potential policies and measures are Marin County’s [Countywide Plan](#) (2007) (excerpted in CAPCOA’s whitepaper), which was awarded the 2008 National Planning Excellence Award for Implementation, and Yolo County’s [2030 Countywide General Plan](#) and [Final Environmental Impact Report](#). Yolo County’s plan contains more than 300 specific climate-change related policies and measures.

The table below sets forth some additional general resources, as well as some exemplary and innovative local sustainability and climate policies and measures currently being implemented or under review. This is by no means an exhaustive list. The policies and measures are organized by action area, based on CAPCOA’s [Top Ten Actions by Local Governments and Communities](#) (see June 2009 whitepaper at p. E-1.)

Strategy	Resources
Smart growth, jobs/housing balance, transit-oriented development, and infill development through land use designations, incentives and fees, zoning, and public-private partnerships	<p>U.S. Environmental Protection Agency, Examples of Codes That Support Smart Growth Development (webpage) and Essential Smart Growth Fixes for Urban and Suburban Zoning Codes (2009)</p> <p>California Department of Transportation, Smart Mobility Framework, Smart Mobility Handbook (draft) (draft document includes table of best practices)</p> <p>California Department of Transportation, Statewide Transit-Oriented Development Study: Factors for Success in California (2002) and California Transit-Oriented Development Searchable Database (includes detailed information on numerous TODs)</p> <p>Association of Bay Area Governments, Urban Growth Boundaries and Urban Limit Lines (2006) (includes list of cities and counties with UGBs and ULLs)</p> <p>State of Massachusetts, Smart Growth/Smart Energy Toolkit</p>

	<p><u>Examples</u></p> <p>City of Sacramento, City Sponsored Infill House Plan Program (allowing purchase of pre-approved house plans in established neighborhoods and redevelopment areas)</p> <p>City of Ventura, Infill First policy</p> <p>Sacramento County Regional Sanitation District, sewer impact fee ordinance at p. 2 (tiered structure that charges less for connections to “infill communities” as compared to “new communities”)</p> <p>Santa Clara County, long- and short-term urban growth boundaries at p. B-9 (boundaries established in coordination with cities)</p> <p>City of San José, Urban Growth Boundary</p> <p>Yolo County, directed growth policy, Land Use Element, Policy LU-3.1 at p. LU 19 (directing all of the County’s residential growth to designated areas within cities and within growth boundaries of existing unincorporated communities (with specified exceptions))</p> <p>Yolo County, jobs/housing balance policy, Community Character Element, Policy CC-3.3 at p. LU 37</p> <p>Santa Cruz County, Urban and Rural Service Lines (directing countywide growth into urban areas where services are more readily available and less costly)</p> <p>City of Hayward, required minimum densities at p. C-3 (see also Land Use Map)</p> <p>City of Visalia, Growth Criteria Before Advancing to Next Growth Area, Appendix C, Table C-1 (phased development)</p> <p>City of Benicia, Downtown Mixed-Use Master Plan (2007) (utilizing form-based code to facilitate mixed use development)</p>
<p>Create transit, bicycle, and pedestrian connections through planning, funding, development requirements, incentives and regional cooperation; create disincentives for auto use</p>	<p>Reid Ewing, Smart Growth Network, Pedestrian and Transit-Friendly Design: A Primer for Smart Growth (1999) (checklist of pedestrian and transit-friendly features)</p> <p>Alameda County Transportation Improvement Authority and Alameda County Congestion Management Agency, Toolkit for Improving Walkability in Alameda County (October 2006)</p> <p>National Highway Traffic Safety Administration, Safe Routes to School Toolkit (2002)</p> <p>Metropolitan Transportation Commission, Reforming Parking Policies to Support Smart Growth / Toolbox/Handbook (June 2007)</p> <p><u>Examples</u></p> <p>City of La Mesa, Sidewalk Master Plan (in progress; will include map</p>

	<p>used to prioritize funding)</p> <p>Marin County Bicycle Coalition, Safe Routes to School (offering assistance to communities in developing program)</p> <p>Solano County Transportation Authority, Safe Routes to School</p> <p>City of San Francisco, Transit First Policy (gives priority to public transit investments)</p> <p>City of Palo Alto, Bicycle Transportation Plan and supporting programs (resulting in 5.6% of residents commuting to work by bike)</p> <p>City of Ventura, Downtown Ventura Mobility and Parking Plan and Downtown Parking Management Program</p> <p>City of Sacramento, multi-modal system policy, Goal M 1.2 and related policies at p. 2-162 (employing “flexible” level-of-service (LOS) standards permitting increased densities and mix of uses to increase transit ridership, biking, and walking)</p> <p>Yolo County, LEED Neighborhood Design policy, Community Character Element, Policy CC-2.16 FF at p. LU 34 (requiring adherence to LEED Neighborhood Design Standards or the equivalent, for new development)</p>
<p>Energy- and water-efficient buildings and landscaping through ordinances, development fees, incentives, project timing prioritization, and other implementing tools</p>	<p>California Energy Commission, Local Ordinances Exceeding the 2005 Building Energy Efficiency Standards and Local Ordinances Exceeding the 2008 Building Efficiency Standards (lists)</p> <p>Attorney General’s Office, Local Government Green Building Ordinances in California (list)</p> <p>U.S. Green Building Council, Summary of Government LEED Incentives (updated quarterly; nationwide)</p> <p>Build it Green, Green Policies (lists organized by California regions)</p> <p>Examples</p> <p>City of Santa Monica, Office of Sustainability - Green Building (program to educate the public about and encourage green building)</p> <p>San Bernardino County, Green County San Bernardino (among other things, program waives permit fees for alternative energy systems and high-efficiency heating and air conditioning systems)</p> <p>Association of Monterey Bay Area Governments, Regional Energy Plan (2006) (appendices suggest language for energy-related provisions to be included in general plans and list and give brief explanations of more than one hundred energy-saving measures)</p> <p>City of Lompoc, water retrofit ordinance at p. 29 (requiring new development to offset projected water use either by directly changing</p>

	<p>out existing high-use fixtures or by paying in lieu fee to fund retrofits)</p> <p>City of San Diego, plumbing retrofit ordinance (requiring that all buildings, prior to a change in property ownership, be certified as having water-conserving plumbing fixtures in place)</p> <p>City of San Francisco, Residential Energy Conservation Ordinance (requiring residential property owners to install specified energy and water conservation measures)</p> <p>City of Sebastopol, Resource Conservation Requirements for New Construction (requiring, among other things, Energy Star appliances)</p>
<p>Green procurement and alternative fuel vehicle use through municipal mandates and voluntary bid incentives</p>	<p>California Integrated Waste Management Board, Green Procurement Policies (list)</p> <p>Commission for Environmental Cooperation, Existing Green Procurement Initiatives (list; Canadian and U.S. examples)</p> <p>Examples</p> <p>Los Angeles County, Green Purchasing Policy</p> <p>Nevada County, Green Procurement and Sustainable Practices Policy</p> <p>Solano County, green purchasing policy, Policy HS.1-60 at p. HS 74</p> <p>City of Chula Vista, Clean Vehicle Replacement Policy (for City and City-contracted fleets)</p> <p>City of Vacaville, Electric Vehicle and CNG Vehicle Incentive Programs</p>
<p>Alternative fuel facilities and infrastructure through land use designations, zoning, and public-private partnerships</p>	<p>City of Riverside, Alternative Fuel Program</p> <p>City of Los Angeles, Clean Fuels Policy</p> <p>City of Vacaville, public solar fuel station (part of Plug-In Bay Area)</p>
<p>Renewable energy generation (utility and residential) through feasibility evaluations, land use designations, zoning, permit streamlining, incentives and financing</p>	<p>Database of State Incentives for Renewables and Efficiency (includes specific California examples with links)</p> <p>American Planning Association, Planning and Zoning for Renewable Energy (Feb. 2008)</p> <p>Examples</p> <p>Sonoma County, Energy Independence Program (financing program available to City and County residents for energy efficiency, water conservation and renewable energy upgrades with costs repaid through assessment on property tax bill)</p>

	<p>City of Berkeley, Financing Initiative for Renewable and Solar Technology Program (financing program for solar PV systems with costs repaid over 20 years through special tax on property tax bill)</p> <p>City of Palm Desert, Energy Independence Program (financing program for major energy-saving home improvements, such as high-efficiency air conditioners, dual-pane windows and solar PV systems with costs repaid through assessment on property tax bill)</p> <p>Solano County, policies governing permitting and siting of wind projects in identified areas, Policy RS.1-37 at p. RS 56.</p> <p>City of Palm Desert, solar pre-wiring ordinance, Tit. 24, § 24.30.030</p> <p>City of Los Angeles, ordinance exempting solar devices from building height limits, Planning and Zoning, Ch. 1, Art. 2, § 12.21.1</p> <p>City of Santa Ana, solar permit fee waiver (two-year program)</p> <p>County of San Bernardino, permit fee waiver for energy efficiency projects</p> <p>City of Santa Barbara, information packets and brochures to assist in solar permitting and compliance with solar access ordinance</p>
<p>Waste diversion, recycling, water efficiency, energy efficiency and energy recovery in cooperation with public services districts and private entities</p>	<p>California Integrated Waste Management Board, Construction and Demolition Debris Recycling, Local Government Sample Documents</p> <p>Eureka Recycling, Zero Waste Ordinance Resource Guide</p> <p>CoolCalifornia.org, Local Government, Recycle and Cut Waste (recommended actions and resources)</p> <p>Department of Water Resources, Updated Model Water Efficient Landscape Ordinance</p> <p>Metropolitan Water District of Southern California, Model Water Conservation Ordinance</p> <p>Examples</p> <p>City of San Francisco, Zero Waste diversion program</p> <p>City of San Diego, Recycling Ordinance</p> <p>Town of Truckee, Business Waste Reduction Assistance Program (free waste assessment and recommendations on opportunities to reduce waste and recycle)</p> <p>Marin County, Marin Countywide Plan, water conservation implementation strategy (Built Environment Element, Policy PFS-2.q at p. 3-204 recommendation for tiered billing rates based on water use to encourage conservation)</p> <p>City of Sebastopol, Water Efficient Landscape Program</p>

	<p>City of Fresno, Watering Regulations and Restrictions</p>
<p>Urban and rural forestry through tree planting requirements and programs; preservation of agricultural land and resources that sequester carbon; heat island reduction programs</p>	<p>U.S. Environmental Protection Agency, Reducing Urban Heat Islands: Compendium of Strategies (webpage)</p> <p>U.S. Environmental Protection Agency, Heat Island Effect, Initiatives for California (list of examples with links)</p> <p>Examples</p> <p>City of Irvine, Sustainable Travel ways program</p> <p>City of Fresno, Performance Standards for Parking Lot Shading (requiring fifty percent of paved parking lots surface to be shaded within fifteen years of tree planting)</p> <p>Yolo County, agricultural preservation policies, Agriculture and Economic Development Element, Goals AG-1.3 through AG-1.5 at p AG 21</p>
<p>Community outreach and education to foster community involvement, input, and support for GHG reduction planning and implementation</p>	<p>Flex Your Power</p> <p>Examples</p> <p>Sonoma County, Climate Protection Campaign</p> <p>San Bernardino, Green County</p> <p>City of Irvine, Irvine Environmental Programs</p> <p>City of San Mateo, San Mateo Acting Responsibly Together</p>
<p>Regional cooperation to find cross-regional efficiencies in GHG reduction investments and to plan for regional transit, energy generation, and waste recovery facilities</p>	<p>Examples</p> <p>Sacramento County and City of Natomas, Natomas Joint Vision (memorandum of understanding including joint planning and revenue sharing policies)</p> <p>Yolo County, policy for City/County planning cooperation, Land Use Element, Policy LU-6.4 at LU 24</p> <p>Yolo County, policy for City/County revenue sharing, Land Use Element, Policy LU-6.7 at LU 24</p>

**Climate Change, the California Environmental Quality Act,
and General Plan Updates:
Straightforward Answers to Some Frequently Asked Questions
California Attorney General's Office**



At any given time in this State, well over one hundred California cities and counties are updating their general plans. These are complex, comprehensive, long-term planning documents that can be years in the making. Their preparation requires local governments to balance diverse and sometimes competing interests and, at the same time, comply with the Planning and Zoning Law and the California Environmental Quality Act (CEQA).

Local governments have decades of experience in applying state planning law and excellent resources to assist them – such as the “General Plan Guidelines” issued by The Governor’s Office of Planning and Research (OPR).¹ They are also practiced in assessing whether general plans may have significant localized environmental effects, such as degradation of air quality, reductions in the water supply, or growth inducing impacts. The impact of climate change, however, has only fairly recently shown up on the CEQA radar.

The fact that climate change presents a new challenge under CEQA has not stopped local governments from taking action. A substantial number of cities and counties already are addressing climate change in their general plan updates and accompanying CEQA documents. These agencies understand the substantial environmental and administrative benefits of a programmatic approach to climate change. Addressing the problem at the programmatic level allows local governments to consider the “big picture” and – provided it’s done right – allows for the streamlined review of individual projects.²

Guidance addressing CEQA, climate change, and general planning is emerging, for example, in the pending CEQA Guideline amendments,³ comments and settlements by the Attorney General, and in the public discourse, for example, the 2008 series on CEQA and Global Warming organized by the Local Government Commission and sponsored by the Attorney General. In addition, the Attorney General’s staff has met informally with officials and planners from numerous jurisdictions to discuss CEQA requirements and to learn from those who are leading the fight against global warming at the local level.

Still, local governments and their planners have questions. In this document, we attempt to answer some of the most frequently asked of those questions. We hope this document will be useful, and we encourage cities and counties to contact us with any additional questions, concerns, or comments.

- **Can a lead agency find that a general plan update’s climate change-related impacts are too speculative, and therefore avoid determining whether the project’s impacts are significant?**

No. There is nothing speculative about climate change. It’s well understood that (1) greenhouse gas (GHG) emissions increase atmospheric concentrations of GHGs; (2) increased GHG concentrations in the atmosphere exacerbate global warming; (3) a project that adds to the atmospheric load of GHGs adds to the problem.

Making the significance determination plays a critical role in the CEQA process.⁴ Where a project may have a significant effect on the environment, the lead agency must prepare an Environmental Impact Report (EIR).⁵ Moreover, a finding of significance triggers the obligation to consider alternatives and to impose feasible mitigation.⁶ For any project under CEQA, including a general plan update, a lead agency therefore has a fundamental obligation to determine whether the environmental effects of the project, including the project’s contribution to global warming, are significant.

- **In determining the significance of a general plan’s climate change-related effects, must a lead agency estimate GHG emissions?**

Yes. As OPR’s Technical Advisory states:

Lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.⁷

In the context of a general plan update, relevant emissions include those from government operations, as well as from the local community as a whole. Emissions sources include, for example, transportation, industrial facilities and equipment, residential and commercial development, agriculture, and land conversion.

There are a number of resources available to assist local agencies in estimating their current and projected GHG emissions. For example, the California Air Resources Board (ARB) recently issued protocols for estimating emissions from local government operations, and the agency’s protocol for estimating community-wide emissions is forthcoming.⁸ OPR’s Technical Advisory contains a list of modeling tools to estimate GHG emissions. Other sources of helpful information include the white paper issued by the California Air Pollution Control Officers Association (CAPCOA), “CEQA and Climate Change”⁹ and OPR’s Technical Advisory,¹⁰ both of which provide information on currently available models for calculating emissions. In addition, many cities and counties are working with the International Council for Local Environmental Initiatives

(ICLEI)¹¹ and tapping into the expertise of this State's many colleges and universities.¹²

- **For climate change, what are the relevant “existing environmental conditions”?**

The CEQA Guidelines define a significant effect on the environment as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.”¹³

For local or regional air pollutants, existing physical conditions are often described in terms of air quality (how much pollutant is in the ambient air averaged over a given period of time), which is fairly directly tied to current emission levels in the relevant “area affected.” The “area affected,” in turn, often is defined by natural features that hold or trap the pollutant until it escapes or breaks down. So, for example, for particulate matter, a lead agency may describe existing physical conditions by discussing annual average PM10 levels, and high PM10 levels averaged over a 24-hour period, detected at various points in the air basin in the preceding years.

With GHGs, we're dealing with a global pollutant. The “area affected” is both the atmosphere and every place that is affected by climate change, including not just the area immediately around the project, but the region and the State (and indeed the planet). The existing “physical conditions” that we care about are the current atmospheric concentrations of GHGs and the existing climate that reflects those concentrations.

Unlike more localized, ambient air pollutants which dissipate or break down over a relatively short period of time (hours, days or weeks), GHGs accumulate in the atmosphere, persisting for decades and in some cases millennia. The overwhelming scientific consensus is that in order to avoid disruptive and potentially catastrophic climate change, then it's not enough simply to stabilize our annual GHG emissions. The science tells us that we must immediately and substantially reduce these emissions.

- **If a lead agency agrees to comply with AB 32 regulations when they become operative (in 2012), can the agency determine that the GHG-related impacts of its general plan will be less than significant?**

No. CEQA is not a mechanism merely to ensure compliance with other laws, and, in addition, it does not allow agencies to defer mitigation to a later date. CEQA requires lead agencies to consider the significant environmental effects of their actions and to mitigate them today, if feasible.

The decisions that we make today do matter. Putting off the problem will only increase the costs of any solution. Moreover, delay may put a solution out of reach at any price. The experts tell us that the later we put off taking real action

to reduce our GHG emissions, the less likely we will be able to stabilize atmospheric concentrations at a level that will avoid dangerous climate change.

- **Since climate change is a global phenomenon, how can a lead agency determine whether the GHG emissions associated with its general plan are significant?**

The question for the lead agency is whether the GHG emissions from the project – the general plan update – are considerable when viewed in connection with the GHG emissions from past projects, other current projects, and probable future projects.¹⁴ The effects of GHG emissions from past projects and from current projects to date are reflected in current atmospheric concentrations of GHGs and current climate, and the effects of future emissions of GHGs, whether from current projects or existing projects, can be predicted based on models showing future atmospheric GHG concentrations under different emissions scenarios, and different resulting climate effects.

A single local agency can't, of course, solve the climate problem. But that agency can do its fair share, making sure that the GHG emissions from projects in its jurisdiction and subject to its general plan are on an emissions trajectory that, if adopted on a larger scale, is consistent with avoiding dangerous climate change.

Governor Schwarzenegger's Executive Order S-3-05, which commits California to reducing its GHG emissions to 1990 levels by 2020 and to eighty percent below 1990 levels by 2050, is grounded in the science that tells us what we must do to achieve our long-term climate stabilization objective. The Global Warming Solutions Act of 2006 (AB 32), which codifies the 2020 target and tasks ARB with developing a plan to achieve this target, is a necessary step toward stabilization.¹⁵ Accordingly, the targets set in AB 32 and Executive Order S-3-05 can inform the CEQA analysis .

One reasonable option for the lead agency is to create community-wide GHG emissions targets for the years governed by the general plan. The community-wide targets should align with an emissions trajectory that reflects aggressive GHG mitigation in the near term and California's interim (2020)¹⁶ and long-term (2050) GHG emissions limits set forth in AB 32 and the Executive Order.

To illustrate, we can imagine a hypothetical city that has grown in a manner roughly proportional to the state and is updating its general plan through 2035. The city had emissions of 1,000,000 million metric tons (MMT) in 1990 and 1,150,000 MMT in 2008. The city could set an emission reduction target for 2014 of 1,075,000 MMT, for 2020 of 1,000,000 MMT, and for 2035 of 600,000 MMT, with appropriate emission benchmarks in between. Under these circumstances, the city could in its discretion determine that an alternative that achieves these targets would have less than significant climate change impacts.

- **Is a lead agency required to disclose and analyze the full development allowed under the general plan?**

Yes. The lead agency must disclose and analyze the full extent of the development allowed by the proposed amended general plan,¹⁷ including associated GHG emissions.

This doesn't mean that the lead agency shouldn't discuss the range of development that is likely to occur as a practical matter, noting, for example, the probable effect of market forces. But the lead agency can't rely on the fact that full build out may not occur, or that its timing is uncertain, to avoid its obligation to disclose the impacts of the development that the general plan would permit. Any other approach would seriously underestimate the potential impact of the general plan update and is inconsistent with CEQA's purposes.

- **What types of alternatives should the lead agency consider?**

A city or county should, if feasible, evaluate at least one alternative that would ensure that the community contributes to a lower-carbon future. Such an alternative might include one or more of the following options:

- higher density development that focuses growth within existing urban areas;
- policies and programs to facilitate and increase biking, walking, and public transportation and reduce vehicle miles traveled;
- the creation of "complete neighborhoods" where local services, schools, and parks are within walking distance of residences;
- incentives for mixed-use development;
- in rural communities, creation of regional service centers to reduce vehicle miles traveled;
- energy efficiency and renewable energy financing (see, e.g., AB 811)¹⁸
- policies for preservation of agricultural and forested land serving as carbon sinks;
- requirements and ordinances that mandate energy and water conservation and green building practices; and
- requirements for carbon and nitrogen-efficient agricultural practices.

Each local government must use its own good judgment to select the suite of measures that best serves that community.

- **Can a lead agency rely on policies and measures that simply "encourage" GHG efficiency and emissions reductions?**

No. Mitigation measures must be "fully enforceable."¹⁹ Adequate mitigation does not, for example, merely "encourage" or "support" carpools and transit options, green building practices, and development in urban centers. While a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented.

There are many concrete mitigation measures appropriate for inclusion in a general plan and EIR that can be enforced as conditions of approval or through ordinances. Examples are described in a variety of sources, including the CAPCOA's white paper,²⁰ OPR's Technical Advisory,²¹ and the mitigation list on the Attorney General's website.²² Lead agencies should also consider consulting with other cities and counties that have recently completed general plan updates or are working on Climate Action Plans.²³

- **Is a “Climate Action Plan” reasonable mitigation?**

Yes. To allow for streamlined review of subsequent individual projects, we recommend that the Climate Action Plan include the following elements: an emissions inventory (to assist in developing appropriate emission targets and mitigation measures); emission targets that apply at reasonable intervals through the life of the plan; enforceable GHG control measures; monitoring and reporting (to ensure that targets are met); and mechanisms to allow for the revision of the plan, if necessary, to stay on target.²⁴

If a city or county intends to rely on a Climate Action Plan as a centerpiece of its mitigation strategy, it should prepare the Climate Action Plan at the same time as its general plan update and EIR. This is consistent with CEQA's mandate that a lead agency must conduct environmental review at the earliest stages in the planning process and that it not defer mitigation. In addition, we strongly urge agencies to incorporate any Climate Action Plans into their general plans to ensure that their provisions are applied to every relevant project.

- **Is a lead agency also required to analyze how future climate change may affect development under the general plan?**

Yes. CEQA requires a lead agency to consider the effects of bringing people and development into an area that may present hazards. The CEQA Guidelines note the very relevant example that “an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision.”²⁵

Lead agencies should disclose any areas governed by the general plan that may be particularly affected by global warming, e.g.: coastal areas that may be subject to increased erosion, sea level rise, or flooding; areas adjacent to forested lands that may be at increased risk from wildfire; or communities that may suffer public health impacts caused or exacerbated by projected extreme heat events and increased temperatures. General plan policies should reflect these risks and minimize the hazards for current and future development.

Endnotes

¹For a discussion of requirements under general planning law, see OPR's General Plan Guidelines (2003). OPR is in the process of updating these Guidelines. For more information, visit OPR's website at <http://www.opr.ca.gov/index.php?a=planning/gpg.html>.

²The Resources Agency has noted the environmental and administrative advantages of addressing GHG emissions at the programmatic level. See Draft Initial Statement of Reasons for Regulatory Action at pp. 17 and 46, available at http://ceres.ca.gov/ceqa/docs/Initial_Statement_of_Reasons.pdf.

³ Pursuant to Health and Safety Code section 21083.05 (SB 97), OPR issued its Preliminary Draft CEQA Guidelines Amendments on January 8, 2009 and transferred recommended amendments to the Natural Resources Agency on April 13, 2009. On July 3, 2009, the Natural Resources Agency (Resources) commenced the Administrative Procedure Act rulemaking process for certifying and adopting these amendments pursuant to Public Resources Code section 21083.05. Resources must certify and adopt guideline amendments by January 1, 2010. For the current status of this process, visit the Natural Resources Agency's website at <http://ceres.ca.gov/ceqa/guidelines/>.

⁴Cal. Code Regs., tit. 14 (hereinafter "CEQA Guidelines"), § 15064, subd. (a).

⁵CEQA Guidelines, § 15064, subd. (f)(1).

⁶CEQA Guidelines, § 15021, subd. (a).

⁷OPR, CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 2008), available at <http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf>.

⁸ ARB's protocols for estimating the emissions from local government operations are available at <http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm>.

⁹ CAPCOA, CEQA and Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (January 2008) (hereinafter, "CAPCOA white paper"), available at <http://www.capcoa.org/CEQA/CAPCOA%20White%20Paper.pdf#page=83>.

¹⁰ <http://opr.ca.gov/ceqa/pdfs/june08-ceqa.pdf#page=15>.

¹¹ <http://www.iclei-usa.org>

¹² For example, U.C. Davis has made its modeling tool, UPlan, available at <http://ice.ucdavis.edu/doc/uplan>; San Diego School of Law's Energy Policy Initiatives Center has prepared a GHG emissions inventory report for San Diego County <http://www.sandiego.edu/EPIC/news/frontnews.php?id=31>; and Cal Poly, San Luis Obispo City and Regional Planning Department is in the process of preparing a Climate Action Plan for the City of Benicia, see <http://www.beniciacimateactionplan.com/files/about.html>.

¹³CEQA Guidelines, § 15002, subd. (g).

¹⁴ CEQA Guidelines, § 15064(h)(1).

¹⁵See ARB, Scoping Plan at pp. 117-120, available at <http://www.arb.ca.gov/cc/scopingplan/document/psp.pdf>. (ARB approved the Proposed Scoping Plan on December 11, 2008.)

¹⁶In the Scoping Plan, ARB encourages local governments to adopt emissions reduction goals for 2020 “that parallel the State commitment to reduce greenhouse gas emissions by approximately 15 percent from current levels” Scoping Plan at p. 27; see *id.* at Appendix C, p. C-50. For the State, 15 percent below current levels is approximately equivalent to 1990 levels. *Id.* at p. ES-1. Where a city or county has grown roughly at the same rate as the State, its own 1990 emissions may be an appropriate 2020 benchmark. Moreover, since AB 32’s 2020 target represents the State’s *maximum* GHG emissions for 2020 (see Health & Safety Code, § 38505, subd. (n)), and since the 2050 target will require substantial changes in our carbon efficiency, local governments may consider whether they can set an even more aggressive target for 2020. See Scoping Plan, Appendix C, p. C-50 [noting that local governments that “meet or exceed” the equivalent of a 15 percent reduction in GHG emissions by 2020 should be recognized].

¹⁷ *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 194 [EIR must consider future development permitted by general plan amendment]; see also CEQA Guidelines, §§ 15126 [impact from all phases of the project], 15358, subd. (a) [direct and indirect impacts].

¹⁸ See the City of Palm Desert’s Energy Independence Loan Program at <http://www.ab811.org>.

¹⁹ Pub. Res. Code, § 21081.6, subd. (b); CEQA Guidelines, § 15091, subd. (d); see also *Federation of Hillside and Canyon Assocs.* (2000) 83 Cal.App.4th 1252, 1261 [general plan EIR defective where there was no substantial evidence that mitigation measures would “actually be implemented”].

²⁰ CAPCOA white paper at pp. 79-87 and Appendix B-1.

²¹ OPR Technical Advisory, Attachment 3.

²² See http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf [list of potential mitigation for projects]; http://ag.ca.gov/globalwarming/pdf/GP_policies.pdf [list of example policies and measures for general plans]; http://ag.ca.gov/globalwarming/pdf/green_building.pdf [list of local green building ordinances].

²³ See http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf.

²⁴ See Scoping Plan, Appendix C, at p. C-49.

²⁵ CEQA Guidelines, § 15126.2, subd. (a).

FARMLAND PROTECTION ACTION GUIDE

24 Strategies for California





INSTITUTE *for* LOCAL
SELF GOVERNMENT

ABOUT THE INSTITUTE AND THE COMMUNITY LAND USE PROJECT

The Institute for Local Self Government is the nonprofit research arm of the League of California Cities. The Institute was founded in 1955 as an educational organization to promote and strengthen the processes of local self-government. The Institute's mission is to serve as a source of independent research and information that supports and improves the development of public policy on behalf of California's communities and cities. The Institute's work is concentrated in three areas: land use, fiscal issues and public confidence in local government.

The Community Land Use Project is the program within the Institute that focuses on land use issues. The Project's charge is to assist local agencies with land use and resource issues, particularly those that involve a balancing of public interests with private property rights. The Project focuses on land use issues, such as farmland protection, that pose significant opportunities and challenges for local agencies.

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FARMLAND PROTECTION ACTION GUIDE: 24 Strategies for California

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This publication provides an overview of farmland protection practices and at times provides summaries of the law. Readers should note that attorneys can, and do, disagree about many of the issues addressed in this *Farmland Protection Action Guide*. Moreover, proposals to change the land use regulatory process are frequently introduced in the state Legislature and new court decisions can alter the practices a public agency should follow. Accordingly:

- **Public officials** should always consult with agency counsel when confronted with specific situations related to land use laws;
- **Agency counsel** using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
- **Members of the public and project proponents** reading this publication should consult with an attorney knowledgeable in the fields of land use and real property development law.



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Spring 2002

Dear Reader,

Was there something we missed? Or was a piece of information provided in this publication the “difference maker” on a project?

Either way, we want to know. The Institute strives to produce meaningful and helpful publications that can assist local officials in carrying out their duties. Your input and feedback, therefore, is vital! Comments from readers help us understand what you need and expect from Institute publications.

We have provided a feedback form at the end of this publication and would greatly appreciate it if you could take a moment to provide some constructive comments.

Sincerely,

JoAnne Speers
Executive Director

Jerry Patterson
President, Board of Directors

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Part I

HERE COMES THE NEIGHBORHOOD



Many in California are expressing concern about the rapid loss of the state's farmland. Not long ago, driving from one city to another meant driving through farmland and perhaps stopping at a roadside fruit-and-vegetable stand. Today, that same drive is more likely to involve a busy expressway lined with sound walls and industrial centers. The disappearance of agricultural territory raises the question: How much farmland must be lost before California's agricultural economy suffers due to farmland shortages?

Agriculture and farming make important contributions to the economy in every region of the state. However, population and economic growth are driving the conversion of productive farmland to housing, industry and commercial development. Obviously, growth and development will have an impact on California's major agricultural regions. But *how* those regions develop and *which* land is urbanized will determine whether agriculture will remain the powerhouse it is today in the state's economy.

There is a growing recognition among farmers, conservationists and business leaders that a new pattern of growth is necessary to protect the agricultural economy. Local government will be a key player in implementing programs to manage and redirect growth and protect the state's most productive agricultural areas. This guide has been written to help local officials tailor such a program to fit their community's needs.

LAY OF THE LAND

Percentage of an American's disposable personal income spent on food in 1952: 21% ¹

Percentage of an American's disposable personal income spent on food in 1998: 11% ¹

Percentage of Californians who believe that the loss of farmland is a "very serious" problem: 57% ²

Percentage of Californians who agree or strongly agree that agricultural land is an essential part of California's identity and we must fight to preserve it: 90% ²

Total cash receipts generated by California agriculture in 2000: \$24.8 billion ¹

Total cash receipts generated by Texas, the second leading agricultural state: \$13.2 billion ³

Number of California counties where the value of agricultural produce exceeded \$1 billion: 10 ³

Number of the nation's top 10 agricultural counties that are located in California: 8 ³

Total agricultural acres converted to urban uses in California from 1988 to 1998: 497,000 acres ⁵

Amount of the state's agricultural land rated as prime: 18% ⁵

Proportion of farmland converted to urban use that was rated as prime: 30% ⁵

Ratio of new residents to acres of farmland converted: 10-to-1 ⁵

Typical value of farmland on urban edge subject to development pressures: \$12,000 per acre

Typical value of land for high-end agricultural crops, such as fruits and nuts: \$5,500 per acre ⁵

Typical value of rangeland: \$1,050 per acre ⁵

SOURCES: (1) Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • (2) Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) • (3) California Farm Bureau Federation (www.cfbf.org) • (4) Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • (5) Kuminoff *et al*, *Issues Brief: Farmland Conversion: Perceptions and Realities*, Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • (6) American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

10 STEPS FOR CONSERVING FARMLAND

Will Rogers once observed that there was only so much land in California, and “... they wasn’t making any more.” His point succinctly underlines the importance of conserving farmland. California, the state that leads the nation in agricultural production and population growth, has a finite amount of farmland.

This guide has been written for elected officials, planning commissioners, planners, attorneys and community members who are interested in protecting California’s farmland. The guide’s focus is how to conserve farmland. What strategies are available to local government? What are their potential benefits and pitfalls? How are such programs funded?

This guide is specific to California. It makes no attempt to describe programs that are not authorized by California law. Moreover, the guide should not be considered an exhaustive resource. Instead, each section briefly highlights the issues and policy consideration of a particular strategy. Where practicable, additional resources for local government are identified.

A total of 24 strategies are presented here. Each can be used to protect farmland and improve the economic viability of agriculture. The strategies are grouped into five parts:

- Ten Steps for Conserving Farmland (Part I);
- Managing the Conversion of Farmland (Part II);
- Planning for Agriculture (Part III);
- Ag-Urban Boundaries (Part IV); and
- General Implementation Issues (Part V).

The following text explains how these 24 individual strategies can be used to form a comprehensive farmland conservation program.

STEP 1: START WITH URBAN PLANNING

In the context of farmland protection, there is no substitute for sound urban planning. Low-density urban sprawl is a significant factor in the loss of farmland and one for which local agencies — as land use decision-makers

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— have primary responsibility. This is not to say that cities and counties should not grow or that farmland should never be converted to urban use. Instead, by increasing population densities, encouraging infill and setting urban boundaries, communities can significantly reduce the amount of land necessary to accommodate new growth. Indeed, local agencies that strive to use land efficiently and manage growth effectively are already ahead in the effort to protect farmland.

A comprehensive growth management plan may even increase agricultural productivity. Farms in fast-growing urban regions often suffer from the “impermanence syndrome” — when farmers perceive that it’s only a matter of time before their farm is converted to urban use, they stop making long-term investments in the operation. As a result, the farm becomes less efficient and marginalized, which in turn increases the farmer’s willingness to sell the property for development. One way to offset the impermanence syndrome is by shaping urban growth in a compact and predictable manner, so that farmers are less likely to think of their land as slated for development “sooner or later.”

STEP 2: GET THE FACTS

Amassing data about local agriculture is helpful for any farmland protection program. California has the most varied and productive agricultural industry in the world. The state produces more than 250 crops and generates \$24.8 billion in cash receipts annually.¹ Knowing how local agriculture fits into statewide and international markets will help decision-makers to shape policy. Other local factors, such as soil quality, microclimates and water availability, are also important considerations. Strategy 22 offers tips for collecting information to use in developing a comprehensive local program.

STEP 3: ENGAGE THE COMMUNITY

Public support is important when developing any new policy. However, it’s particularly important when developing farmland protection programs. Polls consistently show that voters see the loss of farmland as one of the state’s most serious environmental problems.²

Moreover, discussions of how to conserve farmland often evoke visions about how the community should grow, because any proposed program will affect different people in different ways. For example, a zoning designation that encourages compact, higher-density development may

¹ Agricultural Issues Center, *The Measure of Agriculture 2000*, p. 4.

² Fairbank, Maslin, Maullin & Associates, *Results of Recent Polling Relating to Agriculture in California*, July 13, 1999; www.ilsg.org/farmland.

meet resistance from neighborhood groups unless their concerns are addressed in advance. Finally, productive community engagement increases the public's confidence in both the growth program ultimately adopted and the local agency. Ideas for involving the public and developing community consensus are included in Strategy 22, and, to some extent, Strategy 18.

STEP 4: MANAGE THE CONVERSION OF FARMLAND

Local agencies have a variety of regulatory options available to help them begin managing the conversion of agricultural land. These tools can be used to protect broad swaths of agricultural land and decrease the impact of “leapfrog” development. Although sometimes such measures initially meet resistance, they usually gain more support after they are adopted, particularly when they are part of an overarching plan to protect and enhance local agriculture. This guide addresses these options in eight strategies:

- Incorporating policies into the general plan or developing a specific plan (Strategies 2 and 3);
- Zoning for agriculture (Strategy 4);
- Managing the subdivision of farmland (Strategy 5);
- Conservation easement purchase programs (Strategy 6);
- Mitigation fees and development credit transfers (Strategy 7);
- Local agency formation commission policies (Strategy 8); and
- Regional or interagency cooperation (Strategy 9).

Some land use choices, such as mitigation and transfer of development credit programs, can reduce community objections even further by distributing regulatory burdens among landowners. Moreover, conservation easement programs are developing statewide that actually purchase the right to develop farmland directly from the farmer.

STEP 5: CONSIDER INCENTIVES FOR AGRICULTURE

Voluntary approaches to ensuring the viability of local agriculture are just as important as regulatory options. Even the most effective regulation would fall short if it merely preserved land that could not be profitably farmed. Admittedly, many factors that affect agriculture, such as

international trade and technology, are beyond the scope of most local agency actions. Nevertheless, local agencies can take a wide variety of actions to help farm operators be more productive and profitable, including:

- Providing property tax incentives (Strategy 10);
- Developing adequate water supplies (Strategy 11);
- Simplifying farm permit processes (Strategy 12);
- Encouraging new farmers (Strategy 13);
- Assisting farmers with environmental compliance (Strategy 14);
- Building quality farmworker housing (Strategy 15);
- Promoting the economic development of agriculture (Strategy 16); and
- Encouraging farm marketing (Strategy 17).

Incorporating these elements into a plan will help ensure that agriculture remains a vital part of the community.

STEP 6: ADDRESS “URBAN EDGE” ISSUES

No agricultural protection program is complete without addressing the ag-urban border issue. This area is contentious because farming and residential living are fundamentally incompatible land uses. New residents who moved into an area because of its scenic views are often frustrated by the “nuisance” activities associated with agriculture, such as dust, odors, slow-moving tractors on public roads and use of pesticides. Likewise, farmers have genuine concerns about increased vandalism and trespassing. Local agencies have developed a number of tools to address these issues, including:

- Facilitating informal dispute resolution processes (Strategy 18);
- Adopting “right-to-farm” ordinances (Strategy 19); and
- Creating agricultural buffer zones (Strategy 20).

**POLICY CONSIDERATIONS SUPPORTING
FARMLAND CONSERVATION³**

Food Independence. Farmland conversion threatens the state's long-term ability to produce sufficient amounts of food. Increasing reliance on foreign sources causes vulnerability, because potential future global conflict compromises free trade.

Economic Prosperity. Agriculture plays a significant role in both the California and national economies. This abundant harvest means that Americans spend less of their income on food than almost any other nation, enabling them to spend more discretionary income on durable goods.

Promotes Fiscal Efficiency. Because farmland conservation promotes efficient growth, it reduces the cost of providing urban services. It generally costs less per unit to extend public services, such as water and sewer, to homes in compact developments than to those in low-density residential developments. Furthermore, fire and police protection response times are faster in compact developments.

Prime Land Is Most Often at Risk. Many of California's fastest-growing cities started as farm service centers and therefore are located on prime land. As these communities grow, more and more of the best farmland is taken out of production. Moreover, economic incentives also contribute to this problem. It's usually more cost-effective (and meets with less community opposition) to build new housing on existing farmland than it is to build new homes within existing neighborhoods.

Environmental Conservation. Open farmland provides important environmental benefits, such as groundwater recharge, flood control and wildlife habitat.

Preserving Scenic Views. Farmland provides open space and scenic views. Open space near urban areas provides aesthetic relief from the intense development that generally surrounds residential areas.

STEP 7: TAILOR A PLAN

Having reviewed the wide variety of choices for protecting farmland available to local agencies, the next step is to examine the community's characteristics and policy options, and then design a program that best fits community needs. In most cases, the plan will include elements to control urban growth, manage the conversion of farmland, provide economic incentives and address concerns about the ag-urban boundary. In finalizing the plan, decision-makers should be prepared to make tough calls. Eventually, most plans involve drawing a line separating developable land from agricultural land. Those who are near the line will often want it adjusted one way or another. Decision-makers will have to balance legitimate political considerations with the need to draw the line or create a zone in a way that is most supportive of the entire program.

³ Summarized from Mark Cordes, *Takings, Fairness and Farmland Preservation*, 60 Ohio St. L.J. 1033 (1999).

STEP 8: SECURE FUNDING

The costs farmland protection programs vary for local agencies, depending on their scope and complexity. One of the most encouraging aspects of farmland protection programs is that there is a great deal of funding — both private and public — to help local agencies and other organizations protect and conserve farmland. For example, the state will have more than \$75 million in the coming years for preserving land (Strategy 6). When combined with other resources, this means that communities need only raise 5 to 25 percent of an easement’s value in order to leverage additional funding. Moreover, traditional revenue-raising tools, such as assessments and bonds, can also be used when there is sufficient community support. Several funding sources are summarized in Strategy 24.

STEP 9: OVERCOME OBSTACLES

Despite the best-laid plans, setbacks are likely to occur during implementation. A grant will not come through, or a key element of the program will get off to a slow start, or the local media may run a negative story. Indeed, it’s unlikely that even the most inclusive process will generate unanimous community support for farmland conservation. Some landowners are likely to be skeptical, and may even raise the issue that the plan amounts to a taking of property (Strategy 23). Proponents of a good plan will usually persevere — particularly when the plan has been created with significant public input. Actively involving community members in developing and then implementing the program is one way to maintain public support (see Strategy 22).

STEP 10: SEE IT THROUGH

Planning and adopting an effective farmland protection program is only 49 percent of the battle. The other 51 percent is seeing it through. If there is a “Murphy’s Law” of farmland protection, it is: Soon after adopting a program, a project will materialize that seems “too good to pass up” but that will compromise the plan.

How a community responds to such proposals says a lot about its commitment to the plan. Public trust is an important factor in such a situation. Local officials must strike a balance between the community’s overall economic health and the public expectation that the program will be fully implemented. Ultimately, the deciding factor is the community’s level of commitment to preserving its agricultural heritage and assets.

Part II

MANAGING THE CONVERSION OF FARMLAND



Farmland protection begins with sound urban planning. Each year, urban sprawl consumes 15,000 acres of farmland in the Central Valley alone. Given current growth rates and development patterns, the valley's \$16.5 billion in annual agricultural production could be slashed by as much \$2.1 billion by 2040 — a reduction equivalent to the current agricultural production of New York, Virginia, Oregon or Mississippi. And that is just in the Central Valley. Other key agricultural regions in Imperial and San Diego counties and in the coastal valleys are facing a similar threat.

Finding ways to manage urban growth has the potential to protect more farmland than all of the conservation easements, mitigation fees and Williamson Act contracts combined. This is not to say that farmland protection tools do not play a significant role ? they do. But a sound growth management plan is the cornerstone of any comprehensive farmland protection program. Consequently, most farmland protection tools supplement a growth management plan. Part II addresses these tools, such as conservation easements and agricultural zoning, which complement the other elements of a local agency's general plan. In addition, regional cooperation between adjoining districts and agencies can help to ensure that farmland is protected on a broad basis.

LAY OF THE LAND

Percentage of Californians who agree that development poses a serious threat to farmland: 77%²

Percentage of Californians who agree that development is out of control in California: 55%²

Percentage of Californians who prefer to live in a single, detached family home: 84%⁴

Percentage of Californians who are willing to endure significantly longer commutes in order to live in a single-family detached home: 50%⁴

Chance that a Californian believes that the problems associated with new growth can be solved by sound land use planning: 2 in 3⁴

Percentage of Californians who believe that local governments are well qualified to address local land use problems: 74%⁴

Percentage of Californians who believe that land use initiatives are a good way to address planning issues: 63%⁴

Chance that a Californian is not familiar with the terms “sprawl” or “smart growth:” 2 in 3⁴

Chance that a Californian believes that cities and counties should work cooperatively to solve local land use problems: 3 in 5⁴

Percentage of farmers nationwide who believe that agricultural zoning regulations do not impact the value of their land: 86%⁴

Percentage of farmers nationwide who support regulations to protect farmland: 58%⁶

Chance that a landowner recognizes that government action and investments may actually increase land values: 5 in 6⁶

SOURCES: (1) Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • (2) Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) • (3) California Farm Bureau Federation (www.cfbf.org) • (4) Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • (5) Kuminoff *et al*, *Issues Brief: Farmland Conversion: Perceptions and Realities*, Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • (6) American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

DEVELOP A GROWTH MANAGEMENT STRATEGY

2 STRATEGY

Growth management doesn't mean "no growth." Indeed, achieving zero growth is undesirable — and probably impossible — for most California cities. Not only is the state's population projected to increase by nearly 50 percent (or 18 million) in the next 25 years, but state housing laws require each city and county to plan for its fair share of new housing. The question for local officials is how to accommodate an appropriate share of growth in a way that satisfactorily addresses the competing issues of housing, economic development and resource (including farmland) protection.

GROWTH AND FARMLAND PROTECTION

Thoughtful growth management can have a significant impact on limiting farmland conversion. A study by the American Farmland Trust demonstrates this point.¹ The study compared two growth scenarios for the Central Valley. In the first, development continued at an average density of three dwellings per acre. In the second, the density was doubled to six dwellings per acre. The study found that the lower-density model would consume more than 1 million acres of farmland by 2040, 60 percent of which would be prime farmland and farmland of statewide importance. An additional 2.5 million acres would be located sufficiently close to urban areas to put agricultural operations at risk. By contrast, more compact, efficient growth would reduce farmland conversion to 474,000 acres, or less than half the amount projected in the first scenario.

Moreover, the study demonstrated that more compact growth was also good for local agencies' bottom line. The cost of providing public services to the lower-density development would exceed city revenues by more than \$1 billion per year. In contrast, the more compact development pattern yielded a \$200 million surplus, a difference of \$1.2 billion per year.

Members of the public and local agencies are taking notice. In one case, an extraordinary coalition has formed to curb sprawl in Fresno. This effort,

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¹ American Farmland Trust, *Alternatives for Future Urban Growth in California's Central Valley* (1995).

called the Growth Alternatives Alliance, exemplifies a community-based approach to balancing agricultural protection with economic development. Its members include the County Farm Bureau, Fresno Chamber of Commerce, Fresno Business Council, the American Farmland Trust and the Building Industry Association of the San Joaquin Valley. The alliance's commitment to managed growth is based on the common recognition that Fresno's agriculture is threatened by the same forces that transformed the historically agricultural economies of Los Angeles, Santa Clara and other California counties into large metropolitan areas.

The coalition set out to frame a common vision for managing land use in Fresno County.² Its efforts resulted in the April 1998 publication, *A Landscape of Choice: Strategies for Changing the Patterns of Community Growth*, whose centerpiece is a 10-point policy statement (see "Policy Recommendations of the Growth Alternatives Alliance," below). Fresno County and its 15 cities have adopted resolutions supporting these principles. The county and the City of Fresno are also incorporating these strategies into their general plan updates, and several other cities are adopting specific development plans based on growth envisioned in the report.³

POLICY RECOMMENDATIONS OF THE GROWTH ALTERNATIVES ALLIANCE

- Revise zoning to allow increased density and diversity of housing types in the same zone district.
- Evaluate parking standards to economize land devoted to parking, and encourage shared use.
- Develop transit- and pedestrian-oriented design guidelines for community plans.
- Revise local street standards to make streets narrower and more pedestrian-friendly.
- Prepare revitalization plans and encourage permit streamlining, public participation and public-private partnerships to implement the plans.
- Create mixed-use zones to encourage residential, commercial and office use on the same site.
- Promote downtown or village centers that offer a full range of urban services.
- Work with school districts to use school sites as activity centers that serve multiple purposes.
- Initiate a process to adopt reasonable urban growth boundaries.
- Create a forum where multi-jurisdictional planning between cities and counties can occur.

² Fresno Growth Alternatives Alliance, *A Landscape of Choice: Strategies for Changing the Patterns of Community Growth* (1998).

³ Greg Kirkpatrick, *Building a Constituency for Change: The Growth Alternatives Alliance* (visited Mar. 8, 2002) <http://wsare.usu.edu/sare2000/136.htm>.

THE GROWTH MANAGEMENT TOOLBOX

Exactly what constitutes a sound growth management policy varies with each jurisdiction. A thorough discussion of growth management is beyond the scope of this guide. The issue is briefly addressed here to underscore the need for farmland protection measures to work in tandem with growth management. Programs adopted without such support are likely to be ineffective or, at best, implemented in a piecemeal fashion. In California, growth management strategies are incorporated within the local agency’s general plan and various implementing ordinances.

INFILL INCENTIVES

Encouraging infill in existing urban areas decreases the pressure to turn farmland into single-family subdivisions.⁴ For example, the City of Salinas recently revised its general plan to encourage infill at higher densities, in part to protect the rich land at the city’s outskirts (known as “the world’s salad bowl” for its produce). Infill development can also save money for local agencies because it relies more heavily on existing infrastructure.⁵

Local agencies adopting infill policies face two challenges: developer preference for “greenfield” development and neighborhood opposition to increased density. These challenges can be addressed by providing incentives for infill construction, such as fee reduction and permit streamlining, to help make projects “pencil out.” Involving the public in developing design guidelines helps to address neighborhood opposition. Neither solution is a cure-all, but such efforts and other creative strategies are often enough to help projects move forward.

ZONING

Zoning directs growth and ensures that neighboring uses are compatible. Large-lot zoning (such as one residence for every 40 to 160 acres) is often used to help keep farmland viable. Zoning is an attractive strategy that appeals to many people because it is familiar and relatively easy to adopt. The major flaw attributed to zoning, however, is that it cannot guarantee permanent protection. It is always subject to future amendment by the

AFFORDABLE HOUSING

Managing growth is one of many factors that lead to higher housing costs, making it more difficult for low-income families to buy homes. To offset this, many agencies include an affordable housing policy as part of their growth management strategy. For example, the City of Napa (often noted as a leader in protecting farmland) adopted an inclusionary zoning ordinance requiring that 10 percent of all new homes built be affordable for specific income ranges. The city allows developers to pay an in-lieu fee that the city uses to subsidize affordable units.

⁴ A great resource for infill housing issues is published by the Local Government Commission entitled *Building Livable Communities: A Policy Makers Guide to Infill Development*. See [www.lgc.org/land use publications](http://www.lgc.org/land_use_publications)).

⁵ Rolf Pendall, *Myths and Facts About Affordable and High Density Housing* (1993) (available through the Association of Bay Area Governments Web site at www.abag.ca.gov/services/finance/fan/housingmyths2.htm).

legislative body. In addition, zoning does not necessarily lead to coordinated regional growth. If area jurisdictions don't coordinate efforts when developing their zoning ordinances, the land use pattern across a region is likely to be inconsistent.

UTILITY SERVICE CONTROLS

Limiting the geographical extension of utility services is one of the most effective techniques for controlling urban growth. New subdivisions are dependent on such infrastructure. Consequently, plans that control or phase the extension of water and sewer services place a physical limitation on growth.⁶ These restrictions also help control costs. For example, the City of Woodland has phased its development geographically by controlling when and where utility services can be extended. An alternative is to develop a fee program that encourages compact development. For example, the City of Lancaster charges a variable traffic impact fee, depending on the development's distance from the urban core; greater distances incur higher fees. (Such fees should be crafted carefully and in consultation with the agency's attorney).

URBAN GROWTH BOUNDARIES

Urban growth boundaries (UGBs) are a popular tool in many areas. Growth boundaries specifically delineate where growth can — and cannot — occur.⁷ They are usually enforced by two underlying mechanisms: zoning controls and urban service-area limitations. This combination prevents development beyond the boundary line. An interesting variation on the growth boundary concept has been adopted by the City of Visalia, which has developed interim growth boundaries that expand automatically when development within the existing boundary reaches specific build-out criteria.

Several organizations have sponsored initiatives to adopt urban growth boundaries. In these cases, the boundary is reviewed automatically after some period of time, usually 20 years.⁸ In the meantime, the only way to change the boundary is through another vote. Most (if not all) of the cities in Sonoma, Napa and Ventura counties have adopted growth boundaries in this way.

⁶ Such actions to limit water and sewer hookups have generally been upheld as a valid exercise of the police power. *See Dateline Builders, Inc. v. City of Santa Rosa*, 146 Cal. App. 3d 520 (1983).

⁷ *See Dateline Builders, Inc. v. City of Santa Rosa*, 146 Cal. App. 3d 520, 531 (1983). The UGB often corresponds with a city's sphere of influence boundary.

⁸ To the extent that urban growth boundaries affect the ability to meet fair share housing requirements, it may have to be amended every five years. *See DeVita v. County of Napa*, 9 Cal. 4th 763, 790 (1995).

THE IMPERMANENCE SYNDROME

Sound growth management practices can actually increase local agricultural production by offsetting the "Impermanence Syndrome." Farmers who know that their land is unavailable for development are more likely to make new investments in their operations.

LEAGUE OF CALIFORNIA CITIES' SMART GROWTH PRINCIPLES

- ***Well-Planned New Growth:*** Recognize and preserve open space, watersheds, environmental habitats and agricultural lands, while accommodating new growth in compact forms, in a manner that de-emphasizes automobile dependency; integrates the new growth into existing communities; creates a diversity of affordable housing near employment centers; and provides job opportunities for people of all ages and income levels.
- ***Maximize Existing Infrastructure:*** Focus on the use and reuse of existing urbanized lands already supplied with infrastructure, with an emphasis on reinvesting in the maintenance and rehabilitation of existing infrastructure.
- ***Support Vibrant City Centers:*** Give preference to the redevelopment of city centers and existing transportation corridors by supporting and encouraging mixed use development; housing for all income levels; and safe, reliable and efficient multi-modal transportation; and by retaining existing businesses and promoting new business opportunities that produce quality local jobs.
- ***Coordinated Planning for Regional Impacts:*** Coordinate planning with neighboring cities, counties and other governmental entities to establish agreed-upon regional strategies and policies for dealing with the regional impacts of growth on transportation, housing, schools, air water, wastewater, solid waste, natural resources, agricultural lands and open space.
- ***Encourage Full Community Participation:*** Foster an open and inclusive community dialogue, and promote alliances and partnerships to meet community needs.
- ***Support High-Quality Schools:*** Develop and maintain high-quality public education and neighborhood-accessible school facilities as a critical determinant in making communities attractive to families, maintaining a desirable and livable community, promoting life-long learning opportunities, enhancing economic development and providing a workforce qualified to meet the full range of job skills required in the future economy.
- ***Build Strong Communities:*** Support and embrace the development of strong families and socially and ethnically diverse communities, by working to provide a balance of jobs and housing within the community; avoiding the displacement of existing residents; reducing commute times; promoting community involvement; enhancing public safety; and providing and supporting educational, mentoring and recreational opportunities.
- ***Joint Use of Facilities:*** Emphasize the joint use of existing compatible public facilities operated by cities, schools, counties and state agencies, and take advantage of opportunities to form partnerships with private businesses and nonprofit agencies to maximize the community benefit of existing public and private facilities.
- ***Support Entrepreneurial/Creative Efforts:*** Support local economic development efforts and endeavors to create new products, services and businesses that will expand the wealth and job opportunities for all social and economic levels.
- ***Establish a Secure Local Revenue Base:*** Develop a secure, balanced and discretionary local revenue base to provide the full range of needed services and quality land-use decisions.

INTERIM MORATORIA

Interim moratoria are used to temporarily halt development so that a local agency can develop a comprehensive plan to address related issues.⁹ In the farmland protection context, moratoria might be imposed when a local agency experiences an unexpected rush of applications to develop large tracts of farmland. Sometimes, moratoria are criticized for being misused to stall controversial projects. But the Legislature has built in several protections against such use, such as requiring a super-majority (four-fifths) vote by the governing body for adoption and limiting their duration to no more than two years.

SPECIFIC PLANS

Specific plans are flexible tools that implement the general plan in specific areas.¹⁰ A specific plan can set forth broad policies or provide direction to every facet of development. They are optional, and range in size from a single parcel to large areas within a city or county. Specific plans can be used to develop detailed infrastructure plans and financing strategies, enabling local agencies to phase growth in a deliberate way. For example, the City of Reedley adopted a specific plan for limiting the city's urban footprint that included the following elements:

- ***Increase Densities.*** Increase urban densities to limit development of surrounding farmland. Use design standards like large front porches and recessed garages to offset the negative image of increased density.
- ***Avoid Leapfrog Development.*** New subdivisions must be within one-eighth of a mile (660 feet) of existing development.
- ***Limit Annexations.*** Forward annexation requests only after 80 percent of land available for residences has been developed.
- ***Revise Street Standards.*** Encourage narrower streets to reduce the amount of land used for urban development.
- ***Infill.*** Implement a policy that encourages infill development for vacant or underdeveloped parcels within the existing urban area.

⁹ It may only be extended for a period of two years. *See* Cal. Gov't Code § 65858. Moratoria have long been held a proper exercise of the police power. *Tahoe Sierra Preservation Council v. Tahoe Regional Planning Agency*, __ U.S. __ (2002).; *Miller v. Board of Public Works*, 195 Cal. 477, 486-487 (1925). Under SB 1098 (stats. 2001 c. 939) these requirements now apply to charter cities.

¹⁰ Cal. Gov't Code §§ 65450 – 65457; Governor's Office of Planning and Research, *The Planners' Guide to Specific Plans* (1998) (<http://ceres.ca.gov/planning/specific>).

This is only one example of how a specific plan can be used to manage growth (for another, see “The South Livermore Valley Plan,” below).

BUILDING CAPS

Building caps manage growth by limiting the number of residential building permits that a local agency may issue annually.¹¹ The restriction is usually based on a resource or infrastructure limitation. Many local agencies have developed criteria (sometimes called “beauty contests”) to reward projects that include affordable housing, farmland protection, innovative design or other desirable factors.¹²

Building caps are popular because they are easy to understand and give the public a sense of control. Moreover, many systems have been in place since the 1970s, so they are also familiar. But building caps have been criticized for effectively exporting growth to neighboring communities. In addition, they do not necessarily influence the *type* of growth that occurs. In other words, sprawling growth may continue under a building cap, but at a slower pace.

THE SOUTH LIVERMORE VALLEY PLAN

The City of Livermore’s South Livermore Valley Specific Plan balances new housing with enhancing the area’s wine industry.¹³ Not long ago, the valley was a bucolic place where cattle and vineyards outnumbered people. But things have changed. Spillover from nearby Silicon Valley and San Francisco has converted much of the farmland into high-priced houses and business parks.

Livermore’s specific plan complements an area plan adopted by Alameda County. It applies to seven areas, totaling nearly 1,900 acres, on the city’s southern boundary. The plan calls for developing 481 acres to accommodate 1,200 housing units. The remaining acreage will be placed in agricultural conservation easements (see Strategy 6) to provide a permanent growth boundary along the city’s southern edge.

¹¹ Most are modeled on the Petaluma plan, which limited growth to 500 new houses each year in the early 1970s. See *Construction Industry Assn. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975), cert. denied, 424 U.S. 934 (1976) (finding that the concept of public welfare is sufficiently broad to uphold the city’s desire to preserve its small-town character and grow at an orderly pace).

¹² Other decision criteria may include equitable considerations, such as how long a development has been in the pipeline. See *Pacifica Corp. v. City of Camarillo*, 149 Cal. App. 3d 168, 182 (1983).

¹³ The plan was adopted in November of 1997 and amended in February 2001. Selective portions of the plan are available on the Institute’s Web site.

The plan's lynchpin is its mitigation program. Developers are required to pay for planting one acre of new vineyards for each acre converted to housing *and* for each new house. Other crops, such as olives, also be planted. The new vineyard must also be protected by a conservation easement and the developer must arrange for its maintenance for at least eight years — either by placing additional covenants on the property or by entering into a long-term maintenance contract with an experienced farm operator. The South Livermore Valley Agricultural Land Trust was formed to negotiate and purchase these easements, which it holds jointly with the City of Livermore.

One result of this policy has been the creation of several agriculturally viable 10-acre ranchettes in the county planning area. A typical parcel may have one acre of living space on nine acres of income-producing vineyards that, when mature, can generate more than \$100,000 annually in revenue for the owner. Other elements of the plan include:

- ***Nuisances.*** Viticulture is very noisy at times. Large fans, typically powered by loud V-8 engines, operate during cold weather to reduce frost damage. Before harvest, blank cartridges are often fired to scare away birds. A proactive education program warns new residents of the potential consequences of living near vineyards.
- ***Scenic Corridors.*** Because the wine area attracts tourists, design standards help to maintain the city's scenic edge. New subdivisions must include a visual buffer (consisting of a vineyard) between residential lots and the main roadways.

The plan is a comprehensive approach to growth management and farmland conservation. However, it may be difficult for some agencies to duplicate the results. Several unique regional factors, such as a well-developed wine and tourism industry and extremely high land values (ranging from \$78,000 to \$150,000 per acre of developable land), contribute to the plan's success. Livermore has chosen to embrace its wine industry. In other parts of the state, new vineyards are seen as a threat to more traditional forms of agriculture.

Moreover, the very profitable nature of the region's vineyards ensures that requiring landowners to actually engage in grape production is not as burdensome as it might be for a less valuable crop. The Livermore experience underscores the importance of tailoring a growth management and agricultural protection program to the community's unique characteristics.

MAKE FARMLAND PROTECTION A PRIORITY IN THE GENERAL PLAN

A city or county general plan is the foundation for all local land-use planning in California. At its best, the general plan encapsulates a vision for the community and translates it into a set of policies for physical development. All other ordinances and policies that control zoning and subdivisions flow from the general plan,¹ which includes goals and objectives for long-range planning, and specific policies to support them.

General plans must be both horizontally and vertically consistent. Horizontal consistency means that the separate elements do not conflict with one another.² In other words, if a local agency designates an area as farmland within a land use element, it cannot adopt a policy within its housing element that would require the designated farmland to be developed. Vertical consistency means that other policies do not conflict with the general plan. To use the same example, land designated as farmland in the general plan cannot be rezoned as industrial without amending the general plan.³

MANDATORY PLAN ELEMENTS

General plans are required to address seven elements: land use, circulation, housing, conservation, opens space, noise and safety.⁴ Most local agencies address farmland conservation within one or more of these elements in the following ways:

- **Land Use Element.** The land use element describes the location and extent of uses such as housing, business, agriculture and other

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¹ See *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531 (1990); *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990).

² *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698 (1981).

³ Zoning ordinances in charter cities are not required to be consistent, though most charter cities follow the practice. Cal. Gov't Code § 65803.

⁴ Cal. Gov't Code § 65302.

activities. It must specify population density and building intensity standards for each land use category.⁵

- **Conservation Element.** The conservation element addresses the development of natural resources, including agricultural soils.⁶
- **Open Space Element.** The open space element addresses the preservation and management of natural resources. Agricultural lands are listed as one of the resources to be managed.⁷
- **Housing Element.** The housing element, while not directly related to agriculture, often describes how new areas will be developed. The more it emphasizes infill and higher-density development, the less impact it will have on farmland conversion. Housing elements can also plan for farmworker housing.

SPECIFIC PLANS

Specific plans (addressed in Strategy 1) can also be used to implement general plan policies. A specific plan works like a general plan for a specific area, and therefore often allows the policies and goals to be much more specific. Specific plans must be consistent with the general plan.

Local agencies enjoy a great deal of flexibility in tailoring general plans to fit community needs. There is no single “right” way to develop a farmland protection program. For example, the City of Stockton’s land use element includes a goal to “promote and maintain environmental quality and the preservation of agricultural land while promoting logical and efficient urban growth.” A policy under this goal states that “wasteful and inefficient sprawl of urban uses into agricultural lands ... should be avoided.” Butte County’s land use element uses a somewhat different approach: It designates different agricultural areas within the county and provides that zoning and other regulations be adopted accordingly.⁸ The county’s open space element also encourages farmers to enter into open space agreements, such as those offered under the Williamson Act.

THE OPTIONAL AGRICULTURAL ELEMENT

Local agencies may also incorporate optional elements into their general plan to address agricultural issues.⁹ An agricultural element allows

⁵ The land use element must make designations for housing, industry, business, open space, natural resources, public facilities, waste disposal sites and other categories. Cal. Gov’t Code § 65302(a).

⁶ The conservation element of the general plan must address the identification, conservation, development and use of natural resources. “Natural resources” include water, forests, soils, waterways, wildlife and mineral deposits. Cal. Gov’t Code § 65302(d).

⁷ Cal. Gov’t Code §§ 65560 and following. The open space element should details long-rangemeasures for preserving open space for natural resources, managing the production of resources, for outdoor recreation, and for public health and safety. Cal. Gov’t Code §§ 65302(e), 65560 - 65568.

⁸ County of Butte, Cal., GENERAL PLAN LAND USE ELEMENT (2000) (available online at www.buttecounty.net/dds/land.htm).

⁹ Cal. Gov’t Code § 65303.

farmland designation, farmworker housing and economic support issues to be addressed more directly (see “Sample Agricultural Element Policies,” page 22). It also has the same force and effect as the general plan’s mandatory elements. All other elements, ordinances and policies must remain consistent with the agricultural element’s goals and purposes.

Sonoma County’s general plan includes an agricultural element that outlines the county’s intentions of stabilizing agriculture at the urban fringe. Its policies also limit the intrusion of new residential uses into agricultural areas and mitigate conflicts between agricultural and nonagricultural uses in designated production areas. To provide another example, the City of Arroyo Grande’s agricultural element promotes agricultural tourism in connection with its downtown area’s historic character.

There are several good reasons to develop a separate agricultural element. First, the seven mandatory elements are not always the best vehicles for focusing on agricultural production requirements. For example, addressing farmland protection wholly within the open space element risks de-emphasizing the business needs of agriculture. Second, it is difficult to achieve a comprehensive strategy for agriculture when the most relevant policies are spread over three or more general plan elements.

Finally, a local agency is more likely to seek and obtain more accurate information on the status of local resources and production if it is planning for agriculture as a whole. Thus, the agricultural element becomes more than just a delineation of agricultural zones. It becomes a platform on which a local agency can endorse strategies to ensure the local agricultural economy’s long-term vitality.

FOLLOWING THROUGH

A general plan provides the starting point for protecting farmland. However, some critics have observed that it’s relatively easy to amend a general plan.¹⁰ Thus, simply adopting general plan policies to protect farmland is not enough to limit the conversion of agricultural land — the policies must actually be implemented. Indeed, a number of communities throughout the state have adopted model policies, only to amend them as soon as a large development is proposed. In other words, there is no guarantee that a general plan will be implemented as adopted.

¹⁰ With some exceptions, mandatory elements can be amended up to four times during any calendar year. Cal. Gov’t Code §§ 65358. No similar restriction applies to specific plans.

SAMPLE AGRICULTURAL ELEMENT POLICIES

The following policies are excerpted from general plans throughout California:

- ***Support Farming Outside Boundaries.*** Limit annexations of prime land and promote compatible adjacent uses when projects within the city abut farmland.
- ***Cooperation.*** Work with other local agencies to discourage non-agricultural land uses in agricultural areas within or adjacent to jurisdiction (for cities).
- ***Farm Marketing.*** Organize promotional marketing programs for local agriculture.
- ***Soil Quality.*** Preserve high-quality soils and maintain essential agricultural lands.
- ***Small Rural Businesses.*** Support farming by permitting limited small-scale farm services and “visitor-serving uses” (small retail) in farm areas.
- ***Direct Urban Development to Cities.*** Limit rural residential development to parcels outside nonprime agricultural areas (for counties).
- ***Limit Rural Development.*** Direct rural development to communities with economic potential. Severely limit rural residential development elsewhere (except for farm families and employees).
- ***Protect Current Operations.*** Protect the right of farm operators in designated agricultural areas to continue their farming practices.
- ***Cluster Zoning.*** Use cluster housing and easements to maintain large farm parcels.
- ***Farm Worker Housing.*** Allow and encourage the development of farmworker housing.
- ***Farmers Markets.*** Encourage a weekly farmers’ market and support other direct marketing activities.
- ***Regional Collaboration.*** Coordinate with other agencies, nonprofit organizations and landowners to ensure the coordinated designation and preservation of agricultural lands in unincorporated lands.
- ***Minimum Parcel Size.*** Promote a minimum lot size that is large enough to sustain farm enterprises. Discourage development of 20- to 40-acre home sites, unless it can be demonstrated that smaller farm units will remain in production.
- ***Community Separators.*** Define community buffers using productive agricultural open space so cities can maintain their community identities.
- ***Compact Growth.*** Concentrate growth within city limits by using increased densities and narrower streets.
- ***Appropriate Infrastructure.*** Promote an agricultural support system, including physical components such as farmworker housing.
- ***Recognize Economic Contributions.*** Enact and enforce regulations to retain agriculture as a major source of income and employment.
- ***Develop an Inventory.*** Develop an inventory of the quantity and quality of agricultural resources on which to base sound decisions.
- ***Protect Grazing Land.*** Protect lands used for grazing, even if they are not considered prime soils.
- ***Farm Infrastructure.*** Support finance for farm infrastructure, such as drainage.
- ***Viable Industry.*** Enhance agriculture as a major viable production industry.

Local agencies risk losing the public’s confidence when they approve amendments that are clearly contrary to the plan’s original intent. Frequent amendments can also lead to citizen frustration, particularly in cases where the community was very active in developing the plan. Sometimes this frustration manifests itself in a ballot initiative that prohibits local agencies from making any amendments to the parts of the general plan that protect farmland and open space.¹² One way to “see a plan through” is for local agencies to find voluntary ways that make it more difficult to amend the general plan, including the following:

- ***Include Specific Goals in the General Plan.*** General plans that include specific provisions to protect farmland are more difficult to change than those that merely include vague goals. This is because general plan revisions are subject to the California Environmental Quality Act (CEQA). Thus, when an agency goes to change a plan that specifically protects farmland, the action is more likely to trigger the mitigation provisions required by CEQA. Vague goals, however, are easier to explain away in a negative declaration.
- ***Add Public Input Opportunities.*** Increased opportunities for public input (beyond those required by statute)¹³ can also help protect farmland in communities where the public has made it a priority. A policy that requires a community town hall meeting near the location or requires the input of a stakeholder advisory committee will increase public input. Having such policies in place before an amendment is proposed will give proponents of plan amendments a clearer indication of the agency’s commitment to its plan.
- ***Consider Supermajorities for Charter Cities.*** Charter cities have greater control over their own voting processes because such procedures are not matters of “statewide concern.”¹⁴ Thus, charter cities could impose supermajority requirements for certain kinds of general plan amendments in their charters. But this option would probably be ineffective for general law cities and counties, which are governed by contrary language in the state Planning and Zoning Law.¹⁵

GOT INITIATIVES ?

Frequent amendments to the general plan can lead to public frustration, particularly if they hasten development of prime farmlands. Such dissatisfaction can result in “slow growth” initiatives. If such an initiative passes, not only will it change the way the community grows, but it also makes amending the general plan more difficult. As a general rule, provisions adopted by initiative can be amended only by initiative unless the initiative states otherwise.¹¹

¹¹ *DeVita v. County of Napa*, 9 Cal. 4th 763 (1995). Cal. Elec. Code §§ 9125, 9217.

¹² In most cases, such initiatives merely adopt existing agriculture and open space conditions. In another common form, they designate urban growth boundaries. In either event, the legislative body is prohibited from amending the provisions adopted by initiative. The only way to amend it is by subsequent initiative. Cal. Elec. Code §§ 9125, 9217.

¹³ Cal. Gov’t Code § 65353.

¹⁴ Cal. Const. art. XI, § 5(b).

¹⁵ An amendment to the general plan shall be initiated in the manner specified by the legislative body. Cal. Gov’t Code § 65358.

- ***Establish Finding Thresholds.*** A general plan amendment does not require the legislative body to make findings. However, the agency may adopt its own rules stating that such amendments will not be approved unless certain findings can be made.¹⁶ This solution is perhaps a bit cosmetic, because the legislative body could adopt an amendment exempting such projects from review at any given time. However, it does make amending the general plan more difficult, because it provides proponents of farmland protection with a political tool they can use to ask why any given project should receive “special treatment” under the local agency’s policies.

Finally, there is one other way that a local agency can raise the bar of difficulty on amending general plans: It can place the plan on the ballot for approval by local citizens. If approved, the plan can be amended only by subsequent initiative, which gives the general plan the greatest protection against arbitrary amendment. The City of Napa employed this strategy in 1990 when it asked voters to reaffirm certain portions of the general plan designating land for agriculture, watershed and open space uses for a period of 30 years. Of course, such action also limits the extent to which “good” amendments may be adopted. Local agencies using this option should draft the initiative carefully in order to maintain a fair degree of flexibility and avoid liability.¹⁷

BEWARE THE “PLAN BUSTER”

This scenario occurs just often enough to make it worth noting. Typically, it involves a community that has just adopted a new comprehensive general plan balancing new growth and resource protection. Soon after its adoption, however, a “plan buster” is proposed.

A plan buster is a project that seems too good to pass up but that compromises the original plan. It’s a tactic sometimes employed by those who want to develop outside the urban service boundaries. Rather than seek an amendment to the general plan on the basis of the development alone, they offer to donate a portion of the land for a school, hospital or some other special amenity needed in the community. If accepted, the next step for the local agency will be to amend the general plan itself and begin extending water, sewage and road improvements to the site. These actions, of course, making the surrounding land ripe for further development. The original plan is effectively “busted.”

¹⁶ A legislative body may establish for its planning agency any rules, procedures or standards that do not conflict with state or federal law. Cal. Gov’t Code § 65102.

¹⁷ Tips for drafting initiatives are included in another Institute publication: *Ballot Box Planning: Understanding Land Use Initiatives in California*, 37-49 (2001).

ZONE FOR AGRICULTURE

4 STRATEGY

Zoning is perhaps the most widely used land use tool, and often one of the first lines of defense in farmland protection programs. When used effectively, agricultural zoning has several benefits. It is also an efficient way to protect agricultural land. By simply passing an ordinance, local agencies can channel residential development away from broad swaths of farmland.¹

But zoning is not without critics. Poorly implemented zoning can actually speed farmland conversion. Extensive reliance on low-density rural residential zoning, for example, causes urban areas to expand at very low densities and often leads to “leapfrog” development patterns. In addition, zoning is often criticized for how easily it can be changed. Land can be redesignated from agricultural to auto mall by a simple majority vote at any given meeting of the legislative body when general plans are drafted for that kind of flexibility.

Nevertheless, zoning remains one of the most essential tools to use in protecting farmland. It is generally most effective when used with other planning tools in this guide, such as conservation easements, subdivision controls or urban growth boundaries.

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There are at least four key elements to consider when drafting or reviewing an agricultural zoning ordinance: the size of the parcel; extent of permitted or conditional uses; design; and implementation enforcement. In addition, a variety of local factors, such as the characteristics of local agriculture, soil quality and pre-existing regional growth and infrastructure patterns, will influence how the local agency ultimately designs and implements its zoning ordinances.

PARCEL SIZE

Large lot zoning is a common farmland protection tool. Minimum lot sizes, such as 80 or 160 acres, ensure that parcel sizes remain large enough to be farmed profitably. Large lot zoning also discourages land purchases for

¹ See Cal. Gov't Code § 65850(a); 65910 (authorizing open space zoning).

DOWN ZONING: POLITICS AND PROPERTY

One of the toughest issues for local decision-makers is the extent to which they will “down zone” land to protect the agricultural character of an area. Such decisions often raise political considerations.

But contrary to what is often argued, most zoning changes will not amount to a taking of property because zoning ordinances do not confer a right to develop; they are always subject to change. Thus, no property right has been taken (see Strategy 23).

residential use.² Setting an appropriate minimum parcel size is crucial to the effectiveness of agricultural zoning. If it’s too low, the farmland may be divided into parcels that are too small to farm. If it’s too high, the policy may not gain popular support.

An effective density standard can also preserve the production capability of typical farming or ranching operations. For instance, a five-acre vegetable farm (also known as a “truck farm”) may be viable in some coastal zone areas. On the other hand, a cattle ranch in the Sierra foothills may need more than 1,000 acres to maintain a viable operation.

Many agencies “feather” smaller minimum lot designations, such as five or 10 acres, in transition areas to create “rural residential” units between large agricultural operations and urban residences. The idea is to create progressively smaller lots, going from agricultural to urban areas, to reduce some of the conflicts that arise with largely incompatible agriculture and residential uses. This approach has lost favor in some planning circles for two reasons. First, many of the primary conflicts, such as pesticide drift, remain. Second, such designations sometimes impede more efficient higher-density developments as cities expand. Nevertheless, it can be an effective tool in some circumstances (see Strategy 20, page 119).

MANAGING USE

The scope of permitted uses within the zone will determine whether non-agricultural or quasi-agricultural uses will be allowed. Overly broad definitions of agricultural uses may permit golf courses and other nonagricultural activities that may be incompatible with farming. On the other hand, a very narrow definition may limit economic opportunities to expand farming operations into processing and service activities. Most agricultural zoning can be classified in one of the following two ways:

1. **Exclusive Zoning.** Only agricultural uses are permitted. Limiting the scope of allowable uses is particularly significant in farm security zones and other Williamson Act areas (see Strategy 10). The permitted uses for lands enrolled under the act are defined by state statute.
2. **Non-Exclusive Zoning.** Non-agricultural compatible uses, such as recreation or storage, are permitted. Non-exclusive areas tend to urbanize over time, meaning that this designation should probably not be used in areas slated for long-term farming.

² See *Barancik v. County of Marin*, 872 F.2d 834 (9th Cir. 1988) (upholding zoning of one residence per 60 acres).

Both typically require a large minimum parcel size, although exclusive agricultural zoning will usually require lot sizes significantly larger than non-exclusive zones.

In addition, agencies may turn to two other zoning techniques ? conditional use permits and overlay districts ? to address specific uses within agricultural zones. Conditional permitting allows the local agency to address the impacts on a project on a case-by-case basis. Special conditions are attached to the permit to address and mitigate for the aspects of the operation that pose the greatest concern. While it might be impractical to use this tool on more typical cropping operations, it may have applications for dairies or other types of agriculture that are likely to generate some

DEFINING AGRICULTURE: WHAT'S IN A NAME?

Many local zoning ordinances do not define the term “agriculture.” Simple as it is, this term can mean different things to different people. Consider the following examples, drawn from actual events:

- A family farm begins a contract harvesting business and builds a tractor and truck maintenance facility on their farm, which is located in a scenic corridor.
- A biotech company maintains a herd of goats near a residential area. It injects the goats with proteins to research a cure for cancer. Neighbors, who are uncomfortable with the biotech goats, claim that the use is medical, not agricultural.
- A tomato farmer decides to grow hothouse tomatoes and builds greenhouses on 100 acres of land zoned exclusively for agriculture. Neighbors claim that he is no longer farming.

- A large corporation plans a “factory” hog operation. Fearing odors, city residents suggest that confinement operations do not fit within the traditional definition of farming.

Determining what exactly constitutes an agricultural use can be highly subjective. Defining the term in a way that effectively addresses such uses may be an exercise in futility. Even statewide definitions, such as the one used in the Williamson Act, may not resolve the issues described here.³

However, the approach employed by agencies such as the City of Turlock provides a good alternative.⁴ Instead of defining agriculture, the city identifies common agricultural practices as authorized and conditional uses within agricultural zones. Then, in the few instances where a new use affects neighboring properties differently, it can be addressed on a case-by-case basis.

³ Agricultural use means the “use of land for the purpose of producing an agricultural commodity for commercial purposes. ... Agricultural commodity means any and all plant and animal products produced for commercial purposes.” Cal. Gov't Code §§ 51202(a) and (b).

⁴ City of Turlock, Cal., Code § 9-3-101 (2001).

concerns. Once the permit is granted, it is passed to subsequent owners and cannot be revoked without a hearing. However, it can be revoked if the conditions are not met.

Finally, overlay zones can be used to either encourage or limit a specific activity within a smaller sub-zone or across zoning area boundaries. For example, a local agency seeking to encourage farm tourism within an agriculture zone can design an overlay district that would permit a limited amount of construction for small buildings, bed-and-breakfast inns, roadside food stands and other uses consistent with farm tourism.

VARIANCES AND ENFORCEMENT CONSIDERATIONS

How the zoning ordinance will be implemented and enforced is also an important consideration. An issue that arises with many ordinances is whether the agency should grant a variance (or exception) to a landowner who claims to be unfairly affected by the ordinance. Generally, variances can be granted only when special circumstances applicable to the property (such as size, shape, topography, location or surroundings) deprive the landowner of privileges enjoyed by other local landowners under the same ordinance.⁵

Finding cost-effective ways to enforce ordinances is a significant challenge for local government. Typically, code enforcement officers ensure compliance with local zoning ordinances. Fortunately, most agricultural zoning ordinances are aimed at limiting the extent to which farmland is converted to nonfarm uses. Thus, the building permit process will check most nonconforming projects. Additional monitoring may be as easy as driving through flat open country in the area. In more hilly and wooded sections, periodic aerial photographs can also be used to monitor compliance.

DESIGN ISSUES: CLUSTER DEVELOPMENT

Cluster zoning is a technique that can be used to protect farmland while still accommodating some level of development. Homes are generally “clustered” in one area of a parcel to be developed.⁶ The remaining land is saved for farming or serves as a buffer.⁷ Cluster zoning has worked in areas

⁵ Cal. Gov't Code § 65906. This standard may be supplemented with additional local guidelines. *See Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 511 n.6 (1974).

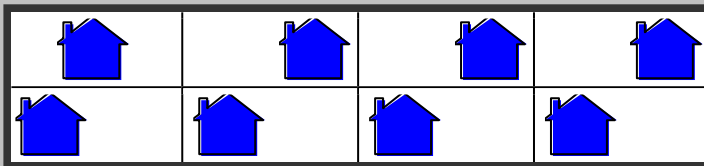
⁶ Randall Arendt, *Rural by Design* (1994).

⁷ Many local agencies in California employ variations of this kind of zoning, sometimes referred to as area-based or sliding scale zoning. Area-based zoning establishes a ratio of residences per specified number of acres. For example, a ratio of one residence per 40 acres would allow five residences to be

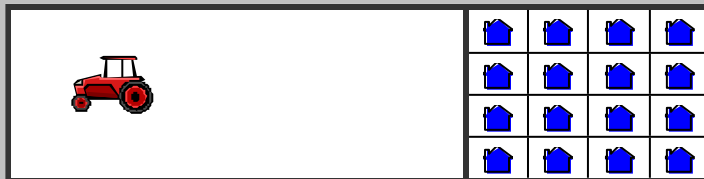
east of the Mississippi River where geography provides a variety of undulations, ridges and valleys. It is perhaps less effective in the broader plains and valleys of the West.

HOW CLUSTERING WORKS

A landowner seeks to build on a 240-acre parcel in an agricultural zone designated A-30 (a maximum density of one house per 30 acres). Present zoning permits up to eight homes on the property.



Under a cluster ordinance, however, the owner would be able to build more houses if they are clustered in one part of the property. For example, assume that a cluster ordinance allowed the owner to double the number of homes that could be built if most of the land is protected for agriculture. In this case, 16 homes on three-acre plots could be built on 48 acres, preserving nearly 192 acres for agriculture.



built on a 200-acre parcel. A fixed area-based ratio does not change. A sliding scale ratio decreases the number of residences as the parcel size increases. For example, a five-acre parcel may be allowed one residence, a 15-acre parcel two residences, and a 30-acre parcel three residences.

In California, the clustering technique is most practical in coastal and mountainous areas, where a small cluster of homes is less likely to affect large-scale farming. For example, San Luis Obispo County has an “agricultural cluster” designation that concentrates development in agricultural areas.⁸ Clustering can also be practical in and near rural residential subdivisions as a means of transitioning from urban to agricultural areas. But it is less effective in California’s large fertile valley floors because it creates disconnected “islands” of farmland and residential units — in effect, sponsoring a form of “leapfrog” development.

Some developers express concern that placing homes close to one another will destroy the “country feel” that makes the property marketable. But a well-designed development can preserve much of that ambiance by taking advantage of its proximity to the newly protected farmland. In addition, local agencies can provide an incentive by increasing the total number of units that can be built in a cluster, making the project more profitable. Cluster zoning can also reduce the cost of servicing the new development because it requires fewer roadways, sewers and water lines than the same number of homes spread over a larger area.

Clustering typically requires the developer to provide a management plan for the undeveloped portion of the property. If the new development is designed as a planned unit development, then the remaining land could be deeded with restrictions to the homeowners association, which in turn could lease it to local farmers. But the local agency would need to be able to enforce the original terms if the homeowners association sought to put the land to alternative uses. One way to provide this security is to identify the local agency as a third-party beneficiary to the agreement that deeds the land to the homeowners association.

Selling or donating a conservation easement may be another option, providing that there is a land trust (see Strategy 6) willing to monitor the easement. A third option may be to allow the land to be sold to another farmer with a deeded restriction prohibiting further development. Finally, the local agency may elect to own and maintain the property if it will become part of a buffer or trail system.

⁸ County of San Luis Obispo, Cal., Code § 22.04.037 (2000).

MANAGE THE SUBDIVISION OF AGRICULTURAL LAND



Subdividing agricultural parcels into minimum parcel sizes is often the first tangible step toward development and consequent loss of farmland. Managing how rural land is subdivided can help protect farmland from unchecked residential development. The Subdivision Map Act (Map Act) authorizes local agencies to regulate the design and improvement of subdivisions within their boundaries.¹

BASICS OF SUBDIVISION LAW

The Map Act authorizes each city and county to adopt an ordinance that designates a local process for subdivision approval.² When a subdivision includes five or more parcels, the landowner files a tentative map.³ The tentative map establishes the proposed design of the subdivision as well as the location of public streets, sidewalks, parks and public utilities. When a proposed subdivision consists of four or fewer parcels, the landowner files a parcel map and oversight is more abbreviated.

The Map Act designates the extent to which a local agency may approve, conditionally approve or reject the proposed tentative or parcel map. In most circumstances, the local agency may require the landowner to meet certain conditions before the map can become final. The owner then has a period of time — usually two years — to meet these standards, though the owner can seek a series of extensions. Upon completion of the conditions, a final map is recorded and the land is subdivided.

GROUNDINGS FOR APPROVAL AND DENIAL

When a local agency considers an application to subdivide, it can apply only those ordinances and policies that are in effect at the time that the

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¹ Cal. Gov't Code §§ 66410 and following. The Map Act applies when land is subdivided for sale, lease, or financing, but an exception has been created for agricultural purposes such as when a portion of land is subleased to another producer. Cal. Gov't Code § 66412(k).

² Cal. Gov't Code § 66411.

³ See Cal. Gov't Code § 66426(f).

application is deemed complete.⁴ The Map Act limits the scope of local discretion to approve or reject specific applications. To approve an application, the local agency must find that the proposed subdivision is consistent with the general plan and any applicable specific plan.⁵ The degree to which a local agency can reject a tentative map application is also limited to specified grounds. The limitations most relevant to farmland protection are:⁶

- **General Plan Inconsistency.** The proposed map, design or improvement is inconsistent with the general plan or applicable specific plan.
- **Williamson Act.** The land is subject to a Williamson Act contract and the resulting subdivision would create parcels too small to sustain agricultural use.
- **Water Supply.** Sufficient water supplies are not available to serve the project when the project consists of more than 500 dwelling units (or in projects that would cause a 10 percent increase in service connections for public water systems of fewer than 5,000 units).⁷

Thus, the general plan (or applicable specific plan) provides an important check against unplanned development. If, for example, the general plan designates an area as agricultural, then it should be relatively easy for the agency to deny an application on the grounds that the proposal is inconsistent with the general plan.

Agricultural lands bound by Williamson Act contracts (see Strategy 10) also receive special consideration. Subdivision of contracted land is permitted only when the resulting parcels remain large enough to sustain agriculture. Parcel sizes of 10 acres of prime agricultural land and 40 acres of nonprime land are presumed large enough to sustain agriculture.⁸ However, local agencies are permitted to establish larger sizes. They can

⁴ The agency may also apply an ordinance that it is in the process of amending or updating. See Cal. Gov't Code § 66474.2. The agency may also apply any subsequent change in the law in response to a subdivider request. Cal. Gov't Code § 66413(b). By designating the map as a “vesting tentative map,” the subdivider gains the vested right to proceed under the law in effect when the application is considered complete. Cal. Gov't Code §§ 66498.1 - 66498.9.

⁵ Cal. Gov't Code § 66473.5.

⁶ See Cal. Gov't Code §§ 66474(e) and (f). A proposed subdivision may also be rejected if the design or proposed improvements are likely to cause substantial environmental damage, injure fish, wildlife, or their habitats, or cause serious public health problems.

⁷ Cal. Gov't Code § 66473.7 (requiring local agencies to make specified findings of sufficient water supply before approving a tentative map).

⁸ Cal. Gov't Code § 66474.4(a).

DO LARGE-LOT SUBDIVISIONS MAKE “CENTS”?

Large lot zoning (designating a minimum parcel size of one to 20 acres) is often used to maintain the rural character. A study by the American Farmland Trust focused on the economic impact of large lot parcels in the 18 counties of the Central Valley.⁹ The report presents the following data about 1.5- to 20-acre “ranchette” subdivisions:

- **Total Area.** There are 444,000 acres in ranchette-type subdivisions in the Central Valley.
- **Greater Impact on Local Agency Budgets.** Local agencies spend \$331 more per unit annually to provide services (such as roads, schools and other services) for ranchette subdivisions than for typical urban development.¹⁰
- **Value of Lost Agriculture.** The Central Valley lost an estimated \$802 million in gross agricultural sales between 1986 and 1994 due to the break up of 456,000 acres of farmland into unproductive parcels. Loss of agricultural production resulted in an estimated loss of 35,200 permanent agricultural and related jobs during this period.
- **Overall Economic Loss.** Total direct and indirect sales losses due to reduced agricultural production exceed \$2 billion each year. This includes \$729 million in lost annual personal income.

also establish smaller lot sizes, but only by issuing findings that the land could sustain agricultural uses permitted under the contract.¹¹

CONDITIONAL APPROVALS

The Map Act authorizes local agencies to impose several conditions on the approval of subdivisions, including the dedication of land or payment of fees for parks, schools, street and bicycle paths, local transit facilities and drainage and sewer facilities.¹² The purpose of these conditions is to offset

⁹ Tim Dunbar, *Ranchettes: The Subtle Sprawl. A Study of Rural Residential Development in California's Central Valley* (2000).

¹⁰ These figures reflect a net loss, and therefore take into account the gain in revenue that the local agency would realize from increased property taxes. It does not account, however, for the expected gains the county could expect from sales tax revenues.

¹¹ Cal. Gov't Code § 66474.4.

¹² Cal. Gov't Code § 66477. Further conditions may be required as mitigation measures under the California Environmental Quality Act.

WHAT TO DO WHEN ALL THE CONTROLS ARE NOT IN PLACE

Update the General Plan. All subdivision applications filed after the update will be subject to those revisions as adopted.

Use a Development Agreement.

Developers will often trade additional public improvements for certainty. Under a development agreement, the agency can encourage the subdivider to cluster the development in a portion of the land to be subdivided and keep the remainder of the land in agriculture. The Institute has published the *Development Agreement Manual*, available for purchase online at www.ilsg.org (keyword search “development agreement”).

the long-term impacts (which may include the loss of agricultural land) that the subdivision will have on public resources.

Local agencies may impose additional requirements when the condition reasonably offsets the impact of development and furthers the purposes of the general plan.¹³ A common practice is to conduct a nexus study to justify the fee by quantifying the impacts of development and showing how a fee or other requirement would offset such impacts.¹⁴ If the general plan requires the mitigation of loss of farmland, then the local agency may impose that condition on development. For example, based on a nexus study, the City of Davis imposes a fee on new subdivisions that is then used to purchase conservation easements on neighboring farmland.¹⁵

Such fees are sometimes challenged as a “taking” of property. However, fees that are adopted by ordinance and are applicable to a broad class of landowners generally survive judicial scrutiny. The cases often cited in support of such claims — the *Nollan* and *Dolan* cases¹⁶ — hold that such fees are more likely to become a taking only if they are imposed in an ad hoc or individual fashion on a single landowner. While such claims should not be ignored, local agencies working closely with legal counsel should be able to craft a program that does not amount to a taking.

ANTIQUATED SUBDIVISIONS

The term “antiquated subdivisions” describes lots that have been created under early versions of the Map Act. The date that the subdivision was legally created is important. Antiquated lots can be developed under the version of the Map Act that was in effect on the day the lot was legally created.¹⁷ For example, if a lot was created in 1910, it would not necessarily have to be consistent with today’s general plan because there was no general plan conformity requirement in 1910.

Thus, landowners have a valuable incentive to determine the extent to which their land may already have been subdivided. Assuming their

¹³ Cal. Gov’t Code §§ 66418, 66419. *Soderling v. City of Santa Monica*, 142 Cal. App. 3d 501 (1983).

¹⁴ Sometimes this analysis is done as part of an environmental impact report (EIR).

¹⁵ Such fee programs must be imposed and managed in accordance with the Mitigation Fee Act. See Cal. Gov’t Code §§ 66000 and following.

¹⁶ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

¹⁷ The Map Act recognizes the legality of parcels created by deed and federal patent. See Cal. Gov’t Code § 66451.10. See also *John Taft Corp. v. Advisory Agency*, 161 Cal. App. 3d 749 (1984) (holding that a United States Government Survey Map is insufficient to create legal parcels); *Lakeview Meadows Ranch v. County of Santa Clara*, 27 Cal. App. 4th 593 (1994) (finding three parcels, two created by federal patent and one by deed, on ranch covering thousands of acres).

A SHORT HISTORY OF ANTIQUATED SUBDIVISIONS

In the late 1880s, land speculators recorded several hundred thousand tiny lots on maps throughout California, creating “ghost” townships that existed only on paper. In some cases, large tracts of land were subdivided into substandard lots with no regard for slope, drainage or topography. Such lots were even used as a promotional sales gimmick; *Sunset* magazine gave away small parcels in a campaign to increase subscriptions. One estimate placed the number of antiquated subdivisions between 133,000 and 424,000 lots.¹⁸

research yields positive results, the next step is to seek a certificate of compliance, which provides formal recognition of the parcel by the local agency. Local agencies do not have any discretion in such matters. If there is a legally created parcel, they must issue the certificate.

The problem that still exists for the landowner, however, is that many of these lots are in less-than-ideal locations, such as steep hillsides, flood plains or away from access to good roads. In such cases, the owner may not be able to develop the parcel as originally drawn and will generally request a lot line adjustment. The Map Act allows owners to reconfigure existing, contiguous parcels on their properties. Until recently, landowners did not have to seek local agency approval for lot line adjustments, which made antiquated subdivisions a contentious issue. Landowners were free to reconfigure their lots into a more marketable configuration regardless of location. Recent state law, however, requires that local agencies determine whether the reconfiguration is consistent with the general plan.¹⁹

The new consistency requirement for a lot line adjustment, however, does not address the underlying problem — the presence of developable, substandard lots in the middle of prime agricultural zones. Some local agencies have drafted ordinances that attempt to deal directly with this issue. For example, Stanislaus County recognizes the legal parcel created by the antiquated subdivision, but limits the extent to which residential homes can be built on such lots, thereby preserving the parcel’s agricultural character. Owners of such lots must go through a special process to build a new residence; a permit for the new residence is granted only when specific findings are made.²⁰

¹⁸ See *Circle K Ranch v. Board of Supervisors* (ordered not published), 94 Cal. Rptr. 2d 97 (2000).

¹⁹ Cal. Gov’t Code § 66412.

²⁰ County of Stanislaus, Cal., Ordinance C.S. 741 (2000).

A NOTE ABOUT ASSESSOR'S PARCELS

Assessor's parcels are sometimes mistakenly assumed to be separate legal parcels when they are not. The purpose of assessor's parcels is identify property for tax purposes. In some cases, a landowner may own a single piece of land that is identified in the assessor's roll as several different parcels. In such cases, it is worth examining whether each of these parcels has a certificate or legal description designating it as a separate legal lot. An assessor's lot designation alone is usually insufficient to create a legal lot. Consequently, owners may not divide land along the lines of the assessor's parcel without first complying with the terms of the Map Act.

INVEST IN A CONSERVATION EASEMENT PROGRAM



Agricultural conservation easements have emerged during the past 20 years as a potentially effective way both to permanently protect farmland and channel urban growth. New efforts are encouraging the use of this tool. The state Department of Conservation’s Farmland Conservancy Program was created to fund easement transaction statewide. In 2000, voters passed Proposition 12, a parks bond, which included \$25 million for agricultural easements. The approval of Prop. 40 in March 2002 increased this amount significantly.

Conservation easements are established by legal agreements between landowners and conservation organizations, in which the landowner voluntarily places a permanent deed restriction on a property to ensure that the land remains in agriculture.¹ In exchange, the landowner receives something of value — cash, tax advantages or simply the satisfaction of knowing the land is protected. Once the opportunity to develop has been sold, the land is permanently restricted to agricultural use, even if ownership of the land changes. But the landowner retains title to the property and can still restrict public access or use the land as collateral for a loan. The primary advantage of a conservation easement is its certainty — even the best general plan can be amended, but a permanent deed restriction is binding forever.

Although most easements are permanent, this is not mandatory. An easement can also be purchased for a specific term, such as 20, 30 or 50 years.² Term easements may be good solutions in circumstances where there is an open question of whether the land should be permanently preserved for agriculture.

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¹ More officially, an easement is defined as “any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land.” Cal. Civ. Code § 815.1.

² Local agencies are authorized to hold open space easements either in perpetuity or for a term of not less than ten years, renewable annually. Cal. Gov’t Code § 51070. This provision can be extended to agricultural lands. See Cal. Gov’t Code §§ 51075(a), 65560(b)(2).

CITY LEADERSHIP KEY TO CONSERVATION EASEMENT³

The City of Arroyo Grande played a key role in acquiring a agricultural conservation easement within its city limits. The Dixson Family Trust sold the easement on its 40-acre ranch on the city's east side for \$550,000. The easement is a collaborative effort between the Coastal San Luis Resources Conservation District and the American Farmland Trust. The California Farmland Conservancy Program and the U.S. Department of Agriculture Farmland Protection Program contributed funding for the easement.

“The beauty of a conservation easement is that it compensates landowners based upon market values for giving up the development potential of their land,” said Jim Dickens, grandson of Wilma Dixson. “We were able to convert some of our land equity into cash and diversify the holdings of the trust while honoring my grandmother’s dream of protecting the farm for future generations.” The farm will continue to earn lease income from its current tenant.

The American Farmland Trust seldom brokers projects within city boundaries. But Arroyo Grande’s 30-year commitment to farmland conservation made it the exception. The city developed long-range plans to protect most of its 340 acres by designating the land for agriculture in its general plan, participating in the Williamson Act and adopting a right-to-farm ordinance.

Protection of the Dixson Ranch draws a line on the eastward expansion of urban development into the upper Arroyo Grande Valley. From the ranch, the valley opens up to a landscape of small vegetable farms. About 2,500 acres of prime farmland in the Arroyo Grande Valley produce more than \$26 million a year in farm revenue.

“It is our hope that other farmers in the valley will follow our lead and consider selling agricultural conservation easements,” said Sarah Dickens, Wilma Dixson’s daughter.

CONSIDERATIONS FOR LOCAL AGENCIES

Because of their nonregulatory nature, agricultural conservation easements are increasingly gaining acceptance in communities throughout California. Before designing a program or entering into a transaction, the easement purchaser has a number of considerations to study.

FINANCIAL CONSIDERATIONS

From a regulatory standpoint, easements are too expensive to use on a large scale. Typically, the value of an agricultural easement will be the land’s fair market value less its agricultural value (see “Value of Agricultural Conservation Easements,” page 39). Although there are an

³ American Farmland Trust, *Family Fulfills Dream of Protecting Farm for Future Generations* (October 21, 2001). Available at www.farmland.org/news_2001/102201_ca.htm.

exceptional variety of funding mechanisms available to assist with these purchases (see Strategy 24), most funding sources favor projects where at least 5 to 25 percent of the cost of the easement is raised locally or contributed by landowner donation (which has certain tax advantages) .

Moreover, easement transactions require a great deal of time and expertise. Anecdotal evidence suggests that land trusts budget as much as \$15,000 in staff time for each transaction. Work that must be completed before making the purchase includes title research, appraisals and securing funding (which may include grant proposal writing).

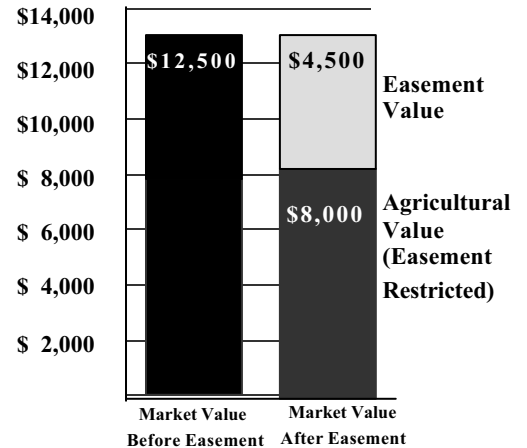
Each conservation easement should be individually negotiated to reflect the needs of the landowner and the purchaser. After the purchase, the easements must still be monitored and enforced. Thus, another important consideration is what role the local agency will play in the easement’s long-term holding and enforcement.

PARCEL-SPECIFIC CONSIDERATIONS

Parcel-specific considerations, such as soil quality, productivity and proximity to development, should also be taken into account. Answering the following questions can provide some guidance:⁴

- ***Will acquisition further policy goals?*** Will acquisition complement the general plan or enhance the viability of local agriculture?
- ***Does the land’s location have special significance in light of the general plan?*** To what extent has the area been affected by checkerboard or leapfrog development?
- ***Will the general plan be enforced?*** Farmers are more likely to sell easements when they realize that the general plan will not be frequently amended to favor new development.
- ***Is the purpose to protect the environment or farmland?*** Although farm operations can provide environmental benefits, they are sometimes incompatible with natural resources or environmental priorities.
- ***Is there an imminent threat of conversion?*** Land should be given priority if it is vulnerable to development and in need of protection.

VALUE OF AGRICULTURAL CONSERVATION EASEMENTS



Courtesy: American Farmland Trust

⁴ Adopted from Great Valley Center, *Agricultural Land Conservation in the Great Central Valley* (1998).

STRATEGIC CONSIDERATIONS

The next task after securing funding is determining where the easements will be purchased. The purchaser often needs to balance opportunity with strategy. Most easements are purchased opportunistically — or as they become available.⁵ Given the cost and staff time necessary for just one transaction, this trend is not surprising. Transaction costs often decrease when the landowner is motivated to sell. Ultimately, however, this approach usually results in widely dispersed holdings that do little to conserve surrounding properties.

As a result, some local agencies and land trusts have taken a more strategic approach, such as attempting to purchase easements over several contiguous parcels to form a large block of protected farmland. Alternatively, easements may be purchased at a strategic location in order to create a de facto urban growth boundary (see “Using Strategic Easements in the City of Madera,” page 44). Indeed, such strategies are consistent with the California Farmland Conservancy Program’s goal of targeting farmland sites for easements that can shield a much larger area from development.⁶

COOPERATING WITH LAND TRUSTS

Because it is an interest in real property, the easement must be owned by an entity, such as a public agency or a nonprofit organization. Local agencies often find it difficult to dedicate the staff and resources necessary to maintain an effective program. Indeed, one survey of public and private community leaders in the Central Valley favored land trusts over other public agency options (such as open space districts) by a 4-to-1 margin.⁷

Most easements are held by a land trust or conservancy. There are about 10 regional land trusts that focus on agricultural easements statewide. Another 15 trusts also work with farmers as part of a larger environmental and open space focus, usually on transactions involving rangeland. Three other organizations, the American Farmland Trust, the Nature Conservancy and the California Rangeland Trust, manage a statewide program. Most local land trusts are concentrated in the central and northern coastal counties, and a few are located in the Central Valley and Sierra Nevada. But large

BUILDING CREDIBILITY WITH FARMERS

Not all land trusts are alike. Some are formed for environmental purposes rather than agricultural preservation. Most farmers are more willing to work with trusts that have farmers on its board and thus inherently understand the special needs of agricultural operations.

⁵ Alvin D. Sokolow, Robin Meadows, Ellen Rilla and Cathy Lemp, Agricultural Easements: New Tool for Farmland Protection, *California Agriculture*, Jan.-Feb. 2002, at 15.

⁶ Id at 7.

⁷ Id at 15.

portions of the state, including most of Southern California, do not have a local land trust operating to protect agriculture.⁸

This absence is significant, given the initial success these organizations have had in obtaining funding. Independent land trusts, particularly those with an agricultural focus, can be useful sources of information. Their expertise can guide agencies through a complex process fraught with pitfalls. They also provide other advantages, including:

- **Funding and Grant Proposal Writing.** As 501(c)(3) charitable organizations, trusts can often secure independent sources of funding, are well-versed in grant proposal writing and have contacts with funding sources.
- **Credibility Among Landowners.** Independent land trusts, particularly those with farmers on their board, are usually well-connected to the farming community and less threatening to landowners uneasy about giving up rights to their land.
- **A Primary Focus.** Land trusts can dedicate full attention to land protection and have volunteers that provide vital professional services.
- **Long-Term Monitoring.** Land trusts are well suited to manage and monitor easements.

An effective partnership between a local agency and a land trust requires a great deal of forethought, particularly when designing a program that connects easement purchases to larger land use goals. In some cases, it may be appropriate to enter into an agreement, such as a memorandum of understanding, to clarify each party's responsibilities.

Some local agencies have addressed this issue by forming their own land trust. The City of Livermore worked closely with Alameda County and the City of Pleasanton to form the South Livermore Valley Agricultural Land Trust, which helps implement its South Livermore Valley Plan (see page 17). Easements are acquired under two ordinances. One requires developers to purchase easements, which are passed on to the trust. The second imposes a fee that is deposited with the trust for purchasing additional easements.

The City of Livermore is the third-party beneficiary for the easements and will take over the easement program if something unforeseen happens to the trust. The drawback to a trust formed by a local agency is that it is more likely to be viewed skeptically by some members of the farming community. The City of Brentwood, which also created a new land trust,

**FOR MORE
INFORMATION**

American Farmland Trust
260 Russell Blvd., Suite D
Davis, CA 95616
(530) 753-1073
www.farmland.org

**California Farmland
Conservancy Program**
801 K Street, MS 13-71
Sacramento, CA 95814
(916) 324-0850
www.consrv.ca.gov/dlrp

**Great Valley Center
Agricultural Program**
911 13th Street
Modesto, CA 95354
(209) 522-5103
www.greatvalley.org

Land Trust Alliance
2001 P Street, Suite 110
Sacramento, CA 95814
(916) 441-4766
www.lta.org

⁸ Id at 9-11.

addressed this issue by including a significant number of local farmers on its board of directors.

Open space districts are an alternative to land trusts.⁹ At least four counties (Marin, Sonoma, Santa Clara and San Mateo) have chosen this alternative. In Sonoma County, the board of supervisors included agricultural protection among the purposes of the Sonoma County Agricultural Preservation and Open Space District. Sonoma County voters then approved formation of the district and funded it with a quarter-cent sales tax. The district now holds 67 easements protecting more than 17,000 acres of farmland and rangeland.¹⁰ Despite this success, the district continues to struggle with one of its primary mandates — forming buffer zones between communities — because that land is also the most developable and landowners are often unwilling to sell.

WORKING WITH LANDOWNERS

Finding landowners interested in selling is a big challenge. One barrier that frequently must be overcome is the general lack of understanding and knowledge about conservation easements. Many farmers fear that once the easement documents are signed, the easement holder will start telling the farmer how to farm.¹¹ Thus, it often requires a number of informal discussions — sometimes over a period of years — before a landowner will consider selling an easement. Even then, additional negotiations, appraisals and paperwork must usually be completed before a formal offer can be extended. The landowner should be encouraged to seek legal and financial advice prior to drafting the easement language.

One successful strategy is to have a land trust representative initiate contact and develop a relationship. Not only are they more likely to have the specific knowledge necessary to make the deal, they are generally treated with less initial skepticism by farmers. Most farmers sell agricultural conservation easements for specific reasons, such as cash to invest in additional agricultural operations, cash for nonfarm use, estate considerations and the preservation of farmland.¹² In addition, landowners may realize certain tax benefits from donating all or a portion of an easement (often called a “bargain sale”).

The American Farmland Trust recently published *Winning the Development Lottery* (April 2002), a report that can be very helpful to

⁹ Cal. Pub. Res. Code §§ 5500 and following; Cal. Gov’t Code §§ 56000 and following.

¹⁰ Sokolow, *supra*. at 17.

¹¹ *Id.* at 7 (quoting John Gamper, California Farm Bureau Federation).

¹² *Id.* at 24.

THINGS TO CONSIDER WHEN BUYING OR SELLING AN EASEMENT

- Does it include the entire farm?;
- Additional housing;
- Farm tourism uses;
- Water rights;
- Indemnification for farm activities;
- Williamson Act contracts (see Strategy 10);
- Price;
- Payment of assessments;
- Monitoring;
- Dispute mediation;
- Public access (if any);
- Permissible buildings; and
- Alternative uses, if any.

landowners considering whether or not to sell a conservation easement.¹³ Its content also provides good background for local officials and planners who are considering using the easement tool in connection with other land use planning objectives.

MONITORING AND ENFORCEMENT

Another critical issue is how the easement will be monitored and enforced. A long-term plan can help ensure compliance with the terms of the easement. Monitoring programs may include the following elements:

- ***Endowment.*** An amount of money that is set aside and draws interest to provide permanent funding to monitor and enforce the easement.
- ***Baseline Inventory.*** A document that describes the baseline conditions at the beginning of an easement acquisition.
- ***Management Plan.*** A document that outlines how the land will be managed. It may also include minimum level of best management practices.
- ***Transition Plan.*** A plan that ensures a smooth transition when a new landowner purchases the land burdened with the easement.
- ***Periodic Site Visits.*** A schedule of periodic site visits, usually one or two per year, where a representative of the easement holder may enter to survey the condition of the property.
- ***Maintenance Costs.*** A plan or budget for monitoring the easement.
- ***Violations.*** A plan for handling easement violations.¹⁴

Land trusts train volunteers to monitor easements as a way of keeping expenses down, involving the community and maintaining an air of informality that is reassuring to landowners unaccustomed to supervision. Infractions of conservation easement contracts rarely occur while the landowner who signed the agreement holds the property. If they do occur, the cause is usually a misunderstanding that can be resolved without litigation. Greater vigilance must be exercised when the property changes hands. But in most circumstances, a good monitoring program and ongoing communication with the property owner will prevent most problems.

¹³ The report is available online at www.farmland.org/regions/ca/central_valley_ag_easement.pdf.

¹⁴ Local agencies may seek injunctive relief or seek monetary damages. Cal. Civ. Code § 815.7; Cal. Gov't Code § 51086(a) (applying to open space easements).

STRATEGIC EASEMENTS ON THE OUTSKIRTS OF MADERA

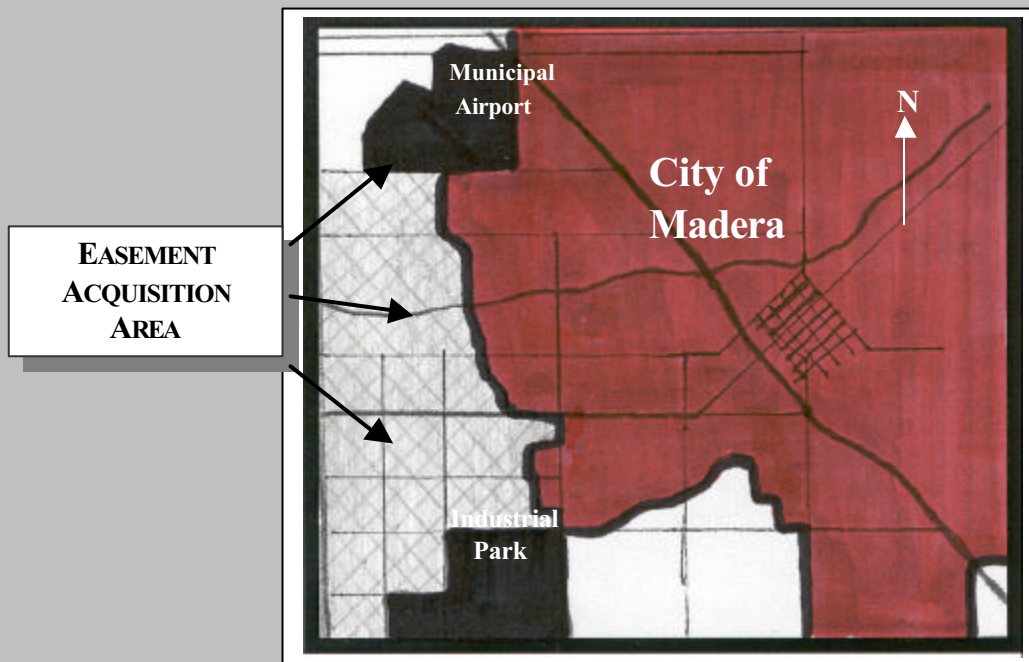
The City of Madera offers a good example of how easements can be used strategically. This area is known for producing several varieties of dessert wines. The landowners in the area are largely a close-knit group of Italian-American vintners whose families have been producing grapes and wine in the area for decades.

Concerns arose when development for the area was first proposed. If residential growth expanded beyond the airport and the industrial park, the thinking went, nothing would stop future expansions over thousands of acres of prime farmland.

Some community members saw an opportunity. If easements could be purchased across the gap between the airport and the industrial park, they would effectively create a growth boundary to protect the farmland under immediate threat and shield thousands of additional acres between the City of Madera and the San Joaquin River, nearly 10 miles away. This program worked because several key elements came together.

- **Landowner Cooperation.** The American Farmland Trust committed to the program early and worked extensively with landowners to negotiate the easements.
- **Local Agency Cooperation.** The City of Madera passed resolutions of support that were required to receive funding from the state. The city is now working to revise its general plan to take the conservation program into account.
- **Outside Funding.** The state's Farmland Conservancy Program contributed \$2.2 million to purchase the easements, and the federal Farmland Protection Program contributed an additional \$1.1 million.

Finally, the plan was tailored to the specific needs of the community and geography of the region. Thus, while some of the techniques could be borrowed in other communities, it would be difficult to replicate the program wholesale in other communities.



BALANCE REGULATORY BURDENS FOR LANDOWNERS

One criticism of farmland protection programs is that they do not treat all landowners the same. Those who are permitted to develop their property often reap the windfall of dramatically increased land values, while in protected farmland areas, landowners' property values remain unchanged. A few local agencies have adopted regulations that attempt to balance these impacts, using development credit transfers and mitigation fees.

DEVELOPMENT CREDIT TRANSFERS

Transferable development credits¹ (development credits or TDCs) allow landowners to transfer the opportunity to develop property from one parcel to another. Typically, a credit is transferred from an agriculturally zoned "sending area" to a developable parcel in a "receiving area." The number of credits assigned to each property can be set at a constant ratio or may vary, depending on soil quality, slope or location. Once sold, the sending site is "burdened" with a conservation easement to prevent future development.² There are several ways to implement such programs, including:

- **Different Parcels, Same Owner.** This arrangement allows an owner to develop one parcel at increased density in exchange for protecting other parcels. Such programs can be limited to adjacent parcels or extended to nonadjacent parcels under the same ownership.
- **Different Parcels, Different Ownership.** Owners of tracts in receiving areas must purchase an appropriate number of credits from a sending area in order to develop at increased densities.

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¹ "Transferable development right" or "TDR" is perhaps the more common term for this land use tool. However, it is a misnomer insofar as it implies that, in absence of the program, there is an underlying "right" to develop according to the number of credits assigned.

² The courts have generally upheld such programs. See *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. ___ (2002); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978); *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997); *American Savings & Loan Assn. v. County of Marin*, 653 F.2d 364 (9th Cir. 1991); *Aptos Seascope Corp v. County of Santa Cruz*, 138 Cal. App. 3d 484 (1982).

- **Regional Transfers.** This option allows the transfer of credits across local agency boundaries.

The key to a development credit program is the zoning ordinance, which establishes the sending and receiving zones. Ideally, the program is designed so that purchasing the development credits is the most profitable way to develop property in the receiving zone. For example, San Luis Obispo County’s transferable credit program allows development at levels of 50 percent over maximum density when sufficient credits are purchased from sending areas. To further encourage compact development, the bonus percentage decreases as the distance increases from the development to an urban center.³

IMPLEMENTATION ISSUES

Development credits are most suitable in places where large areas of farmland remain and growth can be channeled to distinct areas. The idea

HOW DEVELOPMENT CREDITS IDEALLY WORK

Assume that three farmers own separate 100-acre tracts of prime farmland in a “sending” area. Each tract is zoned “Exclusive Agriculture” with a development capacity of 100 residences (one house per acre) under a development credit ordinance. A developer owns a fourth 100-acre tract in a “receiving” area that is zoned at one house per acre. The zoning in the receiving area, however, permits development at four houses per acre upon the purchase of the appropriate number of credits from the sending area. Assume that:

- The full cost for building and marketing a single-family residence is \$150,000.
- The market price for a single house on an acre lot is \$210,000. The price of four homes on smaller lots is \$185,000 each.
- The market rate for credits is \$15,000.

Under these conditions, the agency has created an incentive. Without purchasing any credits, the developer will make \$60,000 per acre (\$220,000 sales price minus \$160,000 building costs) or \$6 million on 100 acres. But by purchasing the development credits, the developer nets \$95,000 per acre (\$740,000 in sales minus \$600,000 for costs minus \$45,000 for TDCs). The developer’s profit margin has increased by 50 percent. In the process, 300 acres of farmland have been protected, and each of the three farmers received \$1.5 million (\$15,000 per acre for 100 acres) to offset lost development opportunities, which can be reinvested into their operation.

This successful outcome depends on a variety of factors, including all three farmers’ willingness to sell their development credits to the developer in a timely fashion.⁴

³ County of San Luis Obispo, Cal., Ordinance § 22.040.500 and following (2001).

behind most programs is that imposing low densities on development in receiving zones will encourage developers to purchase development credits in sending areas. Setting these ratios, however, requires technical expertise and a working knowledge of the margins that drive the building industry. A poorly planned program could stall growth altogether.

Timing imposes another hurdle. Most TDC programs occur in small areas, which limits the ability of the market to match willing buyers and sellers. Some agencies create a development credit bank to facilitate transactions. The bank purchases credits from farmers when there is no buyer and sells credits to buyers when there is no seller. Other considerations include:

- **Clear Definitions.** It's important to clearly define what a credit is. Including square-foot definitions and other specifics helps to clarify exactly what is being transferred.
- **Efficient Process.** Paperwork can be complex. Designing a simple process and sample forms helps considerably. With a little planning, most problems or glitches can be spotted and solved in advance.
- **Public Education.** Buying or selling an intangible like a development credit is a difficult concept to understand for those who are unfamiliar with the regulatory process. Programs that explain the process accelerate the participation rate.
- **Interagency Cooperation.** The pool of buyers and sellers increases when the program covers a larger geographic area, which is more likely when agencies cooperate.

California has a few examples of successful TDC programs. The Santa Monica Mountain Conservancy has facilitated more than 500 transactions. San Luis Obispo County also manages a program to discourage development on steep coastal hillsides near Cambria.⁵ However, of the 27 programs listed in one survey, most saw little or no activity.⁶ The most difficulty appears to be developing the right mix of incentives to create a viable market for the credits.⁷ Thus, although there are a few successful examples of TDCs, the number of inactive programs underscores the importance of a well-designed program.

⁴ This example is a voluntary program - the developer can still opt to build only one house per acre. A mandatory program requires that the developer must purchase TDRs before development can proceed. See Johnston, R., and Madison M., *From Landmarks to Landscapes: A Review of Current Practices in the Transfer of Development Rights*, *J. Am. Plan. Ass'n*, Summer 1997, at 365.

⁵ The County also allows a land trust to sell credits to the land it is conserving to fund additional conservation. See Land Conservancy of San Luis Obispo County, *About the Land Conservancy* (visited Mar. 15, 2002) www.special-places.org/about.htm.

⁶ Rick Pruetz, *Putting Transfer of Development Rights to Work in California* 73-74 (1993).

⁷ *Id.* at 101.

INGREDIENTS FOR A SUCCESSFUL PROGRAM

- Well-defined “sending” and “receiving” zones;
- Integration with the Williamson Act (Strategy 10);
- Worthwhile investment incentives;
- Certainty that zoning will not be changed;
- Clear, easy-to-understand definitions;
- Easements that effectively protect farmland;
- Consistency with the general plan;
- A public education program; and
- Efficient, consistent procedures.

MITIGATION: FEES AND DEDICATIONS

Another mechanism for balancing the burdens of agricultural regulation is to place a mitigation, or linkage, fee as a condition on new development.⁸ Mitigation fee ordinances usually ask developers to protect one acre of farmland of equal or greater quality for each acre of farmland that is converted to non-farm uses.⁹ Similar fees have been imposed to build affordable housing, protect habitat and offset other offsite impacts of development, such as water pollution. The present fee rates generally range from \$2,500 to \$10,000 per acre, but can vary widely depending on local land and crop values.

Only a few agencies in the state have adopted mitigation programs to offset the conversion of farmland. These programs generally require developers to negotiate and purchase an easement themselves (with agency approval) or pay an alternative in-lieu fee. Paying the fee is usually easier and less time-consuming for the developer. But the in-lieu fee means that the agency must devote resources, such as staff time and acquisition funds, to purchasing conservation easements. In such cases, several local agencies have found it beneficial to work with local land trusts that have expertise in working with landowners and negotiating easements (see Strategy 6).

For example, the City of Davis has a one-to-two mitigation requirement; that is, for each acre of farmland that is converted to nonfarm use, two acres must be permanently protected.¹⁰ Yolo County Land Trust actually acquires and holds the easements. Locations of the easements accepted or purchased by the city are coordinated through the open space plan. All easements must be located within the Davis planning area (160 square miles). Easement lands are organized in large contiguous blocks that provide farmland and habitat value and define urban form. The city has secured 2,500 acres of easements and received in-lieu fees of more than \$900,000, which have been used as matching funds for California Farmland Conservancy Program grants.

⁸ The distinction between a mitigation fee and linkage fee is blurred. See Abbot, et al, *Exactions and Impact Fees in California* 26 (2001). Generally, impact fees fund physical improvements directly attributable to development and linkage fees are used mitigate secondary impacts. The same constitutional and statutory limitations apply to both. Our research suggests that the term “mitigation” is commonly used for what are technically linkage fees. See City of Davis, Cal., Municipal Code art. 15.15 (2002).

⁹ A 1 to 1 ratio is common. See American Farmland Trust, *Saving American Farmland: What Works* (1997).

¹⁰ Developers can grant a conservation easement or pay a fee that would cover the cost of protecting a comparable amount of land. But lands identified by developers to satisfy this requirement must meet several standards, including: (1) No more than 20 percent habitat present; (2) Compatible with city and county general plan; (3) Comparable soil quality; (4) Adequate water supply for continued farming; and (5) No other encumbrances on the land.

COMPARING DEVELOPMENT CREDITS AND MITIGATION FEES		
	DEVELOPMENT CREDITS	MITIGATION FEE
ACQUISITION	Developer must locate farmers willing to sell and negotiate credits	Development fee used by local agency to purchase conservation easements
INTERMEDIARIES	Development credit bank facilitates transfers; land trust holds easements	Local agency can act on its own or work with a land trust to negotiate and hold easements
PUBLIC EDUCATION	Market may not readily understand what constitutes a “credit”	Some education necessary, but easier to understand, particularly for developers
THRESHOLDS	Can be designed to accommodate small parcels	Lends itself to bigger parcels except where land values are exceptionally high
SETTING THE FEE	Determined by willing buyers and sellers	Amount charged to developers is set by formula and is usually updated annually

Several elements of fee programs should be addressed in advance:

- **Ordinance.** These fees should always be adopted by ordinance and apply equitably to a broad class of landowners. Fees that are adopted individually or on an ad hoc basis will attract greater judicial scrutiny if challenged (see discussion in Strategy 23).
- **Setting Fees.** The fee must be high enough to pay for the conservation easement, transaction costs and staff time to administer the process. Some fee programs also include the cost of an endowment to fund the monitoring program. Rapidly rising land prices can often cause fee revenues to fall short of the amount needed to complete the easement purchase. One possible solution is to adopt an adjustable fee based on current land valuations or to reset the fee annually.
- **Setting Conversion Thresholds.** In most cases, it’s probably inefficient to purchase conservation easements on one, two or five acres of farmland. Setting a minimum project size will allow small projects to move forward. Such thresholds vary. While 10 acres might be appropriate for vineyards and “truck” farms, 20 acres or more is probably more appropriate in areas where commodity crops are grown.
- **Time to Purchase.** Given the speed at which California land can appreciate in value, the longer agency holds onto the fee without purchasing the easement, the less likely it will be able to protect the amount of farmland intended when the fee was originally collected.
- **Purchasing Strategy.** A “block” of contiguous easements is more effective at controlling growth than a patchwork of individual ones. The downside is that some farmers will hold out for better prices when they realize their farm is targeted. Including a fair price cap or providing a degree of discretion in implementing the program may help avoid such situations.

Another issue that arises in connection with mitigation fees is whether a nexus, or a direct relationship, is required between the impact of the development and the purpose of the fee.¹¹ While there is good authority to suggest that such a nexus is not necessary,¹² some agencies elect to develop a nexus study to identify the linkage between new development and the loss of agricultural land. A nexus study can also be useful in developing the formula for the fee and developing supporting findings if a mitigation ordinance is adopted. It provides a good reference if a developer decides to challenge the fee in court.

CITY OF BRENTWOOD CASE STUDY

The fast-growing City of Brentwood in northwest Contra Costa County is home to high-producing orchards and row crops. Regional agricultural production generated \$51.2 million in 1998. Local farming was threatened, however, as the suburbs of the San Francisco Bay Area expanded eastward. The city's population has grown more than 200 percent since 1990 and its current population of 23,000 is expected to nearly double again before the city reaches its anticipated build-out population of 43,000.¹³

In response, the council appointed an Agricultural Enterprise Committee, composed of farmers, developers and others, to advise the city on how to protect and enhance agriculture in Brentwood. The committee met 11 times in one year and developed recommendations, many of which were implemented by the council. The program's cornerstone is the use of conservation easements to permanently protect farmland. The city designed a process that relies on both a mitigation program and transferable agricultural credits. The city also created a land trust to hold easements.¹⁴

MITIGATION PROGRAM

Brentwood's mitigation program is straightforward. Developers must provide one-to-one mitigation when farmland is converted to any other use, including residential and commercial development. Developers have two choices: They may either purchase a conservation easement over an equivalent acreage or pay an in-lieu fee of \$5,000 per acre. The fee is based on an economic analysis of easements in the area. The city elected to apply the fee to current applications where full discretionary approval was

¹¹ See *San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002) (holding that a generally applicable fee adopted by ordinance is not subject to heightened judicial scrutiny).

¹² *Homebuilders Association of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001).

¹³ DDS Marketing, *Economic Analysis Report for the City Of Brentwood April 2000* (last visited Mar. 28, 2002) www.ci.brentwood.ca.us/departments/econ/demographic_Study/index.htm.

¹⁴ See City of Brentwood, Cal., Municipal Code § 17.730 (2001); *Agricultural Advisory Commission*, (visited Mar. 28, 2002) www.ci.brentwood.ca.us/boards/aarg/aarg.htm.

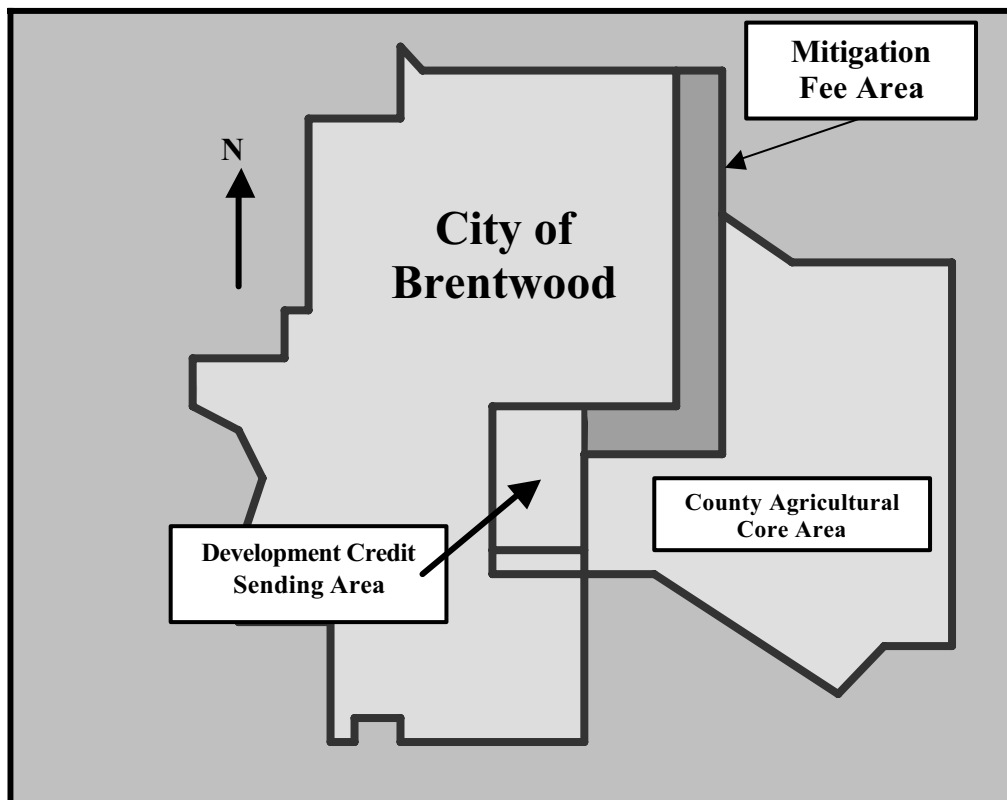
still pending. The fees are deposited into a trust account that may be used only for the conservation easement program. No more than 5 percent of the fee may be applied to administrative costs.

TRANSFERABLE AGRICULTURAL CREDIT PROGRAM

The transferable agricultural credit program was designed to meet the unique needs of a 2,160-acre block of land directly south of Brentwood (see map below). This area contained prime soils and was vulnerable to development because much of it had already been subdivided into smaller, high-value parcels. These property values suggested to the committee that the mitigation fee alone would be insufficient to purchase easements on a one-to-one basis.

The program assigns two credits to each acre of farmland within a “credit sending area.” These credits can be transferred to receiving areas within the city. Once transferred, development can proceed at increased densities. For example, land designated as medium-density (usually developed at eight units per acre) may be developed at 10 or 11 units per acre. Developers who purchase agricultural credits can also forgo paying the mitigation fee if the development involves the conversion of existing farmland.

The credit program was designed with another local characteristic in mind.



Many of the landowners who own developable land within the city also own land in the sending area. The city expects that one of the usual drawbacks to TDC programs — the challenge of matching willing buyers with sellers — will not affect transactions that merely involve the same owner transferring credits from one parcel to another. Of course, developers who don't own property in the sending area may still participate by negotiating their own purchases of credits from other farmers in the area.

FORMATION OF A NEW LAND TRUST

The city also created the East Contra Costa County Agricultural Land Trust. Interestingly, there was another land trust operating in the area, but farmers felt uncomfortable working with it because they believed that it was “too environmental.” So Brentwood formed its own land trust. The trust's board consists of three members appointed by the city, three appointed by the East Contra Costa County Irrigation District (representing agricultural interests) and one member selected by the first six. The trust oversees the purchase and monitoring of conservation easements and seeks additional funding, such as that provided by the state Department of Conservation, to purchase additional easements.

COMMUNITY EDUCATION

To successfully implement the plan, the city is now beginning to conduct a public education program. Its components include:

- ***A New Farmers' Market.*** The city is helping establish a weekly farmers' market to give residents more access to local produce and promote the benefits of farmland protection in the community.
- ***Information at the Corn Festival.*** The city's annual Corn Festival includes an “information alley” feature where groups can share information. The city will sponsor an information booth here as well.
- ***Education about Agricultural Credits.*** The city has mailed information to landowners in the agricultural credit sending area that explains the program and how owners can sell credits.
- ***General Plan Update.*** The city embraced the agricultural enterprise program by including the elements in a recently revised general plan.

Through these efforts, the city is working to educate urban residents about the connection between land use planning and agriculture. It is hoped, for example, that the community will be less opposed to increases in density associated with the credit program when they understand that it is helping to save farmland at the city's edge. Only time will tell how successful the program will be. However, Brentwood's experience provides a great deal of information that's helpful for other agencies.

MORE ABOUT THE BRENTWOOD PLAN

In developing its program, the City of Brentwood used a comprehensive approach to protecting farmland extending beyond the components described here. Buffer policies and economic development strategies, among other things, were also part of the plan.

A copy of the final report of the Agricultural Enterprise Committee is posted on the portion of the Institute's Web site that supports this guide (www.ilsg.org/farmland, keyword search “Brentwood”).

PROMOTE SOUND ANNEXATION POLICIES

8 STRATEGY

Local agency formation commissions (LAFCOs) govern changes to city and special district boundaries, and the extension of public services. Nearly every county in the state has a LAFCO. Consequently, LAFCOs provide another possible forum for implementing farmland protection policies.

Each county may develop LAFCO guidelines and policies to address issues within its region. In the context of farmland protection, policies can be useful to offset the problem that sometimes occurs when different agencies within a county don't share the same conservation goals. An agency that has a desire to confine growth may abandon such policies if the net effect of this effort merely enables neighboring jurisdictions to annex more land. Adopting countywide rules that specifically address the degree to which farmland may be annexed or developed helps to ensure that large tracts of farmland remain intact.

LAFCO BASICS

LAFCOs oversee annexations, service extensions and even new agency formation. They are charged with seeing that services are provided to the public as efficiently and economically as possible.¹ At the same time, they must also attempt to direct new growth away from prime agricultural land.² LAFCOs do not dictate planning goals to other local agencies. Instead, they reconcile differences between agency plans. The most significant of these powers related to farmland protection concerns the following issues:

- **Annexations.** The authority to approve, reject or impose conditions on all boundary-change proposals;³
- **Service Extensions.** The authority to review requests to provide or extend services outside jurisdictional boundaries;⁴ and
- **Sphere of Influence.** The authority to oversee and update sphere of influence (or, for an agency, probable growth area) boundaries.⁵

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¹ Cal. Gov't Code § 56301.

² Cal. Gov't Code § 56377.

³ Cal. Gov't Code §§ 56375(a), 56886.

⁴ Cal. Gov't Code §§ 56133, 56434.

When reviewing proposals, LAFCOs balance the orderly provision of services with the need to protect farmland. For example, in reviewing a proposed sphere of influence change, a LAFCO must make a written determination as to how the change will affect agricultural land.⁶ For annexation proposals, LAFCOs must consider the effect of the proposal on maintaining the physical and economic integrity of agricultural land.⁷ These policies do not mean that the LAFCO will reject an annexation or boundary change that will have the effect of converting agricultural land to non-agricultural uses. However, such policies do encourage local agencies to plan comprehensively to avoid farmland conversion.

DEVELOPING COUNTY-SPECIFIC POLICIES

LAFCOs provide a significant opportunity to forge a countywide farmland protection program. Each LAFCO may develop its own policies,⁸ including criteria for determining when unincorporated farmland may be annexed by

SAMPLE LAFCO POLICIES	
SPHERE OF INFLUENCE POLICIES	ANNEXATION POLICIES
<ul style="list-style-type: none"> • <i>Infill First.</i> Discourage conversion of territory located on a city boundary prior to developing vacant land within the city area. • <i>Seek Contiguous Development.</i> An amendment to the sphere of influence must seek to include land that is physically contiguous to the existing boundary and adjacent to an existing developed area. • <i>Protect Prime Land.</i> Urban services should not be extended into prime agricultural lands. • <i>Plan Proactively.</i> Submit an annexation plan that includes components for protecting agriculture. 	<ul style="list-style-type: none"> • <i>Likely Consequences.</i> Discourage annexations that convert prime land unless effective measures have been adopted to preserve prime agricultural lands within the sphere of influence. • <i>Review Process.</i> Establish criteria to determine whether annexation adversely affects agricultural resources, including soil quality, water and the value of land; and whether infrastructure would be extended through or adjacent to other agricultural lands. • <i>General Limitation.</i> Land engaged in agriculture shall not be annexed to a city or a sanitary sewer agency for urban development.

⁵ Cal. Gov't Code §§ 56425; 56430.

⁶ Cal. Gov't Code § 56425(e).

⁷ Cal. Gov't Code § 56668(e). Agricultural lands means lands currently in agricultural use or participating in crop rotation, agricultural subsidy or set aside programs. Cal. Gov't Code § 56016.

⁸ See Cal. Gov't Code § 56425(a).

a local agency. Several counties have adopted comprehensive procedures for evaluating such proposals. Solano County has developed five specific criteria for addressing an annexation’s impact on maintaining the integrity of agricultural lands.⁹

- **Soil Quality.** The quality of the agricultural land in question.
- **Justification for Conversion.** A determination of: (1) whether the probable 10-year growth horizon justifies the conversion; (2) whether the proposed annexation abuts existing urban development; and (3) the extent to which there is a shortage of nonprime land.
- **Infill Alternatives.** The extent to which the agency facilitates infill development through redevelopment, capital improvement programs, land use changes and housing programs.
- **Planning Consistency.** Consistency with the city’s comprehensive annexation plan (which inventories 10-year growth projections).
- **Williamson Act Provisions.** Annexation of Williamson Act lands is generally prohibited unless certain conditions apply.

There are two additional reasons for working through LAFCOs to develop countywide policies. First, LAFCOs can be effective forums because they are composed equally of representatives from cities, special districts and the county. Second, recent legislative amendments require that LAFCOs be independent.¹⁰ As such, LAFCOs provide a good forum in which different local agencies can work together on farmland protection and other growth management issues.

THE GILROY AGRICULTURAL LANDS AREA

In 1994, a unique collaboration began in Santa Clara County. The county, LAFCO and the City of Gilroy jointly commissioned a study to identify ways ensuring the long-term viability of agriculture in 14,000 acres of farmland south and east of Gilroy (also known as “the garlic capital of the world”). The study, *Strategies to Balance Planned Growth and Agricultural Viability*, presented several strategies supporting the region’s agricultural productivity. A key element of the study suggested that the

MISSION STATEMENT

“To encourage the orderly development and reorganization of local governmental agencies, to preserve agricultural land and to discourage urban sprawl.”

? San Joaquin County
LAFCO

⁹ Solano Local Agency Formation Commission, *Standards and Procedures 25-28* (1999) (available online at www.solanocounty.com/em/forms/laftco/laftco_stdspoc.pdf).

¹⁰ Cal. Gov’t Code § 56381.

LAFCO POLICIES: GILROY AGRICULTURAL LANDS AREA

1. **Support of Growth Boundary.** LAFCO support of the city's 20-year growth boundary. No service expansion will be approved in the agricultural area, except as provided in Policy 6.
2. **Acknowledgement.** LAFCO acknowledgment that agricultural land within the boundary will be converted to urban uses.
3. **LAFCO Considerations.** When reviewing proposals within the boundary, LAFCO may consider the growth boundary, together with the city's other agricultural protection strategies, as mitigation farmland loss.
4. **Contiguous Annexations.** Urban service area expansion proposals must be contiguous to the urban service area boundary and may not include land under Williamson Act contract.
5. **Requests to Extend Service Area.** Requests to extend urban service area must be shown to be necessary for promoting the city's planned, orderly and efficient development.
6. **LAFCO Endorsement.** LAFCO will not approve annexations east of the growth boundary unless it endorses the amended boundary. In making this decision, LAFCO may consider, among other things, the city's ongoing mitigation measures, the degree to which the city has supported the agricultural industry and the availability of other land within the city's urban service area.
7. **One Amendment per Year.** LAFCO will consider amending the urban service area only once every 12 months.¹¹

county, city and LAFCO should agree upon a set of standards to protect the area from piecemeal encroachment.

Eventually, the study led to a special set of seven criteria, approved by LAFCO, the city and the county, that apply only to proposals to annex territory within the Gilroy Agricultural Lands Area (see "LAFCO Policies," above). The process has not been entirely smooth. There is some dispute, for example, about when it is appropriate for LAFCO to hold back its "endorsement" of a city proposal to annex land within the agricultural zone. The city would like to annex 660 acres as part of a comprehensive general plan update. The LAFCO has indicated a reluctance to "endorse" this plan. Because the term "endorse" is vague, it has resulted in minor controversy about the word's meaning.

Regardless of this controversy, some community members credit the study and its process for increasing public discussion of how the City of Gilroy should grow. More than ever before, the community is engaged in the issues of when, where and how the city should manage its growth.

¹¹ County of Santa Clara, Cal., *LAFCO Policies*, (last modified Feb. 27, 2002) http://santaclara.lafco.ca.gov/sclafcopolicies_main.html.

THINK REGIONALLY



A regional approach to protecting farmland can be an important element of a long-term protection strategy. One agency’s farmland protection program will accomplish little over time if nearby communities continue to annex land and expand at low densities.

Regional or cooperative planning agreements, supported by appropriate changes to the general plan and implementation ordinances, can be useful in managing growth in a way that takes neighboring communities into account. Working across jurisdictional lines is not always easy — particularly when land use decisions can have major fiscal impacts. But several local agencies have found a way to deal with these issues positively, using cooperative planning agreements.

COOPERATIVE PLANNING AGREEMENTS

Cooperative planning agreements between public agencies enable local agencies to coordinate their planning on a regional level. Because of their voluntary — and thus political — nature, cooperative plans usually require a great deal of discussion and negotiation before they are adopted. But once adopted, such agreements can help individual local agencies avoid piecemeal planning decisions.

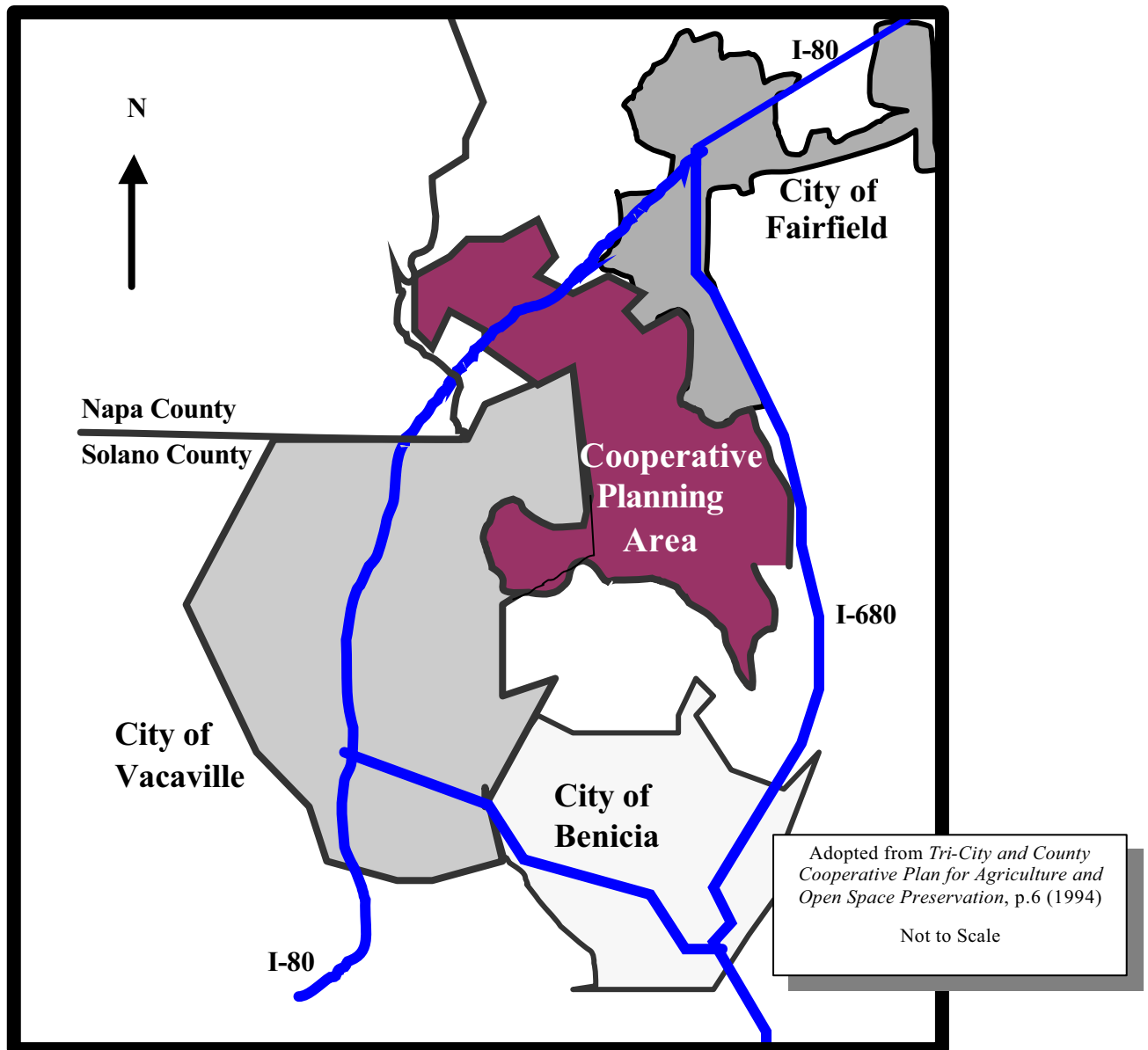
Cooperative planning efforts require an ongoing commitment from everyone involved. Changes in the political or economic climate of even one of the participating agencies can affect the outcome of the planning process. It’s essential to address the structure, implementation and funding of the planning effort. Additionally, a cooperative agreement cannot limit an agency’s authority to adopt future ordinances that might conflict with the agreement.¹ As a general rule, governing bodies are prohibited from adopting resolutions that would restrict the options of future governing bodies.

Nevertheless, there are several examples of successful joint planning. A joint effort between the cities of Vallejo, Fairfield and Benicia involving 10,000 acres of ranchland demonstrates the promise of cooperative planning. The

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¹ A provision of a planning agreement that made any general plan amendment adopted by one city regarding the plan area ineffective without adoption of a parallel amendment by another city was rejected as an unlawful delegation of the police power. *See Alameda County Land Use Association v. City of Hayward*, 38 Cal. App. 4th 1716 (1995). Legislation that would have authorized such agreements was vetoed. *See AB 1877 (Klehs)*, 1993-94 session (vetoed Sept. 30, 1994).

cities created the Tri-City and County Cooperative Planning Group, a joint powers agency, to develop a plan.² Once the plan was in place, the cities revised their general plans to conform to the plan. Each planning group member must consult with the agency before amending its general plan in a way that directly impacts the planning area. The cooperative planning group cannot actually stop such actions, but the consultation requirement provides a forum for expressing and addressing concerns.



The formation of the Tri-City and County Cooperative Planning Group also provides a vehicle to obtain outside funding. Many funding sources give priority to programs that demonstrate cooperation among multiple jurisdictions. The agency has also worked with a land trust to secure an option to purchase an additional several thousand acres, or more than half of the total planning area.

Some cooperative planning efforts include a revenue-sharing element. One reason for this is to address a possible consequence of joint planning. Some agreements may have fiscal impacts that would limit the ability of one or more of the participating agencies to continue to provide public services at desired levels. The decision to forgo new development in unincorporated rural areas, for example, may reduce revenues that the county was depending on to provide health and social services to a broader population.

Revenue sharing has its limitations. For example, revenue-sharing agreements do not necessarily generate new revenue as much as they direct growth and reapportion existing funds. Thus, they are not a substitute for long-term, statewide reform of local government finance in California. In addition, it is difficult to precisely predict future revenue streams. Since no local agency wants to be placed at a disadvantage, the agreements may need to take certain contingencies into account.

INTERGOVERNMENTAL AGREEMENT CHECKLIST

Most intergovernmental agreements should address the following issues to minimize the risk of misunderstanding:

- **Identify Parties.** Specify which agencies will be involved, including cities, counties, special districts and state and federal agencies.
- **Set Out Expectations.** Describe the nature of relationships. Explain the purpose of the agreement and define its parameters.
- **Create Accountability.** Assign roles, responsibilities and powers.
- **Define Process.** Define procedures for meetings and votes of the overseeing body.
- **Assign Risk.** Address risk, liability and indemnification.
- **Address Costs and Finances.** Apportion costs, including unexpected costs, and include a process for ensuring fairness. Identify “in-kind” contributions. Explain how financial returns and remuneration will be handled.
- **Plan for Termination.** Define the duration of the agreement and the process for termination and disposition of holdings.
- **Plan for Disputes.** Provide a procedure to resolve disputes.
- **Retain Flexibility.** Provide flexibility to deal with changed conditions.

POTENTIAL MANAGEMENT STRUCTURES

At some point in a joint planning process, the parties consider what form the cooperative effort will take. This structure can range from a simple agreement of principles to the more complex action of creating a new public entity to oversee the effort. The appropriate structure varies on a case-by-case basis. There are, however, a few basic forms that lend themselves most readily to cooperative planning.³

AGREEMENTS IN PRINCIPLE

An agreement in principle is a nonbinding document that endorses or states an intention to plan cooperatively, manage growth in a certain manner or undertake some other kind of activity. For example, several cities in Fresno County endorsed the principles contained in the *Landscapes of Choice* report published by the Growth Alternatives Alliance (see Strategy 1). Entering into the agreement is significant because it creates the expectation that the agency will follow through on its commitment. The agency risks negative public attention (sometimes referred to as the “shame factor”) if it does not follow through.

PUBLIC-PRIVATE PARTNERSHIPS

Public-private partnerships involve public and private organizations working cooperatively toward shared goals. One of the most active public-private partnerships in the state related to agricultural land protection is the Tri-Valley Business Council in Alameda and Contra Costa counties. The council recently published *Vision 2010*, which includes several regional goals for protecting agriculture. While such partnerships are very productive in developing plans and building community support, they are sometime less effective at instigating real change because they do not usually enjoy any true authority to take action.

NONPROFIT LAND TRUSTS

A nonprofit organization, such as a land trust, can be effective when the primary purpose of the joint effort is to hold agricultural conservation easements. Such trusts are flexible and, as 501(c)(3) nonprofit organizations, can qualify for funding unavailable to government agencies. One consideration is how the trust’s board of directors will be formed. Although

³ For a good discussion of these options within an open space planning context, see Placer Legacy Open Space and Agricultural Conservation Program, Public Review Draft, May 15, 2000 (Chapter 7, Open Space Government Structure) (www.placer.ca.gov/planning/legacy/5-18-00-draft-toc.htm).

the local agency may want to appoint the board, farmers often prefer trusts where other farmers make up a majority of the board. Accordingly, the agency may have to give up a degree of control in order to be effective.

A memorandum of understanding (MOU) works like a contract. Any number of parties can sign an MOU, including state and federal agencies and nonprofit organizations. These agreements work well for program elements that are functional or self-executing, like crediting funds or operation and maintenance, and that don't require a lot of additional decision-making. Attempts to use MOUs to limit the discretionary land use authority of a city or county legislative body would almost certainly constitute an invalid delegation of the police power.

JOINT POWERS AUTHORITY

State law permits two or more public agencies to combine forces to jointly exercise their powers to accomplish mutual goals.⁴ In effect, the partnering agencies create a new public entity, such as the Tri-City and County Cooperative Planning Group mentioned earlier, that focuses on implementing the terms of the underlying agreement.

DIXON AND VACAVILLE SEIZE AN OPPORTUNITY: JOINT POWERS FOR JOINT SUCCESS

The neighboring cities of Vacaville and Dixon are a central part of the fast-growing I-80 corridor between San Francisco and Sacramento. In the midst of the economic downturn in the early 1990s, a key thousand-acre parcel of prime farmland located between the two cities became available for purchase. In addition to physically separating the two communities, the land served as an important regional scenic asset owing to its location along Interstate 80.

Vacaville and Dixon seized the opportunity. They formed a joint powers agency to purchase and manage the property. The JPA placed a conservation easement on the property and then resold it. Although it was prepared to sell at a loss in order to protect the agricultural land, the agency was able to recover its entire purchase price. The JPA continues to monitor the easement, but little staff time is required to maintain the project. The project received a Helen Putnam Award for Excellence from the League of California Cities.

The authority of joint powers authorities (JPAs) is limited to the terms of the underlying formation agreement and by the principle that it may not undertake any activity that could not be conducted by at least one of its member agencies. A JPA may, however, issue bonds irrespective of whether the JPA agencies could independently exercise such powers.⁵

The organization of each joint powers agreement is generally defined in the operating agreement. The member agencies usually appoint representatives to the organization's board. In some cases, the JPA will have its own staff; in others, staff is provided by one or more of the member agencies. A JPA may encounter difficulty if the cooperating agencies' interests and funding priorities change, but it does provide a flexible structure for creating an agency that is dedicated to a particular task, such as conserving of farmland.

OPEN SPACE DISTRICTS

A special district is the most formal option available for implementing a region wide open space or farmland protection program. The Sonoma County Agriculture and Open Space District is perhaps the most active example in the state, in terms of agricultural preservation. The district has more than 20,000 acres in easements and is funded by a voter-approved sales tax increase. One primary advantage of this structure is that it institutionalizes the effort to protect farmland. Funding sources may include taxes, bond measures and fees. The process for forming such districts is more rigid than most other alternatives. There must be specific statutory authority⁶ and LAFCO approval.⁷ Working with a pre-existing district may be appropriate in some instances.

Some districts, such as the Marin County Open Space District, are "dependent" because the county board of supervisors serves as the board for the district. This structure has the advantage of ensuring that the district's actions are consistent with county policy. However, such a board may subject the district to greater political pressures. An "independent" district, where the district's board members are elected, is another possibility. An independent district, however, may result in overlapping duties with other local agencies within the district.

⁴ See Cal. Gov't Code § 6500 and following.

⁵ See Cal. Gov't Code §§ 6584-6599 (commonly referred to as Marks-Roos Local Bond Pooling Act of 1985; 75 Cal. Op. Att'y. Gen. 6, 7-8 (1992)).

⁶ Cal. Pub. Res. Code §§ 5500 and following.

⁷ Cal. Gov't Code §§ 56000 and following.

Part III

PLANNING FOR AGRICULTURE



“Suppose they had a war and nobody came?” was a popular counter-culture slogan in the 1960s. Its modern counterpart for farmland protection might be, “Suppose we protect farmland and nobody farms?” The key to protecting agriculture is ensuring that farming and ranching in protected areas remain viable enterprises. The value of protecting such lands is greatly diminished if agriculture does not remain an important element of the local economy.

In some respects, the task of keeping agricultural land viable may be more daunting than protecting the land from development. Modern farmers must contend with many new trends. International trade, biotechnology and corporate mergers have changed the face of agriculture. Complications from other agricultural issues, such as water and farm labor, also make the practice of farming today more difficult and complex than it was a generation ago.

Fortunately, there are a great many programs that local agencies can initiate or facilitate to help improve agricultural profit margins. The most common program is offering property tax breaks under the Williamson Act. However, economic development, permit streamlining and agricultural marketing strategies can also play key roles in developing a viable farmland protection strategy.

LAY OF THE LAND

Chance that a farm had Internet access in 1997: 1 in 4 ¹

Chance that a farm had Internet access in 1999: 1 in 2 ¹

Amount of each dollar spent on food that actually goes to farmers: 21 cents ¹

Percentage of California's surface and groundwater supply is used by agriculture: 43% ¹

Percentage of Californians who say that maintaining the water supply for farms and agriculture should be the most important priority for future water planning: 42% ⁴

Number of Californians that say new homes and development should receive priority: 20% ⁴

Chance that an irrigated acre of farmland applies water through a drip, sprinkler or trickle system: 1 in 3

Amount that the California Farm Bureau estimates California farmers have invested in irrigation systems since 1975: more than \$1 billion

Change in the number of University of California Agricultural Experiment Station scientists between 1990 and 1998: -20% ¹

Average share of California's total agricultural production that is exported: 16-19% ¹

Percentage of farmers who are 44 years of age or younger: 20% ¹

Percentage who are 70 years of age or older: 20% ¹

Percentage of farm workers in California who are foreign-born: 95% ¹

Chance that a farm labor job exceeds 150 days: 1 in 3

Estimated annual total of personal income generated by California agriculture: \$59 billion ¹

Total number of jobs supported by agriculture in California: 1.1 million ¹

SOURCES: (1) Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • (2) Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) (3) California Farm Bureau Federation (www.cfbf.org) • (4) Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • (5) Kuminoff *et al.*, *Issues Brief: Farmland Conversion: Perceptions and Realities*, Agricultural Issues Center (May 2001) (see www.aic.ucdavis.edu) • (6) American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (see www.farmland.org/cfl/survey.htm).

ADOPT A PROPERTY TAX INCENTIVE PROGRAM

10 STRATEGY

The Williamson Act was one of California’s first farmland protection tools.¹ It allows farmers to contract with local agencies to lower their property taxes. Instead of paying a property tax based on the land’s market value, the land is assessed at its agricultural value. In exchange, farmers give up the option to develop the land for urban uses for a minimum of 10 or 20 years. The state then pays a subvention to local agencies to offset the reduced revenues that result from lower property taxes.²

Nearly 16 million acres are enrolled under Williamson Act contracts, approximately one-third of which is prime land.³ The Department of Conservation estimates that the Williamson Act saves most landowners from 20 to 75 percent in property tax liability each year. In one survey, one in three farmers with enrolled land claimed that they would no longer be farming were it not for the Williamson Act.⁴ Property tax reductions can be a valuable incentive to keep land in agriculture. Without such protection, property tax on farmland will be based on its appraised sale price, which often reflects the development potential of land. Thus, land that is worth \$3,000 per acre for agricultural production might be assessed at values in excess of \$10,000 per acre when demand for development is high.

Despite its success, the Williamson Act is not without critics. Many believe that it failed to provide sufficient incentives to enroll land that was most at risk near fast-developing urban areas. In addition, the permitted uses were so broad that many nonfarm uses, such as golf courses, received the same benefits as neighboring farms. The Legislature addressed many of these perceived loopholes in 1998 and 1999. One key development was the passage of the “Super Williamson Act,” which authorized the creation of farm security zones to provide increased benefits and new restrictions for enrolling farmers.⁵ Agricultural Preserves and Farm Security Zones

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¹ See Cal. Gov’t Code 51200 and following.

² See Cal. Gov’t Code § 16140; California Farm Bureau Federation, *The Farmland Security Zone: Preserving California’s Prime Agricultural Farmland* (visited Mar. 18, 2002) www.cfbf.com/issues/landuse/fsz.htm.

³ Division of Land Resource Protection, *Williamson Act Enrollment Patterns* (last modified Mar. 12, 2002) www.consrv.ca.gov/dlrp/LCA9798_enrollment.htm.

⁴ UC Agricultural Issues Center, *Land in the Balance* (1989).

⁵ Cal. Gov’t Code §§ 51296 and following.

AGRICULTURAL PRESERVES AND FARM SECURITY ZONES

Agricultural preserves are the cornerstone of the Williamson Act. Owners of land located within the preserve can enter into contracts to receive reduced tax assessments. This process involves three steps:

1. ***Develop an Administrative Framework.*** The agency adopts rules for authorizing preserves, such as filing and processing requirements.⁶ Within certain guidelines, the agency also determines the extent to which nonagricultural uses may be allowed within the preserve.⁷
2. ***Establish the Preserves.*** Preserves are established after conducting a public hearing. The planning department must also report on the proposal's consistency with the general plan. The minimum size of a preserve is 100 acres.⁸ Minimum parcel sizes within the preserve are 10 acres for prime agricultural land and 40 acres for nonprime land.
3. ***Contract with Landowners.*** The agency may contract with landowners whose land is devoted to agricultural use within a preserve.⁹ Local agencies also have the option to negotiate more restrictive contracts.¹⁰

There are two types of Williamson Act contracts: the traditional 10-year contract and the newer farmland security zone or 20-year contract. Most of the nearly 16 million acres enrolled in agricultural preserves statewide are under 10-year contracts. Only 400,000 are in farm security zone contracts, but this is beginning to change. For example, San Joaquin County is actively trying to convert its 10-year contracts to farm security zones.

TRADITIONAL TOOL: THE 10-YEAR CONTRACT

Landowners can enter into 10-year contracts by agreeing to restrict their land to agricultural use.¹¹ The local agency determines specific eligibility criteria, such as minimum parcel size and farm income requirements. The contracts automatically renew each year unless a notice of nonrenewal is filed. Upon such notice, the contract terminates in nine years and the

⁶ Cal. Govt. Code § 51231.

⁷ Cal. Govt. Code § 51238.1

⁸ Smaller preserves can also be created. Cal. Govt. Code § 51230.

⁹ Cal. Govt. Code § 51201(b).

¹⁰ Cal. Govt. Code § 51240.

¹¹ Cal. Gov't Code § 51201(d).

property taxes on the land gradually increase.¹² Although most lands are contracted for the 10-year period, local agencies have the option to adopt longer durations.¹³

The contract may also be cancelled if this is consistent with the Williamson Act’s purpose or is in the public interest.²⁰ The owner pays a cancellation

CONTRACT OPTIONS		
	TRADITIONAL 10-YEAR CONTRACT	FARM SECURITY ZONE CONTRACT
Eligible Land	Prime land and some grazing land	Land designated on Farmland Series Map
Contract Period	10 years, annual renewal	20 years, annual renewal
Cancellations	Must be approved by local agency upon specific findings	Must be approved by local agency and Department of Conservation
Penalty	12.5% of fair market value	25% of fair market value
Assessed Value	Agricultural fair rental value	35 % less than agricultural preserve
Subvention Rate	\$5 per acre for prime land, \$1 for range land	\$8 per acre within 3 miles of sphere of influence ¹⁴ ; \$5 outside sphere boundary ¹⁵
Compatible Uses	Broadly defined; ¹⁶ determined by local agency ¹⁷	More narrowly construed ¹⁸
Farm Residences	Excluded from benefit	Excluded from benefit
City Role	Cities can make concerns known about contracts within planning area	City referral necessary for contracts within one mile of sphere of influence
CEQA	Agency approval of contracts exempted	Legislative note states that exemption applies ¹⁹
Annexation	Not applicable	Strict limitations on annexations and purchases by school districts

¹² Cal. Rev. & Tax. Code § 426.

¹³ Cal. Gov’t Code § 51240

¹⁴ Cal. Gov’t Code § 16142.1.

¹⁵ Cal. Gov’t Code § 16142.

¹⁶ “Compatible” uses include agricultural, recreational, and open space uses. Cal. Gov’t Code § 51201(e). Farm labor housing is a compatible use. Cal. Gov’t Code § 51238.

¹⁷ Cal. Gov’t Code § 51231.

¹⁸ Compatible use provisions concerning nonprime land in agricultural preserves (Cal. Gov’t Code § 51238.1(c)) do not apply to Farmland Security Zone parcels. Cal. Gov’t Code § 51296.7.

¹⁹ Cal. Code Regs. title 14, § 15317 (2002).

²⁰ Cal. Gov’t Code § 51282. These findings are: (1) a notice of non-renewal filed; (2) cancellation will not remove adjacent lands from agricultural use; (3) the alternative use is consistent with the general

SHOULD CITIES CREATE FARM SECURITY ZONES?

Counties are probably best suited to create farm security zones for two reasons. First, such zones require minimum acreages not likely to be found within city boundaries. Second, if the overall goal of farmland protection program is to encourage compact urban growth, then it is unlikely that cities will be managing the broad swaths of farmland needed for a viable agricultural district. Of course, there are exceptions. Cities that have already annexed large areas of farmland may want to use the Williamson Act to phase in growth or otherwise protect agricultural land of significant importance.

fee equaling 12.5 percent of the current fair market value of the land²¹ and reimburses the deferred taxes for the period that the land was restricted. The landowner may avoid the cancellation fee by dedicating a conservation easement on comparable lands.²²

NEW TOOL: FARMLAND SECURITY ZONE CONTRACT

Farm security zone contracts differ from traditional 10-year contracts in that landowners receive an additional 35 percent reduction in their property tax. In return, the landowners are subject to stricter provisions, such as a 20-year contract period, state approval of cancellations and a penalty set at 25 percent of the land's fair market value. Farmers in 10-year contracts may re-enroll their land in a farm security zone contract without penalty.²³

Requirements for entering the program are also stricter. Only land designated on the Department of Conservation's Important Farmland Series Maps as prime farmland, farmland of statewide significance, unique farmland or farmland of local importance is eligible²⁴ (see Strategy 21). Procedures for nonrenewal and cancellation are substantially the same as for agricultural preserves.²⁵ However, the local agency's discretion is more limited in approving alternative land uses in such zones.²⁶

A farm security zone contract also affects local agencies' ability to annex territory. In most cases, a city is prohibited from annexing contracted lands.²⁷ Contracted land may not be annexed to a special district that provides sewers, nonagricultural water or streets and roads unless these services benefit the uses allowed under the contract.²⁸ A school district is also prohibited from acquiring land enrolled as a farm security zone. Finally, newly adopted special taxes for urban-related services must be levied on contracted land at reduced rates unless the tax specifically benefits the land within the farm security zone.

plan; (4) cancellation will not result in discontinuous growth patterns; and (5) that there is no proximate non-contracted land which is both available and suitable for the proposal. *See also, Sierra Club v. City of Hayward*, 28 Cal. 3d 840 (1981) (construing the ability to terminate contracts narrowly).

²¹ Cal. Gov't Code § 51283(a). *See People ex rel. Wheeler v. Triplett*, 48 Cal. App. 3d 233 (1996) (regarding the appraisal of current fair market value for purposes of calculating the cancellation fee). In some cases, the local agency may waive the cancellation fee. Cal. Gov't Code § 51283.1.

²² This program is a link between the Williamson Act and the California Farmland Conservancy Program Act (Cal. Pub. Res. Code §§ 10200 and following). The comparable land must be of equal size or suitable for agricultural use. Cal. Gov't Code § 51256.

²³ Cal. Gov't Code § 51296.1. Landowners not enrolled in Williamson Act contracts may apply directly for farm security zone contracts.

²⁴ Cal. Gov't Code § 51296.8.

²⁵ Cal. Gov't Code §§ 51296.9 and 51297.

²⁶ Cal. Gov't Code § 51296.7.

²⁷ Cal. Gov't Code §§ 56749; 51296.3.

²⁸ Cal. Gov't Code §§ 56856; 51296.4.

The goal of these provisions is to strengthen the Williamson Act. Interestingly, the creation of a farm security zone is one of the few long-term solutions to farmland protection that is *not* a conservation easement. From a planning perspective, such zones help to ensure that land remains in productive agriculture for a period of 20 or more years without locking it up in an easement that will be difficult to rescind.

Kings County has been very effective at adapting to the new farm security zone program. In 1998, the first year of implementing the program, the county transferred 208,901 agricultural preserve acres into farm security zones. From 1999 through 2000, another 33,000 acres were converted. As of 2000, Kings County had enrolled more land in the program than any other agency: 242,615 acres. (Kern County was the runner-up with 85,211 acres.) Of the Kings County land, 28,421 acres were considered “urban prime” — land within three miles of a city’s sphere of influence.

FISCAL IMPACTS ON LOCAL AGENCIES

The consequence of lowering property tax values in agricultural zones is that less money ultimately flows to local agencies. To offset this, the Williamson Act authorizes the state to provide a payment, called a subvention, for each acre of farmland enrolled under the act. The state currently spends about \$39 million annually in subventions.

The system works the same way for agricultural preserves and farm security zones, except farm security zone payments are larger. For land enrolled under a 10 year contract, the state pays \$5 per acre for prime agricultural land and \$1 per acre for all other land.²⁹ In farm security zones, subvention payments are \$8 per acre for land within three miles of a sphere of influence boundary and \$5 per acre for land beyond this boundary.

To receive payment, the local agency submits an application to the state Department of Conservation’s Division of Land Use Protection by Oct. 31 each year.³⁰ Once the local agency receives the subvention payment, the funds are unrestricted and may be used for any expenditure. The receiving agency may also allocate a portion of the funds to any special district or

TOP 10 SUBVENTION PAYMENTS 2001 (ALL COUNTIES)

Fresno	\$5,757,402
Kern	\$5,233,922
Tulare	\$3,506,396
Kings	\$2,786,645
San Joaquin	\$1,991,968
Stanislaus	\$1,722,411
Madera	\$1,359,352
Yolo	\$1,354,347
San Luis Obispo	\$1,074,304
Tehama	\$ 978,674

²⁹ Cal. Gov’t Code §§ 16140 and following.

³⁰ See Division of Land Resource Protection, *Programs To Conserve California’s Farmland & Open Space Resources* (last modified Mar. 12, 2002) www.consrv.ca.gov/dlrp. A local government may be ineligible for subvention payments if it fails to adopt a local open-space plan or to comply with the provisions of the Williamson Act contracts. Cal. Gov’t Code § 16146. Cal. Gov’t Code § 65560.

LOCAL AGENCY REVENUES UNDER THE WILLIAMSON ACT (PER ACRE OF FARMLAND)			
	NORMAL	10 YEAR CONTRACT	FARM SECURITY ZONE
VALUATION	Sale price -fair market value	Capitalized of fair rental value	65% of 10-year contract or market value, whichever is less
ASSESSED VALUE	\$2,000	\$1,250	\$812.50
TAX RATE	1 %	1 %	1 %
TAX BILL	\$20.00	\$12.50	\$8.12
COUNTY SHARE ³²	\$3.40	\$2.12	\$1.38
REVENUE DECREASE	0	\$1.28	\$2.02
SUBVENTION	\$0	\$5 on prime and \$1 on nonprime land	\$8 within 3 miles of sphere; otherwise \$5
TOTAL GENERAL FUND REVENUE	\$3.40	\$7.12 on prime land; otherwise \$3.12	\$9.38/acre within 3 miles of sphere; otherwise \$6.38.

school district located within the assessed area whose revenues are reduced by the lower property valuation.³¹

ASSESSING THE IMPACT ON LOCAL REVENUES

The California Constitution requires that property tax assessments of land reserved for agriculture be based on the land's actual use.³³ Land covered by a Williamson Act contract is valued according to the annual income it can be expected to generate from rent or agricultural production.³⁴ This is called the "capitalization of income formula."

The California Farm Bureau Federation has developed an analysis of the economic effects of Williamson Act contracts for counties and landowners (see "Local Agency Revenues Under the Williamson Act," above).³⁵ This analysis takes a parcel of prime land with an assessed value of \$2,000 and

³¹ Cal. Gov't Code § 16145.

³² Actual proportions vary from area to area and even parcel-to-parcel. See Legislative Analyst's Office, *Property Taxes: Why Some Local Governments Get More Than Others* (1996).

³³ Cal. Const. art. XIII, § 8.

³⁴ Cal. Rev. & Tax. Code §§ 423, 423.4. Proposition 13 establishes a property tax rate of one percent of full cash value as determined by the 1975-76 assessor's roll. Reassessment occurs due to a change in ownership or new construction. Full cash value increases by two percent each year.

³⁵ California Farm Bureau Federation, *Economic Effects of Farmland Security Zone (FSZ) Contract for Landowners and Counties*, www.cfbf.com/issues/landuse/study.htm.

provides a comparison of the per-acre property tax payments by the landowner and the corresponding effect on local agency revenues.

Of course, the bottom line for many agencies is whether they come out ahead financially after recouping the subvention from the state. Today, the answer appears to be that many local agencies *do* come out ahead. The information provided by Sutter and San Joaquin counties (see “Impact of Williamson Act Assessments,” next page) demonstrates that the state’s subvention payment more than compensates for reduced property tax revenues.

On a parcel-by-parcel basis, the following “break-even points” can be used as a very rough rule of thumb to determine at what property value level the state’s farm security zone subvention payment becomes less than the local agency’s share of lost property tax revenue:³⁶

- ***Within a Three-Mile Boundary.*** The break-even point is \$6,700 per acre.³⁷ If land values exceed that amount, the subvention will not offset lost revenue. This break-even point is probably higher for most cities — \$13,450 — because designations are less likely to affect special district revenues.³⁸
- ***Outside the Boundary.*** For land more than three miles from a sphere-of-influence boundary, the value is \$4,200 per acre.

These break-even figures suggest that there is sufficient incentives for local agencies to create farm security zones.³⁹ However, these figures are only approximations and vary from county to county and even from parcel to parcel, depending on various factors.

While this information is helpful, there are at least three compelling reasons to review the program on a jurisdiction wide basis, rather than using a parcel-by-parcel approach: First, wide variations in the assessed value of thousands of parcels make the exact financial gain or loss resulting from individual Williamson Act contracts difficult (and time-consuming) to calculate. Second, any net loss on a single contract is more

³⁶ Per acre break-even point calculated by the following equation: $(LV)(.34)(.01) = [LV (.65)(.01)(.34)] + 8$; where LV = break-even land value; (.01) = property tax rate; (.34) = estimated share of property tax revenue for counties and special districts; (.65) = reduced property tax rate in farm security zone; (8) = subvention payment within three miles of sphere of influence.

³⁷ This assumes that the county will reimburse special districts for lost revenues.

³⁸ This number assumes that the subvention would not have any effect on special district revenues and that the city only receives 17 percent of the property tax.

³⁹ It is only in the limited circumstance when agricultural land has a high value (vineyards, for example); or when the land value reflects some development pressure, that the incentives may not pencil out for local government on a case-by-case basis.

IMPACT OF WILLIAMSON ACT ASSESSMENTS IN SAN JOAQUIN AND SUTTER COUNTIES		
	SAN JOAQUIN⁴⁰	SUTTER⁴¹
Number of Williamson Act Parcels	6,932	72
Williamson Act Acreage	550,948	6,802
Base Value of Williamson Act Acreage	\$1,968,761,235	\$18,997,970
Restricted (Williamson Act) Value	\$1,616,277,889	\$12,834,055
Decrease in Assessed Value	\$352,483,346	\$6,163,915
Decreased Assessments (1% of Value)	\$3,524,833	\$61,639
Decrease in Tax Revenue to County⁴²	(599,222)	(10,479)
Estimated State Subventions to County	\$2,030,337	\$34,010
Estimated Net Gain/Loss to General Fund	\$1,431,115	\$23,531

than offset by contracts in other areas that provide a net gain to local agencies. Third, even a minor decrease in revenue is a small price to pay when compared to the cost of purchasing conservation easements. For substantially less money (most of which is offset by other net gains), a local agency can use farm security zones to direct growth away from entire blocks of enrolled land.

The potential impact on special district revenues should also be addressed when designing a property tax incentive program. Special districts can be hardest hit by such programs because they are not directly entitled to any subvention payment. However, local agencies receiving payments are authorized to share them with special districts to offset this effect.⁴³

From a growth management and a financial standpoint, the Williamson Act — and the farm security zones contract in particular — appears to create a win-win situation for landowners and local agencies.

⁴⁰ San Joaquin County Assessor's Office. San Joaquin County has 393 Farmland Security Zones.

⁴¹ Sutter County Assessor, *2001/02 Roll Report* (2002).

⁴² Assumes county general fund receives 17 percent of property tax revenues.

⁴³ Cal. Gov't Code § 16145.

PLAN FOR ADEQUATE WATER SUPPLIES

11 STRATEGY

Water is a vital resource for California agriculture. By managing and increasing the local water supply, local agencies can help to ensure that farms remain viable. Although many policy alternatives are beyond the scope of local agencies, several proactive policies and programs can be implemented to maintain an affordable water supply.

The Tri-Valley Business Council, a public-private partnership operating in fast-growing Alameda and Contra Costa counties, recently created the Agricultural Water Task Force to implement a planning process that focuses on identifying sufficient water supplies to support local agriculture. The task force has three goals:¹

1. Create a plan to obtain water for increased irrigated agriculture in a way that integrates economic profitability and environmental health, and respects the needs and desires of all people in the region;
2. Identify and resolve issues of common concern related to an increase in irrigated agriculture; and
3. Promote communication and understanding among the different interests involve in agricultural land decisions.

The task force is composed of community leaders from a variety of interest groups. Although there are very significant challenges in achieving these goals, the fact that diverse interests are working together for the benefit of agriculture and the community as a whole may provide the momentum necessary to accomplish the task.

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PLANNING FOR NEW DEVELOPMENT

New developments can pose a threat to local agriculture when they share the same source of water. When urban uses require ever-increasing amounts of water, it makes the availability of water uncertain for agriculture — particularly in times of drought. Consequently, ensuring that local agriculture has an adequate water supply means that there must also be adequate water for new urban development.

¹ See www.tri-valley.org

An initial step is identifying sources of water to serve new development before it is built. State legislation now requires most large projects² to conduct water availability assessments at various stages of the development process, such as environmental review and subdivision approval.³ Water suppliers (or purveyors) have traditionally produced urban water management plans that describe total water supplies for present use (including agriculture) and all planned development. Proponents of new development must now show that there are sufficient supplies, even in multiple dry years, to meet new water demand for 20 years. This requires greater agency understanding of water supply issues.

In some respects, these new requirements codify what several agencies have already been doing. For example, Santa Barbara County already requires developers to provide the gross and net water demand for new developments and a description of how the project will be served during droughts. Furthermore, water purveyors have a standing obligation to determine whether there is an adequate supply of water to serve existing customers before the supplier can add new connections.⁵

WATER CERTAINTY AND FARMLAND PROTECTION: IS THERE A DEAL TO BE MADE?

From time to time, the issue arises of how to better connect water certainty to farmland conservation. In other words, is there a way to reward farmers for forgoing development by providing them with a certain, affordable water supply?

Such proposals take various forms. Noted *Cadillac Desert* author and water commentator Marc Reisner suggested offering guaranteed Bureau of Reclamation water deliveries to farmers at reduced costs in return for entering into 20- to 40-year contracts to conserve farmland (similar to a Williamson Act for water supply).⁴ While it's impossible to predict if or when such a statewide program would go into effect, the underlying concept may be helpful for local agencies working to develop local solutions to farmland protection.

² 500 units or equivalent, retail of 500,000 square feet, office space of 250,000 square feet, 500 room hotel, 650,000 square feet of industrial or 10 percent increase in service connections for communities of 5,000 connections or less. See Cal. Water Code § 10912.

³ SB 221 (ch. 642, stats. of 2001); AB 901 (ch. 644, stats. of 2001).

The new water assessment requirements are likely to mean more proposals to increase nontraditional sources of water, such as water marketing, improved efficiencies and water recycling. For example, the City of Tracy is planning to construct an aquifer storage and recovery well and four monitoring wells and pipelines to store treated surface water in its area aquifer. The project would bank 2,000 acre-feet per year of treated Delta Mendota Canal contract water. Extraction will depend on dry-year needs and storage availability.

THE ECONOMIC VALUE OF WATER

What does water mean to a community? One study examined the effects of a 56 percent reduction in surface water deliveries to the community of Mendota from 1990–92.⁶ The study found that:

- Irrigated cropland decreased by 14 percent;
- Farmers substituted pumped groundwater for lost surface deliveries;
- Demand for farm labor decreased dramatically;
- Farm and packing wage and salary income declined by \$4.8 million;
- Three out of seven area wholesale firms went out of business;
- A total of 18 farms went out of business;
- Retail sales in Mendota decreased 11 percent (compared to a 4 percent countywide *increase*);
- Agricultural land values declined by 30 percent; and
- City tax revenues and business license fees declined substantially.

⁴ Marc Reisner, *Water Policy and Farmland Protection: A New Approach to Saving California's Best Agricultural Lands* www.farmlandinfo.org/fic/ft/calwater.html.

⁵ Cal. Health & Safety Code § 4010. Scott S. Slater, *The Role of Cities in Managing and Regulating Water*, 1996 League of California Cities City Attorneys Spring Conference Papers, 553, 568.

⁶ D. Villarejo, *93640 at Risk: Farmers, Workers and Townspeople in an Era of Water Uncertainty* (1996).

IMPROVING GROUNDWATER SUPPLIES

Many farming operations are partially or wholly dependent on groundwater — particularly in times of drought. Thus, local aquifer management can play an important role in keeping agriculture viable. The amount of groundwater in each basin is a function of inputs (rainfall and recharge from surface water) less extractions (pumping). Local agencies retain some authority to manage groundwater supplies,⁷ unlike surface water, where the state regulatory authority has largely pre-empted local discretion.⁸ In addition, recent court decisions confirmed the right of landowners to pump underlying groundwater from their properties, making comprehensive management of the resource a more difficult prospect.⁹

Nevertheless, the water planning legislation addressed in the previous section (page 74) highlights the significance of managing groundwater.

USEFUL RESOURCES FROM DWR

The State Department of Water Resources (DWR) will publish (July 2002) two documents that can be useful in helping assess local water supplies:

- ***Bulletin 118.*** Bulletin 118 is a statewide inventory of groundwater basins that provides a detailed analysis about nearly 500 California groundwater basins. It also includes a discussion of policy options.
- ***Water Planning Guidebook.*** A guide for water suppliers, cities and counties to implementing recent legislation that requires the integration of water supply management and land use planning.

More information can be obtained by visiting the Web site:

<http://wwwdwr.water.ca.gov>

⁷ See *Baldwin v County of Tehama*, 31 Cal. App. 4th 166 (1994). In the Sacramento Valley and the Sacramento-San Joaquin Delta, Water Code section 1220 limits exportation of water without consultation with water districts and a vote of the counties overlying the groundwater.

⁸ Surface water transfers are subject to extensive state regulation, but there may be some room for local regulation that does not conflict with the State Water Resources Control Board. Slater, *supra*, at 567. For example, surface water transfers that are promised on the fact that lost water will be supplemented by increase groundwater pumping may be subject to local reticulation. *Id.*

⁹ *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224 (2000).

Local water purveyors will have to include an assessment of groundwater availability, including any groundwater management plan, whenever groundwater will be used to serve large development projects. As a result, it's important to develop a groundwater budget and collect other data about the quantity and quality of local groundwater sources.¹⁰

The need for a local agency to take action on conserving groundwater resources varies by area. Many regions already have special districts in place that manage groundwater basins.¹² A few counties have also taken steps to address groundwater issues by adopting a groundwater export ordinance. For example, Fresno County has implemented a permit system that requires anyone who directly or indirectly exports groundwater outside the county to apply for a permit. The permit is conditioned on a finding that the extraction will not increase the overdraft or injure also the

SEVEN STEPS FOR MANAGING GROUNDWATER SUPPLIES¹¹

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Identify Extraction Points. Record each well's location. Collect driller's logs and compile water level measurements and a water quality analysis for each well. Plot these data on maps to begin a monitoring program. 2. Define Outputs. Calculate the amount of groundwater extracted plus consumptive use, exports, evapotranspiration, surface flow and other outputs. 3. Define Inputs. Quantify how much water is coming into the basin through precipitation, surface water and other inputs. 4. Draft and Map a Water Budget. Inflow minus outflow equals the change in groundwater. Mapping this information is useful for understanding past, present and projected inflow and extraction levels. | <ol style="list-style-type: none"> 5. Estimate Specific Yield. Estimate the amount of water available from an unconfined aquifer. The specific yield can be used to calculate the amount of groundwater in storage. 6. Project Future Extractions. Use the specific yield values to calculate the estimated change in groundwater level that will occur during a given period of time. Groundwater quality data can also be used to estimate the effect of such extractions on the movement of underground contaminants. 7. Develop a Management Plan. A management plan can reduce the amount extracted by specific wells, either through a reduced rate of pumping or by restricting the length of time the pump can be operated. Such reductions have to be voluntary unless the plan is adopted and implemented by a local agency. |
|--|--|

¹⁰ See Cal. Water Code § 10910.

¹¹ Department of Water Resources, *7 Steps for Managing Groundwater Supplies, Water Facts*: (February 1996) (http://www.dpla.water.ca.gov/publications/pubs/supply/gw/water_facts_2.pdf).

¹² For a listing, see Department of Water Resource, *Groundwater Management in California* (1999) (www.dpla.water.ca.gov/publications/pubs/supply/gw/gwm_report.pdf).

reasonable uses of other groundwater users.¹³

Conjunctive use management (the combined use of groundwater and surface water) is another way to increase local water supplies. Conjunctive use involves managing the aquifer system as an underground reservoir. During wet years, when more surface water is available, surplus surface water is stored underground by recharging the aquifers with it. During dry years, the stored water is available in the aquifer system to supplement diminished surface water supplies. A groundwater management plan can also be used to address other specific issues, such as salinity intrusion, contaminants, wellhead protection, overdraft mitigation, replenishment and monitoring.

The state Department of Water Resources also has periodic funding programs, such as the Local Groundwater Assistance Fund Grant Program, that can be tapped by local agencies to underwrite some of the initial costs of developing a groundwater management program. Although the availability of funds varies from year to year, it's worth monitoring these programs at least annually to see whether funding is available to implement a new management plan.¹⁴

WATER RECYCLING

Recycling wastewater is a relatively new option for local agencies. New technology purifies used water for reuse. Now, instead of discharging wastewater into rivers, it's treated and stored until needed. This reclaimed water is delivered to various points to irrigate crops, golf courses and other landscaped areas. In the southern San Joaquin Valley, more than 32.7 billion gallons of reclaimed water are used largely for agricultural irrigation.¹⁵

Water recycling is not without its drawbacks, however. Its implementation, including a system of pipes to deliver the water, can be costly. Water quality can also be an issue. The treatment processes must be carefully monitored to ensure that the discharged water is safe for the environment.

¹³ County of Fresno, Cal., Code § 14.03.01 (2000).

¹⁴ See Department of Water Resources, *Division of Planning and Local Assistance Grants and Loans* (last modified Mar. 8, 2002) www.dpla.water.ca.gov/grants-loans/.

¹⁵ Great Valley Center, *The State of the Great Central Valley: The Environment* 38 (2001) (www.greatvalley.org/research/publications/pdf_folder/indicator_enviro_report.pdf).

If the discharged water is highly saline, it can damage salt-sensitive crops or reduce soil productivity.¹⁶

Nevertheless, water recycling's potential deserves serious consideration. Monterey County built a \$78 million recycling system to offset the serious groundwater overdraft and concurrent threat of salt-water intrusion from the adjacent Monterey Bay. The reclaimed water is mixed with groundwater in a 2-to-1 ratio and used to irrigate 12,000 acres of lettuce and other vegetables. The project is expected to reduce the groundwater extraction by 20,000 acre-feet in and around the City of Castroville annually. Some local farmers, however, have expressed concern about possible market impacts due to the public's potentially negative perception of irrigating vegetables with recycled water.¹⁷

The State Revolving Fund program offered by the U.S. Environmental Protection Agency provides low-interest loans (at half the interest rate of general obligation bonds) for planning, designing and constructing municipal wastewater treatment works, including water-recycling systems. The federal government matches the state funds on a 5-to-1 basis. Such funding played a key role in the development of the Monterey County project mentioned above. The county received an \$8.8 million loan from the State Revolving Fund program and \$52 million (over an eight-year period) from the Bureau of Reclamation to finance the project.¹⁸

THE WATER EDUCATION FOUNDATION

A good starting point for gaining a better understanding of water issues in California is the Water Education Foundation. The Foundation serves as an impartial nonprofit organization dedicated to creating a better understanding of water issues and helping resolve water resource problems through educational programs. The Foundation's *Laypersons Guide* series (priced at \$7 each) provides excellent, easy-to-read executive summaries of most of the urgent water issues facing California today. Visit their Web site for more information:

www.water-ed.org

¹⁶ Water Education Foundation, *A Layperson's Guide To Water Recycling* (1999). This publication is an excellent introduction to the issue and only costs \$6. See www.water-ed.org/.

¹⁷ *Id.*

¹⁸ *Id.* See www.epa.gov/safewater/dwsrf.html for more information about loan program.

RESOURCES FOR WATER RECYCLING

- **Bureau of Reclamation.** The bureau has limited funding for up to 25 percent of design and construction costs and 50 percent of planning costs (Title 16 program). It also works with local agencies to develop feasibility studies. *Contact:* Water Recycling Coordinator, 2800 Cottage Way, Sacramento, CA 95825-1898; (916) 978-5100; www.mp.usbr.gov/.
- **State Water Resources Control Board.** The state board regulates and permits the state's surface water. *Contact:* P.O. Box 100, Sacramento, CA 95812; (916) 341-5250; www.swrcb.ca.gov.
- **Environmental Protection Agency.** The U.S. EPA sets applicable biosolid standards. It also administers the State Revolving Fund program. *Contact:* Office of Groundwater and Drinking Water, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; (202) 564-3750; www.epa.gov/OW.
- **California Department of Health.** The department establishes health criteria for the treatment and use of recycled water. *Contact:* Recycled Water Unit, 601 North 7th Street, Sacramento, CA 95814; (916) 445-0498; www.dhs.ca.gov (search: "water recycling").
- **Department of Water Resources.** The department provides resources and information for recycling programs. *Contact:* Division of Planning and Local Assistance, P.O. Box 942836, Sacramento, CA 94236-0001; (916) 651-9236; <http://www.dwr.water.ca.gov>.
- **WateReuse Association.** This is an organization of groups and agencies involved in water recycling. A portion of its Web site is dedicated to California and includes a model water-recycling ordinance. *Contact:* 635 Slaters Lane, 3rd floor, Alexandria, VA 22314; (703) 684-2409; www.watereuse.org (only one "r").

SPONSOR PROGRAMS TO ESTABLISH NEW FARMERS

The pool of available skilled farmers who have the means to enter the industry is a resource that's vital to a strong, successful local agricultural economy, and it's often overlooked. This is becoming a more significant issue in California, where the farmer's average age is 55 and rising (compared to the national average age of 47). This trend is compounded by the fact that many in the next generation do not follow in their parents' footsteps, increasing the likelihood that farms will be sold for development.

New farmers face several challenges. Not only is it difficult to obtain the capital necessary to purchase a working farm, but banks and other financial institutions also generally require the borrower to have experience operating a farm or other business before financing such a purchase. Local agencies can play an important role in preparing prospective farmers to overcome these challenges and other initial barriers.

INCUBATOR FARMS

A new farm incubator program can be an innovative way to help new farmers become established. Typically, a farm is purchased, divided (not formally or legally) and then subleased at affordable rates to people who have demonstrated an interest in owning and operating a farm. In many cases, these individuals have a great deal of experience as farmworkers, but have never had the opportunity to own a farm.

Once invited to participate in the program, the prospective farmers make all the farming decisions for their section, but receive guidance from advisors. Classes on farm business management are usually provided. Where practicable, other local farmers offer advice and experience through a mentor relationship. Ideally, the program also includes additional assistance, such as low-interest loans, to help new farmers get started.

Prospective farmers generally stay in the program for two to five years. The benefit to the prospective farmers can be significant. Not only do they receive valuable experience in operating a farm, but they also generate a track record that will help obtain financing to purchase their own farm.

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While local agencies may not have the resources to manage a farm incubator, they can help launch a program with funding and by bringing key players together. A local land trust and the local cooperative extension service are ideal partners for this purpose, as they are generally better positioned to engage and help in the program's long-term management. Communities that are home to a university with an agriculture program may also be excellent partners.

CASE STUDY: FRESNO'S MISITA PROPERTY¹

The Misita Farm operates on the City of Fresno's south side. The farm is 40 acres of rich farmland planted in a variety of Asian vegetables. The land is bordered to the east by a large subdivision and to the west by productive farmland.

When the farm's original owner, Dusan Misita, decided to retire from farming, he received many offers from developers with plans to subdivide the property or convert it to non-agricultural uses. However, Misita wanted to see his farm remain in production. Through a unique collaboration between the American Farmland Trust (AFT) and the local Hmong-American community, the land became a farm incubator and demonstration site for new farmers. Small plots of land are leased to minority or small-scale farmers until they qualify for land-acquisition loans to buy their own larger parcels of land. During this period, these farmers receive technical assistance to improve their skills and chance for commercial success.

"This project will help transform minority and small farmers from farm laborers and tenants on small plots of land to commercially successful landowners," said Greg Kirkpatrick, AFT's California field representative. "At the same time, we ensure that the Misita land stays in farming. It's a win-win solution."

To guarantee that the land is used solely for farming, AFT is placing an easement restriction on the property. The trust's investment in Misita Farm is part of a strategy to identify and protect high-quality farmland located at the edges of cities. Purchasing and protecting Misita Farm begins to draw the line on urban growth southwest of Fresno, where farming historically has dominated the landscape.

"The purchase of Misita Farm is a first step toward making farmland available to hundreds of local farmers who are crying for land," said Toulou Thao, community builder for the Department of Housing and Urban Development, and a member of the local Hmong community. "The project will be a dream come true for many farmers."

The Misita Farm project is an outgrowth of the Small Farm Development Task Force convened by Congressman Calvin Dooley to identify the needs of small farmers and develop a comprehensive program to ensure their success. The Small Farm Resource Network, a collaborative effort involving several agricultural agencies and nonprofit organizations that offer assistance to small farmers, is now implementing many of the task force recommendations. The network's goal is to provide coordinated services for helping small farmers acquire land, as well as providing access to capital, technical assistance and marketing.

¹ American Farmland Trust, *Farmland Provides Training Grounds for New Farmers* (May 13, 1999). Available online at www.farmland.org/news/051399.htm.

An incubator farm also provides other advantages. For example, funding can be used to place the farm in a location to help reduce sprawl or serve as a buffer between residences and large farm operations. It may also provide an opportunity for public education through the local schools or other programs that can help connect people to local agriculture.

FARMLINK PROGRAMS

One relatively new nonprofit association, California FarmLink, specializes in structuring creative financial deals to help entry-level farmers get started. The organization, which presently has staff and offices in Sonoma, Yolo and Fresno counties, is modeled after other successful programs around the country that match retiring farmers with prospective or current farmers who wish to purchase a farm but generally cannot yet afford it.

FarmLink can structure real estate transactions in a way that it makes it easier for new farmers to purchase farmland. Sometimes, these transactions are coupled with the sale of a conservation easement to a local land trust. This reduces the overall cost for the new farmer and helps to ensure that the land remains as farmland. While such transactions are often complex and time-consuming, retiring farmers may be willing to enter into them on the knowledge that their farm will be transferred into good hands. In addition, if the deal is structured with the help of a good attorney or financial planner, the farmer may realize substantial tax benefits from such a sale.

FarmLink conducts community workshops on a variety of related topics, including farm succession planning, business planning, farm financing and developing on-farm mentoring relationships. It also serves as a clearinghouse for farm apprenticeship programs and opportunities throughout the state.

Finally, California FarmLink has started to partner with local agencies, such as the Sonoma County Agriculture and Open Space District, that want to implement farm transition policies on a regionwide scale. These partnership activities include making presentations to community stakeholder planning groups and at public meetings about strategies for farm transitions and promoting economic development, conservation and smart growth.

FOR MORE INFORMATION

California FarmLink

P.O. Box 2224

Sebastopol, CA 95473

(707) 829-1691

www.californiafarmlink.org

Beginning Farmer Center National Farm

Transaction Network

(Iowa University Extension)

www.extension.iastate.edu/bfc/

HOW DOES FARMLINK PRESERVE LAND FOR FARMING? A HYPOTHETICAL EXAMPLE²

After farming for more than 40 years, Mr. and Mrs. Smith want to retire but they are unsure about how to proceed. Developers have inquired whether they would be interested in selling, but no firm offer has been made. Although they want to see the land remain in agriculture, their three children aren't interested in farming. The Smiths reluctantly decide to sell their farm, but they have concerns:

- They want to realize their equity in the farm;
- If possible, the land should remain in agriculture;
- They want to retain a source of income to take care of special needs, such as long-term health care, as they arise; and
- They would prefer to remain living in the farmhouse located on the property.

The potential sale has raised concerns in the community. The farm is located along the main highway and contributes significantly to the town's rural character. In addition, the town's planning department has recognized that the farm would be an important part of any growth management plan. If developed, the necessary infrastructure would have to be built in a way that would threaten thousands of acres of additional farmland.

A council member suggests contacting FarmLink. After studying the Smiths' needs, FarmLink proposes a two-part solution. First, the Smiths can sell a conservation easement on the property, which would allow them to capture much of the property's development value without taking the land out of farming. Given the land's unique character, the potential for funding the deal would be high. The money can then be invested in more liquid assets that can be annualized over a period of years.

Second, the Smiths should lease the land for agriculture. The annual income from the lease can either supplement their retirement income or help offset unexpected costs. Moreover, they can remain in their house. Although they could lease to anyone, FarmLink offers to match them with a young family interested in starting their own farm. While such arrangements may start under a lease, they often evolve into a sale when the Smiths (or their heirs) are ready to part with the land. To help facilitate the transaction, the city alters zoning on the parcel so that an additional home can be built to house the tenant family. The Smiths' proximity on the land also gives the new tenant the opportunity to learn from their experience. Even after their retirement, the Smiths periodically visit the farm's fruit stand, much to the delight of their former customers.

² Adopted from examples that are posted on the California FarmLink Web site at www.californiafarmlink.org/.

DESIGN FARM-FRIENDLY PERMIT PROCESSES

Designing and implementing farm-friendly local permit processes is a prudent step for local agencies interested in farmland protection. Most farmers must split their time between tending their fields and managing their business. They have little spare time to engage in lengthy permit procedures — particularly for a relatively minor project like a barn expansion or a small building improvement. When local agencies can streamline their permit process, adjust their fee schedule or otherwise make the process easier to navigate, farmers can spend more time and energy on the farm.

SIMPLIFY THE PERMIT PROCESS

Simplifying permit procedures means making the process of seeking a permit easier and more intuitive for permit applicants. There are several ways to streamline permit processes, including the following:

- **Consolidate.** Create “one-stop” permitting centers that provide all information and approvals in one location.
- **Expedite Review.** Provide clear directions about the information needed to complete the application and then work to make quick determinations.
- **Delegate Approval Authority.** For small projects, such as barns and sheds, give approval authority to the zoning administrator.
- **Assign Permit Coordinators.** Assign a permit coordinator for each application to avoid situations where applicants receive conflicting messages from different staff members.
- **Improve Customer Service.** Providing attentive customer service helps to create public confidence.
- **Use the Web.** While it may be a few years before most agencies can accept permit applications via the Internet, they can use their existing Web site to explain the permit process to farmers and others interested in seeking a permit.

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- **Consider Self-Imposed Timelines.** Local agencies that are truly committed to speedy processes may want to impose timelines on themselves for issuing permit decisions, and discount the permit fees (or provide some other benefit) when those deadlines are missed.¹

Regardless of which methods are ultimately chosen, the important thing is to make the process easily understood and user-friendly. The community's interest is best served when the permit process, which protects public health and safety, is both efficient and responsive to its customers' needs.

PERMIT SIMPLIFICATION: IDEAS FOR GETTING STARTED²

- **Know the Purpose of the Regulation.** Simplifying permit procedures should not compromise their fundamental health and safety purposes. Identify the underlying purposes of the regulations and keep them in mind when considering changes.
- **Involve Stakeholders.** Bring local officials and stakeholders together to determine the scope of the streamlining effort. Those who have been involved in the process can best identify its flaws and those who use the permit system can make sure that the result still supports the public good.
- **Learn From Other Agencies.** Talking with agencies in other jurisdictions that have implemented permit streamlining can yield important lessons and reduce the time needed to study the issue.
- **Coordinate with Other Agencies.** Some permits require review by multiple public agencies. Work with these agencies to determine whether there are ways to streamline the process.
- **Identify and Collect Key Information.** Consider conducting a permit audit or inventory to see whether the permitting process is inconsistent or redundant. Create a timeline for a typical permit, and look for trends in appeals. Identify the most common mistakes. Such audits often identify several potential solutions.
- **Make it a Priority.** Include permit simplification for farmers (or everyone) within an element of the general plan.

¹ Such action would be very different from the local agency obligations under the Permit Streamlining Act, which requires agencies to process certain development applications within specific time periods. Cal. Gov't Code §§ 65920 and following.

FEE ADJUSTMENTS

Another way of encouraging farming is to analyze the agency's fee structure for typical agricultural permit applications. For example, permit fees can be reduced for typical agricultural structures such as barns, packing sheds and silos. Simplifying some of the requirements may diminish the amount of time staff spends processing the fee, which in turn decreases the cost that must be recaptured through the fee.

The Stanislaus County winery ordinance offers a good example of tailoring an ordinance to fit such needs. This ordinance classifies wineries by their size (such as boutique, small and large) and provides a graduated fee scale. As a winery expands, the fees increase. This process better suits the small wineries, which originally had to pay the same fees as the large wineries. This solution was reached as part of a collaborative effort involving the California Farm Bureau, the county's Community Development Department and the wine industry.

CREATE A “FARMBUDSPERSON” POSITION

Ombudspersons are government officials who work independently of regulatory staff to serve as a neutral contact for the public. A “farmbudsperson,” therefore, serves as an ombudsperson for the farming community. Frequently, farmers do not have the necessary resources to participate in the regulatory process that affects them. A farmbudsperson can help farmers gain access to and navigate the regulatory process.

Depending on how the local agency structures the position, a farmbudsperson can be vested with a variety of responsibilities. Generally, ombudspersons do not advocate for a specific party. Many agencies, including the California Air Resources Board,³ have such positions to help citizens navigate regulatory processes. Other duties of a farmbudsperson may include:

- ***Reviewing and making recommendations*** to local authorities about the development and implementation of regulations that affect the farm community;

² See Office of Permit Assistance, *Twelve Tips to Make the Permitting Process Easier* (last visited Mar. 18, 2002) <http://commerce.ca.gov>. Search on keyword “twelve tips.”

³ See California Air Resources Board, *Office of the Ombudsman* (last modified Nov. 1, 2001) <http://arbis.arb.ca.gov/ba/omb/omb.htm>.

- ***Investigating complaints.*** Investigating complaints about enforcement;
- ***Helping to disseminate information*** about upcoming regulations and land use controls that might affect farming;
- ***Connecting farmers with grant programs,*** such as environmental compliance assistance grants, for which they may be eligible;
- ***Explaining the permit process*** and helping farmers navigate it;
- ***Referring Farmers.*** Referring farmers to appropriate specialists for help with specific needs; and
- ***Conducting studies*** to evaluate the role that farming plays in the economy and the potential impact of proposed legislation.

In many counties, the agriculture commissioner plays some of these roles. But the commissioner is also expected to enforce county regulations. A separate farmbudsperson who is not charged with regulatory compliance may be better able — at least in some instances — to help improve communication between local government and the farming community.

PROVIDE ENVIRONMENTAL COMPLIANCE PROGRAMS

In the past 30 years, the public has demanded better environmental performance from agriculture. Concern about conserving soil and water has expanded to include nonpoint source pollution, wetland protection and biodiversity. Environmental regulations on agriculture have become more stringent, and farmers have had to find alternatives to conventional practices. New technologies may not be as well researched, proven or profitable as the methods that were promoted and used in the past.¹

Environmental problems can result in farmland conversion. If water supplies become scarce or polluted, rationing and regulations may increase the cost of farming. Soil erosion also reduces agricultural productivity. Maintaining the natural resource base is a relatively new issue for state and local farmland protection programs.

By collecting and providing helpful information about environmental laws, local agencies can make compliance easier for farmers, particularly in areas where a group of farmers is facing the same regulatory problems. In addition, local agencies may also help to identify and obtain funds for programs that protect the environment. Finding ways to assist local farmers can help protect environmental quality and the vitality of local agricultural economies.

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RESOURCE CONSERVATION DISTRICTS

Resource conservation districts (“resource districts”) provide a unique and often overlooked way to help farmers with environmental compliance and conservation issues on their properties. Resource districts operate as special districts² and are governed by locally elected or appointed volunteer boards composed of landowners. Generally, the county supervisors appoint

¹ American Farmland Trust, *Saving the Farm: A Handbook for Conserving Agricultural Land*, 13 (1990).

² Cal. Pub. Res. Code §§ 9001, 9151. As such, the county’s local agency formation commission governs their formation. See Cal. Gov’t Code § 56000.

RESOURCE CONSERVATION DISTRICTS IN ACTION

- **Glenn County** obtained \$600,000 in federal funding to address overgrazing problems and implement 32 separate conservation plans.
- **Inland Empire** helped provide flood controls to protect dairies from local urban runoff, which had flooded agricultural areas in previous years.
- **Monterey County** obtained federal funding to improve conservation practices within the sensitive Elk Horn Slough area; installed projects that prevented an estimated 26,827 tons of eroding soil from entering watercourses; and conducted outreach to non-English speaking farmworkers.
- **Shasta and Scott Rivers** helped establish the 995,000-acre Shasta and Scott Rivers rural watershed groups to address bank degradation and threats to salmon habitat. They also installed fish screens, watering facilities, riparian fencing and buffer zones; and stabilized stream banks.
- **Salinas Valley** obtained \$440,000 for conservation on more than 52,000 acres of rangeland, and worked with landowners on rangeland management to protect water quality from excessive sediment pollution.
- **Feather River** implemented a \$1.3 million program to reduce sediment and improve trout and game habitat by teaching ranchers to manage their pastures, to use fencing and seeding on stream banks, and to install offsite livestock watering holes.
- **Tulare County** partnered with land trusts and trade organizations to control infestations of noxious weeds and to implement an education program about noxious and invasive plants.
- **Willows** coordinated \$2 million in funds to address conservation issues on 131,000 acres of farm and ranchland, including tail-water pond creation, riparian enhancement, controlled burns and hedgerow buffers.

the directors, but they can also be elected through county government elections. Resource districts generally address soil conservation, irrigation and water quality issues and implement programs that educate landowners about resource conservation. (See “Resource Conservation Districts in Action,” above).

Collaborating with a resource conservation district can provide unique advantages when implementing a farmland protection plan. Perhaps more than any other agency, resource districts can provide expertise and specific knowledge about the resources that drive the agricultural industry. In addition, they often have established networks among local landowners, created from training and information programs. Finally, they can be extremely helpful in obtaining federal and state funding.

The Resource Conservation District of Greater San Diego County offers one example of how resource districts can help. The San Diego district, working with the California Coastal Conservancy, administers the Carlsbad Agricultural Grant Program to help local farmers increase productivity. To date, the Carlsbad program has funded a variety of projects, including a recycling program and a grant to the University of California, Riverside, for developing biological pest control measures as an alternative to pesticides. Like other resource districts, the Greater San Diego RCD offers technical assistance to help farmers manage soil and

water resources, and reduce farm operations' negative environmental impacts. In many cases, practices that conserve soil and water resources for farming benefit the environment as well.³

Throughout California, resource districts provide training and hands-on assistance to farmers facing a variety of environmental compliance challenges. The U.S. Department of Agriculture's Environmental Quality Incentives Program (EQIP) funds a variety of education projects and supports cost-share programs for "on-farm" conservation practices. In 2001, EQIP provided \$5.8 million for projects in California, including \$340,000 for education projects sponsored by resource conservation districts and other local farm and conservation groups.⁴

UC COOPERATIVE EXTENSION SERVICE

The University of California Cooperative Extension Service is another resource on environmental compliance issues. Its farm advisors are based in more than 50 county offices and collaborate with campus-based researchers to help farmers improve productivity using environmentally sound agricultural practices. For example, the UC Cooperative Extension service offers a program that helps dairy producers comply with the water quality regulations. The program teaches techniques for using manure to optimize cropland production and minimize groundwater contamination.⁵

One area where the extension service has been particularly active in recent years is helping dairy producers comply with water quality laws. The program is a cooperative effort between the University of California, the California dairy industry and the U.S. Environmental Protection Agency. These organizations created a voluntary environmental compliance certification program, called the California Dairy Quality Assurance Program. The program provides classroom and onsite instruction on how to dairy producers on how operate their facilities in compliance with state and federal regulations. UC Cooperative Extension dairy and animal waste management specialists developed the curriculum for the project. The UC

FOR MORE INFORMATION

California Association of Resource Conservation Districts

801 K Street, Suite 1318
Sacramento, CA 95814
(916) 447-7237
www.carcd.org

UC Cooperative Extension Service
(offices statewide)
<http://ucanr.org>

USDA Natural Resource Conservation Service

California State Office
430 G Street, No. 4164
Davis, CA 95616-4164
(530) 792-5600
www.ca.nrcs.usda.gov/

³ See the Resource Conservation District of Greater San Diego Web site at www.rcdsandiego.org.

⁴ U.S. Natural Resource Conservation Service, *Over \$340,000 Released For California Conservation* (last visited Mar. 18, 2002) www.ca.nrcs.usda.gov/eqip/graphic/indexg.html.

⁵ Practical Dairy Nutrient Management Education Program for Dairy Producers. For more information, contact UC Cooperative Extension, 3800 Cornucopia Way, Suite A, Modesto, CA 95358; (209) 525-6800.

Cooperative Extension Service, in partnership with local agencies, provides instruction.⁶

FEDERAL INCENTIVE PROGRAMS

A number of federal programs also provide assistance with environmental issues, such as nonpoint sources of water pollution, wetlands preservation and wildlife habitat, including:

- ***Conservation Reserve Program.*** This program encourages farmers to plant cover crops to reduce soil erosion and runoff on land that meets specific criteria. Farmers can be reimbursed for up to 50 percent of their costs. Contracts usually are for periods of 10 to 15 years.
- ***Wildlife Habitat Incentives Program.*** This program provides technical assistance and cost-share payments to help improve habitat on private lands. Property owners must prepare and implement a habitat plan. Contracts usually last between five and 10 years, and NRCS monitors implementation. In return, NRCS offers technical assistance and pays up to 75 percent of the installation cost. Funds cannot be used for mitigation.
- ***Environmental Quality Incentives Program.*** This program offers financial and technical aid for conservation management. Other incentives encourage nutrient, manure, pest, irrigation water and habitat management. Contracts last for five to 10 years, and other federal, state or local governments can partner to preserve habitat on private property.

A good place to start is the Natural Resources Conservation Service (formally the Soil Conservation Service) of the U.S. Department of Agriculture (see “For More Information,” previous page, for contact information).

⁶ *Id.*

BUILD FARMWORKER HOUSING

Farmworkers are an essential component of California’s agriculture. Farm employees and their families need access to adequate housing, whether they are temporarily or permanently employed in an area. Without adequate housing, farmers cannot attract and retain the labor necessary to operate profitably. In some cases, farmers improvise by converting garages and sheds to house workers. Such improvised housing often lacks sufficient plumbing and electricity, and overcrowding frequently compounds these hazardous conditions.

One estimate places the housing shortfall at 164,000 units for nonmigrant workers and 121,000 units for migrant workers.¹ Accordingly, anything local agencies can do to provide adequate housing for farmworkers can help give local farmers a competitive edge. Many communities address farmworker housing within their general plans.² Fortunately, this is another area where local funding can be leveraged to attract state and federal funding.

LEADERSHIP ROLE FOR LOCAL AGENCIES

Local agencies play a pivotal role in providing affordable housing for farmworkers. Not only are they instrumental in obtaining various sources of funding, but they also have ultimate approval and siting authority over most projects. As a result, local agencies interested in developing projects can facilitate collaboration among a variety of interested parties, including housing advocates, developers and even other governmental agencies.

In addition, through the general plan process, local agencies can identify places where farmworker housing would be most appropriate. Siting such projects is often a challenge because of conflicting priorities in location requirements, including proximity to education, health care, transportation

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¹ Rural Housing Conditions, Trends, and Needs: California and the Nation, Hearings Before the Millennial Housing Commission, (June 4, 2001), [hereinafter Hearings](testimony of Robert J. Wiener, Executive Director, California Coalition for Rural Housing).

² In 1999, state law required local housing elements to identify adequate sites for farmworker housing. See Cal. Gov’t Code § 65583.

routes and job sites. Local agencies are uniquely situated to design projects address these needs.

Once a project is under way, local agencies can streamline the permit process, waive fees or reduce the length of the design review. There are multiple examples of successful programs, including:

- ***Sonoma County.*** Sonoma County amended its zoning regulations to allow growers to build farmworker housing on parcels larger than 10 acres. Projects that meet basic criteria do not require use permits and receive administrative approval within one week. Growers pay for building permits, but the county waives all impact fees.
- ***Napa County.*** Napa County recently loosened zoning restrictions in farm areas for farmworker housing. In addition, the county provided \$800,000 for a 60-bed facility to the Napa Valley Housing Authority, which will also seek state funding.³ A local trade organization contributed a loan and a local vineyard provided the land for the project.

Finally, local agencies can work to develop community consensus and support for such projects. Many projects meet initial resistance based on preconceived stereotypes. Local education programs and community involvement can help people overcome such fears.⁴

TEMPORARY AND PERMANENT HOUSING

Farm housing can be permanent or temporary. Both types of housing are essential to the success of agricultural operations, but they are constructed, regulated and financed differently.

TEMPORARY HOUSING

Providing housing for seasonal labor is often the more difficult problem to solve. Many agricultural crops require a great deal of labor for short periods of time, such as two or three weeks. Growers and labor contractors

³ See Cal. Gov't Code § 25210.4(h) (authorizing the Napa County Board of Supervisors to establish a county service area to acquire, construct and maintain farmworker housing). The County can tax property owners up to \$10 per acre of vineyard, assuming that two-thirds of the growers approve the assessment.

⁴ See Strategy 22: *Develop Consensus*.

NAPA'S UNIQUE SOLUTION FOR TEMPORARY HOUSING

Traditionally used in the Siberian desert, Mongolian yurts provide a unique farmworker housing solution outside the City of Yountville. The tent-like structures are constructed from wood frames, vinyl roofs and foam-insulated fabric walls.

The program started at the joint suggestion of a local farmworker housing committee and the Nesting Bird Yurts company.⁵ Napa County purchased 12 yurts for \$130,000. Two larger structures are used for dining and recreation. The remaining 10 units accommodate four people each. Each structure is connected to electricity, water and a septic system.

The Napa Valley Housing Authority operates the camp during the annual grape crush. Residents pay \$10 per day for three hot meals and a bed. Occupancy is first-come, first-served. The yurts are easily disassembled and stored for the next season.

have renewed interest in providing housing as a means of attracting their best workers back each year.

One of the largest sources of temporary housing is offered by the state Office of Migrant Services (OMS), which provides housing for more than 12,000 workers in 26 migrant agricultural housing centers throughout the state.⁶ But this is not enough to assist the estimated 90,000 migrant workers who work in the state each year. Part of the problem is that there are regulatory and financial disincentives to building additional housing, including:

- **Federal Regulation.** Unlike housing for permanent workers, temporary housing is governed extensively by federal law.⁷ Federal Occupational Safety and Health Administration regulations include detailed standards for labor camp location, sleeping quarters, kitchen

⁵ Nesting Bird Yurts, 713 West Park Ave., Port Townsend, WA 98368; www.nbyurts.com.

⁶ Typically, counties, housing authorities and grower associations provide the land for migrant centers as an in-kind contribution. OMS owns the structures and contracts for management for each center. The furnished units rent for \$5 to \$8.50 per day. To qualify, workers must earn at least 50 percent of their total annual household income from agricultural employment, and travel outside a 50-mile radius of the housing center for three of the past six months.

⁷ Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 (1983).

WILLIAMSON ACT AND FARMWORKER HOUSING

The Williamson Act allows farmworker housing projects to be built on up to five acres of farmland. The land remains assessed at the agricultural rate for as long as the rest of the parcel is enrolled in the Williamson Act.¹⁰ (See Strategy 10).

facilities, water supply and sewage disposal.⁸ The paperwork necessary to build and maintain such housing is a disincentive for many farmers.⁹

- **Cost-Benefit Ratios.** It's difficult to justify a large capital outlay for a building that may only be occupied for a few weeks each year, particularly when there is a shortage of permanent farm housing.

However, the temporary housing issue lends itself to unique solutions (see "Napa's Unique Solution for Temporary Housing," previous page). Many migrant workers travel on their own away from their families. This means that they can be housed in more efficient dormitory-like facilities rather than individual units.

PERMANENT HOUSING

Local agencies generally have more influence and control over projects to house permanent labor. Permanent farmworkers are more likely to live with family members. Thus, typical apartment complexes are more appropriate. Such facilities can also serve as an efficient means for delivering a variety of government services. Indeed, in many communities, several government services offer support to farmworkers and their families. Two Riverside County projects offer examples of successful collaboration:

- **Nueva Vista Apartments.** The Coachella Valley Housing Coalition manages this complex of one- to three-bedroom apartments. The state Department of Housing and Community Development and Department of Education fund a childcare facility on the site, which also has a library and medical facility.¹¹ Local agencies helped by streamlining the permit process and reducing fees.
- **Tlaquepaque Apartments.** Low-income housing tax credits funded this development of one-, two- and three-bedroom units.¹² Services offered to residents include two Head Start programs and language classes.

⁸ 29 C.F.R. § 1910.142 (1980).

⁹ In 1955, growers registered more than 9,000 labor camps with the state. By 1968, there were less than 3,000. In 1994, only 900 camps housed 21,310 workers.

¹⁰ Cal. Gov't Code § 51230.2.

¹¹ California Budget Project, *Locked Out: California's Affordable Housing Crisis* May 2000; www.cbp.org/reports/r00051oc.html.

¹² The California Tax Credit Allocation Committee administers low-income housing tax credit programs to encourage private investment in rental housing for very low- and lower-income families and individuals. See www.treasurer.ca.gov/ctcac/ctcac.htm or call (916) 654-6340. A table of income limits for very low-, lower-, median-, and moderate-income categories of varying household sizes is posted on the Department of Housing and Community Development Web site at www.hcd.ca.gov. See www.hcd.ca.gov/hpd/hrc/rep/state/inc2k2.pdf.

The complex is available to those with annual incomes of between \$10,000 and \$15,000. Local officials facilitated the project by familiarizing developers with the low-income housing tax credit program.¹³

Building projects to accommodate education and health services helps to ensure their effective delivery and improves the community's quality of life.

FUNDING FOR HOUSING

A variety of state and federal programs provide funding for farmworker housing. The California Department of Housing and Community Development, the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture offer the following specific funding for farmworker housing:

- ***Joe Serna, Jr. Farmworker Housing Grant Program***¹⁴ provides grants and loans for the construction or rehabilitation of housing for agricultural workers and their families. The program favors funding for permanent dwellings for year-round occupancy. The program awards funding on an annual basis as it is made available by the Legislature.
- ***Home Investment Partnership Program (HOME)***¹⁵ provides grants and loans to local agencies to create and retain affordable housing. Most assistance is in the form of loans from local agencies to project developers. The loans are repaid to local HOME accounts for reuse.
- ***State Community Development Block Grants (CDBGs)***¹⁶ are another source of federal funds for affordable housing, including farmworker housing.¹⁷ The program provides states with annual direct grants, which they in turn award to smaller communities and rural areas for use in revitalizing neighborhoods, expanding affordable housing and increasing economic opportunities. Program funds serve communities with populations of up to 50,000.¹⁸

¹³ See the Coachella Valley Housing Coalition Web site at www.ruralisc.org/cvhc.htm.

¹⁴ See also Cal. Health & Safety Code §§ 50517.5 and following; Cal. Code Regs., tit. 25, §§ 7200 and following.

¹⁵ Cal. Health & Safety Code §§ 50896 and following.

¹⁶ Administered by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development.

¹⁷ Hearings, *supra*.

¹⁸ 42 U.S.C. §§ 5301 and following.

FOR MORE INFORMATION

USDA Rural Development
State Office
430 G Street, #4169
Davis, California 95616
(530) 792-5800
www.rurdev.usda.gov/ca

Department of Housing and Community Development
1800 Third Street
P.O. Box 952050
Sacramento, CA
(916) 445-4782
www.hcd.ca.gov/fwhg

California Housing Law Project
1225 8th Street, Suite 425
Sacramento CA 95814
www.housingadvocates.org
(keyword search "farmworker")

- ***Farm Labor Housing Loan and Grant Program*** provides capital financing to develop or renovate farmworker housing.¹⁹ Local agencies are eligible for these funds. Applications are available from the Rural Housing Service, a branch of the U.S. Department of Agriculture. Typical loan amounts range from \$1 million to \$2 million.

In addition, local agencies can also provide seed money or develop additional sources of funding, such as development impact fees, to ensure that adequate housing is built.

A SUCCESS IN SANTA MARIA

These funding sources can often be used in combination. For example, the 65-unit Los Adobes project in the City of Santa Maria used funding from several different sources:

- \$490,000 from a Community Development Block Grant;
- \$6,690,000 from USDA Farm Labor Housing Funds;
- \$320,000 in state Housing and Community Development Farmworker Housing Grants; and
- \$30,000 in county In-Lieu Mitigation Housing Grants.

The program offers day care, health services and English language classes. To qualify for housing, families must earn at least 51 percent of their annual income from agriculture. Rents are capped at 30 percent of the family's income. Some nonprofit housing organizations provide training and technical support to help local agencies apply for housing assistance and implement housing development programs.²⁰

¹⁹ 42 U.S.C §§ 1484 and 1486.

²⁰ *Hearings, supra.* See also California Housing Law Project, *Links* www.housingadvocates.org/default.asp?ID=111.

DESIGN AN ECONOMIC DEVELOPMENT PLAN FOR AGRICULTURE

Perhaps the best way to keep land in agriculture is to ensure that farming remains profitable. A vibrant agricultural economy creates an incentive to keep farming instead of selling land for development. In communities that have implemented land use controls to protect farmland, this strategy helps the land designated for agriculture remain productive.

FARMING IN TODAY’S ECONOMY

As in many other industries, a great deal of change is occurring in agriculture. The factors driving this change are detailed in a New Valley Connexions report entitled *Producing a Competitive Advantage*.¹ Although written to address specific issues in the San Joaquin Valley, these underlying trends identified in the report are affecting farming statewide:

- **Market Fragmentation.** Current marketing practices have moved away from the mass market to niche markets. Thus, collecting data to and other techniques to better understand changing market demographics is increasingly important to local producers.
- **Consolidation of the Food Distribution Chain.** In the past, most agricultural commodities moved from producer to consumer through a multi-tiered marketing system. That model is quickly changing as traditional channels are eliminated to increase efficiency. Consolidation among producers, processors, and retailers will continue to divide producers into two distinct categories: mega-marketers and niche marketers.
- **Globalization.** The trend toward global partnerships and marketing is accelerating. While globalization means more worldwide competitors, it also provides growth opportunities for producers and processors who operate competitively and efficiently. Consumers expectations also

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¹ *Producing a Competitive Advantage: Agritech in the San Joaquin Valley* (2000). Available online at www.greatvalley.org/nvc/. New Valley Connexions is a partnership of the Great Valley Center and the Division of Science, Technology and Innovation of the California Trade and Commerce Agency.

expect year round-supplies and are more likely to accept new produce varieties.

- **Technology.** Technology is both a force for change and a tool that enables competitive advantage. The flow of information between producer and seller is becoming increasingly significant and requires grower access to advanced communication infrastructure.
- **Science and the Environment.** Environmental regulations and other concerns, such as limited water supplies, pose new challenges. New science in combination with technology (such as satellite imagery), is improving the ability to solve environmental problems. This will lead to new management styles and more efficient farming techniques and use of natural resources.

Finally, regional areas of expertise, or industry clusters, are increasingly becoming key elements in developing new economic bases.² An industry cluster is a regional concentration of companies and industries that share interconnected markets or products and support suppliers, trade associations and educational institutions. The wine industry in Napa and Sonoma counties is a classic example of an industry cluster. While the individual wineries compete in the same markets, their concentration creates significant benefits: There are a greater number of specialized suppliers (bottling, harvesting, fermentation supplies, etc.), and the pool of available labor is especially skilled for the industry. These combined benefits give each winery in the region a competitive advantage against wineries outside the region.³

AGRICULTURE AND ECONOMIC DEVELOPMENT

An agricultural development strategy is best incorporated as an integral part of the vision for the community and the region. Although agriculture is not often thought of as a “high end” industry like high tech, it may nevertheless be the driving force behind many higher-end industries. For example, in the Sacramento Valley, the emergence of a new biotech industry is largely due to the area’s simultaneous proximity to a large agricultural region, advanced universities and Silicon Valley. Identifying

² An easy to read but more detailed description of these trends can be found in three New Valley Connections reports: *Producing a Competitive Advantage*, *The Economic Future of Sacramento Valley* and *The Economic Future of the San Joaquin Valley*. These reports are available online at www.greatvalley.org/nvc/index2.html.

³ Michael Porter, *Clusters and the New Economics of Competition*, *Harv. Bus. Rev.*, Nov.-Dec. 1998, at 78-90 (describing the wine industry cluster in the Napa region).

these kinds of benefits will help local agencies structure some land use controls as economic protection measures. If the agricultural land upon which this industry is based were converted, it could increase the likelihood of such industries relocating to areas where the long-term future of agriculture is more certain.

Local agencies can also provide significant leadership in building the capacity to support agriculture in today's economy. Local agencies can be active partners in developing new businesses, leadership models and technologies by using the following methods:

- ***Identify Regional Strengths.*** Each region has natural economic strengths based on a combination of factors, including proximity to markets, labor and natural resources. Identifying cluster networks can be key to developing an effective economic strategy. Local agencies can finance studies to help identify cluster network areas within the regional economy.
- ***Create Interlinked Networks.*** Once a cluster is identified, local officials can facilitate forums, workshops and electronic networks that build relationships between companies and producers that are involved in the same industry. Although these groups and companies compete in the marketplace, such collaboration fosters innovation within an industry, particularly with respect to common support and distribution needs. As a result, small and medium-sized companies can create the large scale efforts necessary to serve global markets.
- ***Encourage Innovation and Entrepreneurship.*** Entrepreneurship often follows collaboration and frequently leads to the production of higher-value products and higher salaries. When it involves agricultural products, entrepreneurship can also create new markets for agricultural production. Local agencies can help cultivate innovation by providing meeting space, financial support and other resources that encourage people to work together on developing new products.
- ***Build Infrastructure.*** Build an infrastructure that gives businesses and the workforce to have access to high-end technology. Broadband communication technologies are necessary to establish and maintain niches. In addition, basic infrastructure needs, such as roads and utilities, play a more important role as manufacturing and processing industries develop more refined inventory strategies.
- ***Maintain the Quality of Life.*** Attracting and retaining a skilled workforce is essential. As an economic development tool, create a high-quality living environment attractive to workers, including vital downtowns and protected landscapes. In addition, local agencies can maintain local environmental standards by encouraging the use of technology to address air and water quality issues often associated with agricultural production.

OPPORTUNITY FOR REGIONAL LEADERSHIP

The new economy's focus is shifting from a system that pits local agencies against each other to one that focuses on how a region can best take advantage of its collective assets. It is becoming more common for entire regions to work collectively. This requires participants to understand that siting a new processing facility in one region will strengthen the surrounding economies as well. To compete globally, leaders within a region must cooperate in establishing an identity and filling niches in the global marketplace. Local agencies can develop networks of business and community leaders to take the lead in responding to such challenges (see "Economic Development for the New Economy," below).

ECONOMIC DEVELOPMENT FOR THE NEW ECONOMY

Stanislaus County. The nine cities within Stanislaus County joined with the county to develop vision statements that address the community's future. This vision recognizes agriculture as an ongoing base industry for new specialties in manufacturing, processing and support services. As a result, local agencies are working to implement a countywide sales tax agreement and reprioritize projects of regional significance.

Five Cities Economic Development Authority. Five rural cities in Fresno County (Fowler, Parlier, Reedley, Sanger and Selma) have created a joint powers authority⁴ to expand the region's economic development opportunities. Although the agency is not focused solely on agricultural issues, this kind of formalized cooperation provides a possible model for other local agencies.

Fresno General Plan. Amendments to the City of Fresno's general plan acknowledge the existence of the agricultural cluster in the community and call for the city to take steps supporting its continued development.⁵

Rice Straw Industries in the Sacramento Valley. Efforts are under way in the Sacramento Valley to find new uses for an old waste: rice straw. This byproduct's abundance is driving new development of fuels and building products.

New Valley Connexions. New Valley Connexions, a joint project of the Great Valley Center and the California Trade and Commerce Agency, worked with Collaborative Economics⁶ to develop a series of reports identifying economic opportunities in the predominantly agricultural areas of the San Joaquin and Sacramento valleys. These reports are available online.⁷

⁴ Donna Silva, *5 Cities JPA a First, New Valley CONNEXIONS Newsl.*, Winter 1999/2000, at 14.

⁵ City of Fresno, *General Plan* (1984).

⁶ A private consulting firm. See www.coecon.com.

⁷ Such analysis has already been conducted for the Sacramento and San Joaquin Valleys. Great Valley Center, *New Valley CONNEXIONS*; www.greatvalley.org/nvc/index2.html.

ENCOURAGE MARKET DIVERSIFICATION

The inability to generate consistent profits from crops is an ongoing problem for small farmers. In a way, farmers and ranchers are victims of their own efficiency: Although per-acre yields have increased over the years, the price a farmer receives has remained relatively constant or, in some instances, even decreased. Some farmers, however, have found ways to bypass wholesale markets and market directly to consumers. Others differentiate or “position” their goods, which helps in negotiating a higher price for them. Such strategies have added benefits for local economies. In most circumstances, products that are higher in value require more labor to handle them, which creates jobs and increases wealth throughout the community.

Issues such as marketing, branding and agricultural tourism may not be typical activities for a local agency. Nevertheless, these issues seem to arise consistently in stakeholder and community groups that meet to discuss local needs in agriculture. A workshop sponsored by the Solano County Board of Supervisors illustrates this point. The attendees were asked what barriers prevented them from developing a profitable agricultural business in the next 10 years. Then they were asked to develop solutions. The group decided that local marketing could have the greatest impact in keeping local agriculture profitable.

ZONING FOR VALUE-ADDED ENTERPRISES

Most people think of agriculture as a raw-product industry. A farmer grows a crop, such as tomatoes, and then sells it to a processor who turns it into soup, salsa or pasta sauce. However, some farmers process or “add value” to their crop before it leaves the farm. Value can be added by simply cleaning or freezing, and can extend to processing, packaging and distributing the farm’s produce. For example, a dairy might process its own milk to make cheese, or an orchard farmer may add value by allowing consumers direct access by selling peaches on a “u-pick” basis. In other cases, the farmer may supply a restaurant or operate a fruit stand that features the farm’s produce.

Value-added enterprises enable farmers to be more productive. Generally, the farmer must invest in processing or retail facilities to increase the farm’s profitability. These projects can open new markets, establish name

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MARKETING 101

Access to U.S. Highway 101 is the key for a small farmers' market in the Marin County community of Laytonville. Its location attracts many tourists who continue to purchase goods from the vendors afterward through a mail-order business. Not all farmers' markets need to be so ideally located. Many successful roadside stands are located along roads with less traffic, and the Internet is providing fresh opportunities for farmers to reach new markets.

recognition for the farm and create local jobs. Such operations have the potential to add a great deal to the local economy.

One of the major burdens for this kind of value-added enterprise can be local zoning ordinances and other land use restrictions. In fact, farmland protection programs that are designed with an eye toward protecting the open space nature of farmland do not always address agriculture's business needs. Successful value-added enterprises often require processing or retail facilities to be built on agricultural land. Thus, one way to retain the vitality of local agriculture is to implement land use policies in a way that allows farmers to engage in value-added enterprises. There are several ways that local agencies can expand the scope of value-added enterprises in agricultural areas, including:

- ***Flexible Zoning.*** Local officials can acknowledge the importance of value-added enterprises in the general plan and permit the construction of facilities in agricultural areas. Conditional use permits can address concerns about haphazard or disproportionate development.
- ***Thinking Creatively for Extended Growth.*** When value-added enterprises become very successful, they can outgrow their rural surroundings. When larger facilities are proposed, it may be worth reviewing whether, through incentives or reduced permitting fees, the local agency can encourage the farmer to locate the facility in a nearby commercial area where the needed infrastructure already exists.
- ***Providing Education.*** As an economic development strategy, local agencies can match farmers with experts in the food manufacturing business to determine the viability of value-added enterprises.

Value-added enterprises are an important method of diversifying investment and potentially increasing the value of the farmer's product. In addition, it opens new markets and extends the market season, which creates additional jobs and captures the community's character with locally produced specialty foods. It can play a vital role in ensuring the long-term viability of agricultural protection programs.

DIRECT MARKETING

Direct marketing of farm products is a growing trend in agriculture that provides farmers an opportunity to bypass middlemen and sell directly to consumers. One of the prime examples of direct marketing efforts is selling through local farmers' markets. Such markets draw consumers a step closer to the farm and create popular meeting places in urban locations.

Community-supported agriculture is also increasingly popular. Under this strategy, customers sign up in advance to buy "shares" of a farm's harvest. The customer assumes part of the risk, accepting less produce if a crop is damaged or fails. Shareholders sometimes help on the farm for additional

credit. Harvested crops are usually delivered to a central pick-up point or, for a higher price, delivered directly to the shareholder. Although this type of farming is labor-intensive — it requires one farmer to grow a variety of crops in smaller quantities — the farmer gains by minimizing risks. Such farms are ideal when located close to urban areas. Not only do they provide a service close to its customer base, but their small scale is also less likely to create “nuisance”-related problems encountered when larger farms operate next to residences.

Direct marketing, however, is not for every farmer or crop. It’s most likely to be successful for seasonal items or relatively high-value products, including value-added or processed products, and for small farmers close to urban population centers or on access roads in major tourism areas.

DIRECT MARKETING MODELS¹		
	CHARACTERISTICS	LOCAL AGENCY’S ROLE
FARMERS’ MARKET	Farmer sells at a weekly market. This provides direct access to consumers and enhances the ability to establish personal relationships with them.	Helps facilitate siting and issue appropriate permits, and promotes market in media and announcements. Sponsors booth to inform shoppers about programs to protect agriculture.
COMMUNITY-SUPPORTED FARMING	Steady income during extended harvest season. Requires farmers to grow several crops on a small scale. Delivery costs and logistics need to be addressed. Producers often use newsletters to keep consumers interested.	Connects local producers with experts in operating this type of business. Encourages such farms near urban boundaries.
ROADSIDE STANDS	Low-cost, low-tech way to sell. Involves some liability issues, particularly with “u-pick” operations.	Allows flexible zoning standards, connects producers with expertise and training to minimize risks and liabilities, and promotes farm tours in the region where appropriate.
INTERNET MARKETING	Provides broad consumer access. Easier to establish specialty niche in large market; there may be some difficulty in getting started; relies on shipping.	Works to improve broadband access in rural areas, and connects local producers with business experts.

¹ A good general resource is the *Direct Farm Marketing and Tourism Handbook* published by the University of Arizona, and available at <http://ag.arizona.edu/arec/pubs/dmkt/dmkt.html>. More information, including insurance, is available through the North American Farmers Direct Marketing Association at www.nafdma.com.

PRACTICE TIP

When working to develop a regional brand, it's helpful to review economic development strategies in the region before settling on a logo and message, to ensure that the two are consistent.

DEVELOPING A REGIONAL BRAND

The value of “branding” local products is gaining recognition in many agricultural regions. Demand for local agricultural products can grow when local products are differentiated from typical market offerings. Such products do not necessarily have to be superior in quality, though that's certainly one of the easiest ways to make a distinction. It's enough that there is some other distinguishing characteristic, such as locally grown, organic, environmentally friendly, pesticide-free or high quality.

Regional branding requires significant cooperation among area growers. Voluntary marketing associations are usually the mechanism that farmers use to develop brands and marketing plans to distinguish their products. Association membership can vary. Some associations consist only of growers, while others include processors and retailers.

Marketing associations, however, can be difficult to get started. Many growers don't have time to invest in developing such programs from scratch. Others are hesitant to make contributions until they are certain that the effort will actually make a difference to their operation. Local agencies can play a key economic development role by facilitating initial meetings, providing meeting space and seed money or sponsoring speakers who can help the group get a project off the ground.

As the effort gains momentum, the group may need additional guidance in forming an organization to carry out its mission. Useful second-phase skills that local agencies can help secure include grant proposal writing, legal advice and financial management. As the organization matures, the local agency's role will diminish.

The Sonoma County Board of Supervisors created the “Select! Sonoma County” program in 1989 (see “Case Study: Sonoma County Marketing Association,” next page). Its goal was to increase farm revenues by financially supporting and promoting local agricultural products and encouraging farmers to stay in agriculture instead of converting their land for non-agricultural uses. The program costs about \$200,000 annually. The county contributes approximately 50 percent of this amount through transient-occupancy-tax revenues. Grants, special events and dues from its 350-members fund the remainder. The funds are used for promotions, consumer education special events and a monthly newsletter.

CASE STUDY: SONOMA COUNTY MARKETING ASSOCIATION

“Select! Sonoma County” is a regional nonprofit agricultural marketing association that has been in operation since 1989. The program was founded with the help of a three-year, \$250,000 grant from the U.S. Department of Agriculture. Its purpose is to encourage consumers in the North Bay Area to purchase locally grown produce.

Select! Sonoma County membership consists of 300 producers, processors and product consumers. The association licenses its “Sonoma Grown” and “Sonoma Made” logos, and develops promotions, educational programs and marketing opportunities for the county’s producers. Dues vary by the size and type of farm or processing facility. In return, members receive a referral service, marketing leads and advertising.

One early issue was establishing a brand identity. The “Sonoma Grown” and “Sonoma Made” brands were developed, but the next step was to identify their meaning. For example, several wines produced in Sonoma County use a combination of grapes, only some of which are grown in the county. Could a wine that was

of only 40 percent Sonoma County grapes call itself “Sonoma Grown”?

Ultimately, the association established standards. To be certified as Sonoma Grown, at least 70 percent of the ingredients, by both weight and volume, must have been grown in Sonoma County. For wine or olive oil, the standard is 75 percent. For meat, the animal must have spent 70 percent of its life in Sonoma County. To be certified “Sonoma Made,” the majority of a product’s manufacturing must have occurred in Sonoma County.

Select! Sonoma County also works with retailers to post “We feature ...” or “Proud supporter of ...” signs to inform shoppers about the brand. The organization also provides advocacy for agricultural marketing concerns, and a database of programs and information. Its Web site has a product directory with links to sellers of Select! Sonoma County products. Member farmers who sell at farmers’ markets can use Sonoma Grown banners on their booths, while grocery stores use point-of-sale cards.

AGRICULTURAL TOURISM

Agricultural tourism is a hot topic in agricultural market development. Agri-tourism works best in scenic farming communities close to large urban areas. Entrepreneurial growers are offering educational and recreational services, including school tours, hay rides, crop mazes, petting zoos and overnight farm home stays² as well as “u-pick” operations, roadside stands, harvest festivals and various other activities, such as bird-watching hikes and farm tours. The success of Napa and Sonoma counties in attracting tourism dollars has spurred this interest. Areas along the central coast and in the Sierra Nevada, including Santa Barbara and Amador counties, have also successfully promoted certain regions as wine-tasting destinations.

FOR MORE INFORMATION

The Web site for the Small Farm Center, a program of the U.C. Cooperative Extension Service, serves as an excellent resource for agricultural tourism.

www.sfc.usdavis.edu

² Farmers offering guest accommodations may serve meals without having to meet all the public health standards of a typical commercial kitchen when agriculture is the primary source of income for the establishment. See Cal. Health & Safety Code § 113870.

Other efforts to capitalize on the natural character of agricultural lands are also under way. The communities around Fresno and Chico promote spring “blossom tours” to showcase flowering orchards. Chico and Butte County also promote waterfowl tours to attract bird-watching tourists in the fall. The communities designate tourist routes and, in some instances, such promotions may require improvements to roads or other amenities.

While these efforts demonstrate promise, agricultural tourism is probably best considered a secondary or supplemental marketing or economic development strategy. Agricultural tourism alone cannot ensure the long-term viability of local farms. The unique natural amenities associated with particular type of agriculture are not easily replicated. Agricultural tourism is most successful in areas where geography and specialty crops combine to create an especially attractive rural character. The most successful programs already have an established base of crops with particular public appeal, such as grapes, berries, pumpkins or apples. Areas that are far from rural areas or that primarily grow crops like wheat and cotton, for example, may have more difficulty generating public interest.

THREE OTHER MARKETING IDEAS

1. **Farm Sign Programs.** A farm sign program usually involves placing signs in farm fields, along major highways, that identify the crop grown there, and also involves membership in a local marketing association.³ The signs connect local and interstate consumers to local food sources, and create brand awareness.
2. **Farm Reports.** A lighthearted weekly or monthly farm report included with other local government announcements and media can create a connection between residents and local farm produce. Anecdotes, biographies, recipes and harvest reports encourage the community to purchase local produce.
3. **Data Collection.** Local officials can collect and distribute meaningful data to help producers market agricultural goods. A good way to start is by conducting a survey or focus group to identify what information would be most useful to local growers. The next step is to collect the data and find a way to effectively disseminate it to growers. Such information might also be useful in supporting the agency’s economic development strategy.

³ Some agencies have fairly restrictive sign ordinances to protect the scenic character of rural landscapes. Creating an exception for farm signs may compromise the entire ordinance on First Amendment grounds if it is determined that the exceptions effectively regulate the content of speech. Such programs should be reviewed by the agency’s attorney.

Part IV

AG-URBAN BOUNDARIES



This situation is a common one: A fast-growing community approves a subdivision located on farmland, placing new homes right next to farms. Proximity to the bucolic landscape is one of the development's most attractive features. But the new homeowners are soon disillusioned by pesticide drift, night harvesting, odor, flies, dust and slow-moving tractors.

Farmers also have concerns about adjacent development. Theft and vandalism increase when the surrounding area urbanizes. Imported pests and increased traffic also affect operations. As a result, farmers see the next wave of development as inevitable, and accordingly reduce investments in their operation. The operation becomes less profitable, real estate becomes more valuable, and soon another farmer is willing to entertain offers from developers.

Farming and residential uses are fundamentally incompatible. When they are located next to one another, local agencies can anticipate significant complaints and problems. However, there are several strategies that local agencies can use to head off or reduce such problems, such as creating physical barriers and educating residents to create more appropriate expectations. Such approaches can improve both the quality of life in new subdivisions and farmers' ability to remain a viable part of the local agricultural economy.

LAY OF THE LAND

Percentage of Californians who feel that it is at least somewhat likely that too much farmland will be built over, causing food shortages and rising food prices: 63%²

Number of agricultural commodities in which California leads the nation: 77³

Percentage of woman farm operators in California in 1978: 7.6%¹

Percentage of woman farm operators in California in 1998: 13.6%¹

Estimated number of farmers' markets in the United States: 2,800

Increase in the number of local farmers' markets from 1994 to 2000: 63%

Chance that a pound of fertilizer sold in California will be used in agricultural production: 1 in 3¹

Percentage of farm operators who consider farming their principal occupation: 53%¹

Number of people fed annually by the typical farmer in 1980: 25

Number of people fed by annually the typical farmer today: 135

Number of California farms owned by African Americans, Hispanics, Asians and Pacific Islanders: 10.5%¹

Percentage of farms owned by African Americans, Hispanics, Asians and Pacific Islanders nationally: 3.3%¹

Approximate number of California counties that have adopted right-to-farm ordinances: 50

Approximate number of California cities that have done the same: 40

Amount spent in legal fees by one Elk Grove, California farmer defending his turkey operation against a single nuisance complaint from a neighboring landowner: \$1.5 million⁷

SOURCES: (1) Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • (2) Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) (3) California Farm Bureau Federation (www.cfbf.org) • (4) Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • (5) Kuminoff *et al*, *Issues Brief: Farmland Conversion: Perceptions and Realities*, Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • (6) American Farmland Trust, *Owners' Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm) • (7) Sacramento Bee, Farms and suburbs can make troublesome neighbors (October 19, 1998).

RESOLVE AG-URBAN CONFLICTS

18 STRATEGY

Residential neighborhoods and agricultural zones are not ideally suited to be located side by side. The business of farming produces side-effects that urban residents may find objectionable. Likewise, farmers often incur additional costs associated with living in close to large residential areas. This section describes the sources of this controversy; how to minimize it by reorienting local planning and structural design practices; and examines mediation and other community solutions to unavoidable disputes.

SOURCES OF CONTROVERSY

A number of potential conflicts are likely when urban areas encroach on farmland. Pesticide application, addressed on the next page, is perhaps the most obvious. Other issues include:

- ***Farm Equipment Storage.*** Farmers often accumulate equipment to use for parts or future needs. But urban neighbors see the collection of pipes, trailers and other miscellaneous objects as a junkyard and complain to the code enforcement officer. Similar problems result from dilapidated storage sheds, barns and other structures.
- ***Trespassing and Theft.*** Urban communities pose the threat of theft. Targets include vehicles, fruit, livestock or anything else that may be valuable. Farmers have greater liability risk when increasing numbers of people are tempted to wander onto farm property. Theft can also have a major impact on a farmer's livelihood. In San Joaquin County, farm thefts (including trucks and tractors) exceeded \$683,000 in 2001.¹
- ***Shared Roadways.*** Residential development brings cars, bicycles and pedestrians onto roadways used by farm trucks and slow-moving tractors. This increases the risk of accidents and mutual inconvenience.
- ***Odors and Livestock.*** Wind shifts can cause unpleasant reminders of nearby cows, pigs and turkeys. Farm animals occasionally escape and appear unexpectedly on roads. Farm pests sometimes stray from fields to make new homes in backyards and living areas.

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¹ Farm Theft Reaps Big Rewards for Criminals, Oakland Tribune (April 29, 2002).

- **Pets.** New residents bring pets that may attack livestock. Dog attacks cause livestock stress, which can reduce the number of lambs born in sheep operations or reduce milk production in dairies.
- **Noise.** Machinery often operates late into the night during harvest season and other times of the year.

PESTICIDE ISSUES

Perhaps the most difficult and persistent point of conflict between farmers and their urban neighbors is the spraying of pesticides.² Agricultural commissioners enforce regulations on pesticide application.³ Nevertheless, the increased proximity of urban populations heightens concern that drifting pesticides will create human health risks and damage property.

State law prohibits local agencies from adopting regulations that control pesticide application or its timing.⁴ Accordingly, local agencies must rely on informal processes to resolve disputes. The silver lining is that the remaining available options require farmers and their neighbors to engage in community problem-solving.

Kern and Napa counties are good examples of an informal process that has been developed between grape growers and their neighbors. The grape farmers provide notice before dusting their crops with sulfur (necessary to combat a grapevine fungus). The nearby residents can then plan around the farmers' dusting schedule. The county agricultural commissioners take an active role in making sure that the parties communicate.

Another type of resolution was reached in Fresno County, where a large percentage of farms use crop dusters (airplanes and helicopters) to apply pesticides and fertilizers. Fresno County uses an ad hoc method of restricting air space to crop dusters, called 'red zoning.' Red zoning began in the 1970s, when the agricultural commissioner drew a line approximately a one-half mile outside the City of Fresno's developed areas. Inside the line, crop dusters voluntarily seek the commissioner's approval before they apply any material.⁵

² In California, laws regulating pesticide application include herbicides as well. Cal. Food & Agric. Code § 12753.

³ See Cal. Code Regs. tit. 3, § 6460.

⁴ Cal. Food & Agric. Code §§ 11501 and following. Methyl bromide is the only chemical for which the state has a fumigation notification requirement. Cal. Food & Agric. Code §§ 14081, 14082.

⁵ Douglas N. Edwards, *Proceedings of a Workshop: Farmers & Neighbors, Land Use, Pesticides, and Other Issues*, UC Agricultural Issues Center (1996) at 39.

OTHER TOOLS FOR COMMUNITY PROBLEM-SOLVING

Many conflicts can be addressed by creating forums to resolve differences before people's positions become entrenched. Community problem-solving can be achieved through:

- **Community Meetings.** One-time events are held to identify problems and solutions.
- **Neighborhood Committees.** Area residents address issues in an ongoing series of meetings.
- **Advisory Committees.** Stakeholders address issues in an ongoing series of meetings.
- **Study Circles.** A fact-finding group studies a single issue; participants are given reading material prior to meeting; and moderating duties rotate.
- **Roundtables.** These small groups use facilitated discussions around a particular issue, generally held in a single meeting so citizens can share ideas and concerns.
- **A Working Committee.** A fact-finding committee investigates issues and makes recommendations; it can include representatives from the legislative body.
- **Hotlines or an E-mail Suggestion Box.** Hotlines and e-mail are effective, convenient tools for gathering information and viewpoints.
- **A Web Site.** Feedback is often improved when the community has access to better information. The Internet provides an affordable way to disseminate information.

INFLUENCE OF PLANNING AND DESIGN

Some conflicts between farmers and their urban neighbors can be “planned away” by using design elements that increase the distance between farmland and residential properties near urban limit lines. For example, planners may require that a large buffer be placed between farmland and a new development to physically separate the two uses. Other techniques include increasing set-back requirements or even planting trees. Another technique is to gradually “feather” densities toward farmland to decrease the number of residents that actually abut farm areas.

Thoughtful design can minimize some conflicts by changing a building's orientation or adjusting the window or deck locations according to their surroundings. In one example in San Diego County, a design flaw caused problems for residents of a condominium development, which was constructed adjacent to well-established greenhouses. The condo balconies faced the greenhouses, and the greenhouse vents released pesticides directly toward the balconies on treatment days. This problem could have been avoided if the design review committee had recognized the proximity to the greenhouses as a potential problem, and refused to issue a permit for the project without an alternate design that solved the problem by reorienting the balconies.

MEDIATION TECHNIQUES

Inevitably, disputes arise despite all efforts to isolate residences from agricultural operations or improve communication between farmers and urban neighbors. When direct negotiation fails, local agencies can use dispute resolution programs that offer a simple, inexpensive means for those involved to air their differences. Mediation is generally a method of nonbinding dispute resolution, involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

The City of Davis has established a grievance procedure intended to settle disputes resulting from “inconveniences or discomfort” caused by agricultural operations. The process involves a meeting held within 25 days of submitting of the dispute to a hearing officer. Prior to the meeting, the hearing officer investigates the underlying facts. The parties in the conflict are encouraged to ask the county agricultural commissioner for a statement that addresses whether the underlying activity is an accepted farming practice. At the meeting, both parties have an opportunity to present their side of the dispute. Attorneys may be present only if both sides agree to it beforehand. The hearing officer issues a written decision within five days of the meeting and the parties split the cost. The process does not preclude either party from bringing legal action against the other. Neither party is required to use the grievance procedure before pursuing legal action.

San Diego County’s Agricultural Interface Board provides a different model. The board brings farmers, neighbors and the relevant public agencies together to discuss complaints concerning agricultural operations. At the request of community members, the agricultural commissioner may convene the board, which then holds a series of meetings. The first meeting allows neighbors to vent frustrations and concerns. Agencies and farmers spend most of their time listening. The meeting is facilitated because of its emotional nature.

After the first meeting, the agricultural commissioner assigns a staff person to serve as an intermediary between the farmer, the neighbor and the appropriate contact people in the agencies. Follow-up meetings are used to assess progress, and provide the agencies and farmer an opportunity to explain the factors affecting their ability to address the complaint.

ADOPT A “RIGHT-TO-FARM” ORDINANCE

One difficulty that farmers face in urbanizing areas is that new residents may perceive typical farming practices as a “nuisance” (see “A Word About Nuisances,” next page). Right-to-farm ordinances were developed to offset this problem in two ways: by providing dispute resolution mechanisms for neighbors as an alternative to filing nuisance-type lawsuits against farming operations; and by notifying prospective buyers about the realities of living close to farms *before* they purchase property.

When new residents have clear expectations, the theory goes, they are less inclined to complain about sprays, dust, odors, noise and other aspects of agricultural activities. However, it’s one thing to acknowledge that farmers work long hours in the fields and quite another to be awakened at sunrise by the sound of a nearby tractor. While right-to-farm ordinances do not eliminate all conflicts, they can help reduce problems by educating new and prospective residents about life near a farm.

ORDINANCE ELEMENTS

Approximately 40 counties and 50 cities have adopted right-to-farm ordinances. These ordinances, however, are more about awareness than property rights. State law already limits lawsuits resulting from farm practices that disturb neighboring property owners.¹ Local agencies accordingly focus on public education and dispute mediation. Most local right-to-farm ordinances include one or more of the following elements:

- ***A Policy Statement.*** A policy statement can outline the intent to preserve agricultural operations, promote a good-neighbor policy or articulate agriculture’s valuable role in the local economy.
- ***Definitions.*** Most ordinances define “agricultural operation” according to state code.² This section may also designate the areas where the

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¹ Cal. Civ. Code §§ 3482.5, 3482.6 (protecting agricultural and agricultural processing activities).

² Cal. Gov't Code § 3482.5 (defining “agricultural operation” as the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur-bearing animals, fish or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market).

protection applies. Some counties define farmland more broadly as land that currently or potentially supports active farm operations.

- ***A “Coming to the Nuisance” Warning.*** This is a declaration that normal farming operations do not constitute a nuisance. State law already protects operations that have been in place for three or more years.³ Some local ordinances reduce this time to one year.
- ***An Agricultural Use Notice.*** An agricultural use notice requires sellers, real estate agents or title companies to inform prospective homebuyers that commercial farming operations are close by and that odors, dust, flies and noise may accompany such operations.⁴
- ***Grievance Procedures.*** A grievance committee may be established to mediate disputes between farmers and nonfarm residents.⁵
- ***Vandalism Fines.*** Fines may be levied for vandalism, pilferage or loss of livestock due to domestic animal predation.

These elements can create a degree of certainty for farmers. Knowing that their operations have some protection, farmers are more likely to continue to invest in farming.

A WORD ABOUT “NUISANCES”

The original idea behind right-to-farm ordinances was to prevent new residents from suing to stop or alter established farm practices. Such disputes usually involved claims that farm practices were so invasive in terms of noise, odor or other elements that they unreasonably interfered with the use and enjoyment of neighboring properties. Typically, the remedies sought (in addition to money) involved regulating the operation of farm machinery, application of pesticides and fertilizers, disposal of manure, storage of machinery or other typical farming activities. State law limits neighboring property owners from bringing these types of claims against farm operations and agricultural processing facilities.

³ Cal. Civ. Code § 3482.5. However, this is not a blanket protection. The activity must be conducted in a manner consistent with accepted industry standards in the locality. *Mohilef v. Janovici*, 51 Cal. App. 4th 267 (1996). The protection only applies when: (1) it’s an agricultural activity (2) conducted for commercial purposes (3) in manner consistent with proper standards (4) as followed by similar operations in same locality; and (5) the claim of nuisance arises due to any changed condition (6) after activity has been in operation for more than three years; and (7) the activity was not nuisance at time it began. *Souza v. Lauppe*, 59 Cal. App. 4th 865 (1997).

⁴ Local agencies are authorized to adopt such provisions under Cal. Civ. Code § 1102.6(a).

HOW EFFECTIVE ARE RIGHT-TO-FARM ORDINANCES ?

What do people who manage urban-agricultural issues say about right-to-farm ordinances? This question was posed to agricultural commissioners, farm bureau leaders, real estate representatives and UC Cooperative Extension Service staff in 15 counties. The study's findings are summarized below.⁶

- **Primarily Educational Tools.** Right-to-farm ordinances are primarily educational tools. They promote awareness of the value of agriculture. Their most important role is to alert homebuyers to the realities of living near a farm.
- **Useful for Mediation.** Right-to-farm ordinances serve as a valuable reference for local officials responding to complaints and facilitating dispute resolution.
- **No Substitute for Good Planning.** Right-to-farm ordinances do not take the place of land use regulations that define urban-agricultural boundaries. They lack the power of zoning and subdivision controls to preserve farmland.
- **Weak Implementation.** Only a few local agencies play an active role in implementing disclosure requirements for real estate transactions. In general, this implementation suffers from a lack of coordination among agencies involved in developing and revising right-to-farm ordinances.
- **Do Not Insulate Farmers from Lawsuits.** Right-to-farm ordinances offer little additional protection from lawsuits beyond that already provided in the state's right-to-farm law.
- **Impact on Complaints is Uncertain.** Adopting a right-to-farm ordinance has no definitive impact on the number of complaints directed against farming.

INCREASING PUBLIC AWARENESS

Right-to-farm ordinances can shape community expectations by providing a clear picture of what it means to live close to agricultural operations. Disclosure is usually accomplished in one of three ways:

1. **Tax Bills.** The annual tax bills sent to owners of property close to farm areas may include disclosure information.
2. **New Projects.** Disclosure information may be provided in connection with new development located near agricultural activity, usually when a subdivision or parcel map is approved or building permits are issued.

⁵ Most programs are seldom used. M. Wacker, A. Sokolow and R. Elkins, *County Right-to-Farm Ordinances in California: An Assessment of Impact and Effectiveness*, University of California Agricultural Issues Center, AIC Issues Briefs, May 2001, at 4.

⁶ Wacker, et al., *supra*. at 3.

3. **Notice at Sale.** Disclosure information may be included as part of a real estate sale transaction involving residential or other property located near agricultural activity.

Each of these methods reaches different audiences and has varying levels of effectiveness. Tax bill notifications, for example, while broad in scope, serve notice only after the property has been purchased. A notice at the time of sale, however, is not an ongoing notice. As a result, many local agencies require more than one method of notification. For example, Stanislaus and Sonoma counties use all three methods. Sonoma County has even added a fourth component by having sheriff's deputies distribute pamphlets that describe county agriculture to residents.⁷

Thus, local agencies that want to implement or revisit a right-to-farm ordinance have several options. An effective ordinance is one that fully informs affected parties and the community at large about the importance of maintaining productive agriculture in the face of urban growth.

THE RIGHT-TO-FARM IN DAVIS

The City of Davis has a right-to-farm ordinance with the following elements:

- **Notification.** Buyers considering home purchases within 1,000 feet of agricultural land and processing facilities must be notified that farming operations are permitted within the city and county;
- **Acknowledgement.** The possibility of inconvenience or discomfort from such operations is acknowledged;
- **Environmental Compliance.** Farmers, agricultural processors or others must still comply with all local, state and federal laws. For noncompliance with appropriate state, federal or local laws, legal recourse is possible by, among other ways, contacting the appropriate agency;
- **Contact Point.** Concerned citizens may contact the county agricultural commissioner; and
- **Grievance Procedure.** A grievance procedure is provided if a dispute escalates.

⁷ *Id.* at 5.

CREATE BUFFER ZONES

STRATEGY 20

Every city adjacent to agricultural areas has a point where the urban area ends and farming begins. Agricultural buffers provide a way to minimize conflict by creating space or improving the barrier between agricultural operations and urban residents. There are two basic methods of creating buffers. The first is to create space or place a physical barrier between the agricultural operation and the residential use. The second is to use transitional zoning techniques to ensure that the uses on the boundary are generally compatible.

An ideal buffer would be located along a permanent boundary between agricultural and urban uses. Indeed, many agencies report a reduction in the number of complaints they receive about neighboring agricultural operations in areas where buffers have been created.¹ A buffer area may be as narrow as a stand of trees or a country road, or as large as 1,000 feet or more. Buffer zones reduce the amount of noise and odor that can carry to residential areas. They also reduce the risk to farmers of domestic animal predation, crop theft and damage and complaints from neighboring urban dwellers. A fixed boundary also reduces the chance that additional farmland will be converted to urban uses.

Buffers can also be used to protect environmental quality. Appropriately placed buffer strips control soil erosion and protect water quality, which can help local farmers comply with environmental regulations. Buffers can remove up to 50 percent of the nutrients and pesticides, 60 percent of the pathogens and 75 percent of the sediment associated with agricultural runoff, which can harm water quality.² When coupled with farm management practices such as nutrient control and cover cropping, buffer strips achieve a measure of environmental sustainability. Furthermore, farmers with buffer strips usually undertake additional conservation practices, such as minimum tillage.³ One study found that buffers can

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¹ Laura Thompson, *The Conflict at the Edge*, *Zoning News*, February 1997, at 1. See American Planning Association Web site at www.planning.org/ZoningNews.

² U.S. Department of Agriculture, Natural Resources Conservation Service, *Benefits of Buffers* www.nhq.nrcs.usda.gov/CCS/Buffers.html#Anchor-WhatBuffer.

³ Applied Research Systems, Inc., *The National Conservation Buffer Initiative: A Qualitative Analysis* 51 (1999). Available through the Natural Resources Conservation Service Web site at www.nhq.nrcs.usda.gov/CCS/BufQual.pdf.

actually increase the value of the farm on which they are located by as much as 5 to 15 percent.⁴

PRACTICE TIPS

Take Advantage of Existing Geography.

Look for existing physical features when planning a buffer zone. A road, canal, railroad tracks, streams and waterways or other pre-existing features can provide elements to help separate farmland from its surroundings.

Health and Safety Findings. When implementing buffer programs, public agencies should make findings describing the health and safety benefits of buffer zones and how the agency's individual program is tailored to meet the community's health and safety needs.

TYPES OF PHYSICAL BUFFERS

Buffers should be designed to fit each community's needs. In most cases, farmers want to maintain the land's traditional use. Urban residents, however, may have multiple demands. In addition to keeping the agricultural operation (and its "nuisance" activities) at a safe distance, urban residents may also be concerned about the buffer's aesthetics, maintenance and landscaping. Fortunately, there are a variety of tools that local agencies can use to implement buffer programs, including:

- **Fences and Barriers.** Particularly in cases where houses are built immediately adjacent to farmland, barriers such as fences, walls or tree rows may be the only available option. Many farmers already plant tree rows to reduce the likelihood of pesticide drift onto neighboring properties. One consideration is whether to include some design element for walls and fences to avoid a plain, stark appearance.
- **Physical Dedications.** When large developments are approved, a local agency will sometimes require that a strip of land be dedicated or maintained as a buffer as a condition of new development.⁵ Other infrastructure requirements, such storm drainage, can often be incorporated into the buffer area to limit the developer's cost.
- **Topographic Buffers.** Existing land uses and topography can form very effective buffers. Such barriers can be natural, such as rivers, flood plains or hillsides; or man-made, such as roads, railroad tracks, parking lots or power line rights-of-way. Some communities use irrigation canals, which can often contribute a swath of 100 feet or more (including service roads) to the buffer. Integrating buffers into the existing landscape saves money and reduces the perception that they impose an "artificial" boundary on development.
- **Setback Requirements.** A setback is a restriction (usually implemented by zoning ordinance) that limits building within a certain number of feet from the property line that abuts the farming operation. Setbacks range from 100 to 1500 feet, but are commonly set at 150 to 300 feet. Setbacks are typically used in connection with rural residential zoning,

⁴ National Association of Conservation Districts, *Buffers Work in Urban Areas Too!, Buffer Notes* (June 2000) www.nacdnet.org/buffers/00Jun/urban.htm.

⁵ To the extent that a local agency imposes such a requirement on new development, it is better to adopt the requirement by ordinance. See Strategy 2.

which creates a block of large “ranchette” lots (five to 20 acres) between farmland and urban residential areas. The ranchette landowner can use the buffer strip for less intensive purposes, such as storage or livestock grazing.

IMPLEMENTATION ISSUES

Many of the same funding sources that are available for agricultural conservation easements (see Strategy 23) may be available for buffer programs. Two other key considerations are the arrangements for long-term maintenance and use of the buffer:

- **Maintenance.** One critical issue that should be addressed in any buffer program is who will own the buffer and assume responsibility for weed and pest control, fire hazard management and other maintenance issues. In many cases, the local agency elects to maintain the buffer itself and includes the costs in its park maintenance budget. In some cases, where the buffer set-aside was required as a condition of development, the ownership may remain with a homeowners

TWO BUFFER PROGRAM EXAMPLES

City of Davis. The City of Davis requires a 150-foot buffer and encourages a 500-foot aerial spray setback.⁶ Public access is kept to a minimum in the first 100 feet adjacent to the agricultural operation. Buffers allow these types of land uses: trees, drainage swales, utility corridors and certain agricultural uses, such as organic farming. The last 50 feet abutting the development allows increased public uses, such as bike paths, hedgerows and trash enclosures. The entire 150 feet is generally dedicated to the city by the developer after the improvements have been made, whereupon the city annexes the area to an existing lighting and landscape district for maintenance.

San Luis Obispo County. San Luis Obispo designates buffer width on a case-by-case basis. Factors in the calculation include the type of crop production, zoning, site topography and wind direction. Distances range from 400 to 800 feet for vineyards, 300 to 800 feet for irrigated orchards, and 100 to 400 feet for field crops.⁷

⁶ City of Davis, Cal., Code §§ 40A.01.050 and following (1995).

⁷ Thompson, *supra*. at 2.

association — particularly if the area doubles as a park or storm drainage. If the buffers are maintained privately, then code enforcement officers should be assigned to conduct periodic visits to ensure the program’s integrity.

- **Permitted Uses.** It is often tempting to create some kind of trail to provide public access to a buffer and its views of agricultural land. However, farmers may be concerned about having trails close to their cropland. The presence of human activity too close to farmland may restrict farmers’ ability to apply pesticides.⁸ Encouraging public use of the strip may also increase the number of complaints. One way to balance these competing interests is to divide the buffer into subzones. The City of Davis accomplished this by locating trails in the part of the buffer closest to the residential area, while the part of the buffer adjacent to the farmland includes trees and drainage swales.

FIVE STEPS FOR GETTING STARTED

A report by the Great Valley Center (see ‘For More Information’, next page) provides a five step process for designing and implementing a buffer policy:

1. **Determine Local Need.** Study the community issues. What type of farming exists at the urban fringe? Assess the type and frequency of complaints. What role should buffers play in addressing these issues?
2. **Examine the Process.** Establish a buffer team. Are there special issues that should be addressed at the outset? What other jurisdictions should be involved? To what extent will LAFCO policies affect options? Encourage communitywide agriculture awareness and education.
3. **Define the Community’s Agricultural Principals.** How does the community envision its growth? Assess the strength of local will to maintain agriculture as economic contributor.
4. **Adopt an Effective Policy.** How well do current policies address growth issues? How can existing buffer programs be improved? Review general plans to determine how best to close existing gaps. Review policy direction on rural residential development: Where will it be allowed and where does it fit in?
5. **Investigate Funding Options.** Explore local options for funding buffers as part of the necessary infrastructure. Identify potential external funding sources.

⁸ Cal. Code Regs. tit. 3, § 6614 (1995) (prohibiting pesticide application where there is a reasonable possibility of contamination of persons not involved in the application process).

- ***Environmental Considerations.*** Several federal programs to improve water quality and erosion are encouraging farmers to place buffer zones on their land. More information on these programs is available on the National Conservation Buffer Initiative Web site, operated by the U.S. Department of Agriculture.⁹

Finally, a truly effective buffer strategy depends upon the permanence of the ag-urban boundary. Today's buffer zone can be tomorrow's linear park, if the ag-urban boundary is continually advancing into farmland.

AGRICULTURE-RESIDENTIAL TRANSITION ZONES

Parcels of land are not always available to serve as dedicated buffer areas. In such cases, zoning regulations provide another alternative for separating incompatible uses by creating intermediate zones where only less-intensive urban and agricultural uses are permitted.

On the urban side, zoning can be used to discourage the build-out of residential neighborhoods adjoining rural lands. For example, parcels that are likely to border agricultural operations may be better suited for commercial or light industrial uses rather than parks, schools or homes. Such uses are less likely to generate the conflicts associated with residential uses. Ideally, agricultural service industries, such as processing, warehousing or farm machinery businesses, could also be located in these areas. It is unlikely that agriculturally related businesses would perceive neighboring agricultural operations as a nuisance.

Similarly, agricultural operations can also be zoned to reduce potential conflicts. Not all farming activities have the same impact on surrounding residents. For example, zoning can be used to separate foul-smelling livestock and poultry operations from residential neighborhoods. This concept is analogous to creating light and heavy industrial zones.

Such programs usually require an initial investment in documenting local resources and conditions. Soil quality, residential development patterns, farming needs, drainage patterns and prevailing winds are just a few of the factors that should be taken into account. Once the agricultural zones are

FOR MORE INFORMATION

An excellent resource on these issues is *Can City and Farm Coexist? The Agricultural Buffer Experience in California*, published by the Great Valley Center. It is posted online at.

www.greatvalley.org

(click on ag programs, then click "buffer study").¹⁰

⁹ Natural Resources Conservation Service, *USDA Conservation Programs* (last visited Mar. 19, 2002) www.nrcs.usda.gov/NRCSProg.html.

¹⁰ The actual link is www.greatvalley.org/programs/agprograms/pdf/buffer_study.pdf. The report is also available by contacting the Great Valley Center, 911 13th Street, Modesto, CA 95354, (209) 522-5103, e-mail info@greatvalley.org.

established, residents may choose to avoid purchasing homes that are adjacent to a higher-intensity agricultural zone, which permits spraying or animal cultivation.

SAMPLE AGRICULTURAL DISTRICT ZONES

To create gradations in agricultural zoning, a local agency must identify different areas appropriate to different kinds of agricultural use.¹¹ This process includes taking inventory of specific features, such as drainage patterns and prevailing winds, to help identify the boundaries of various zones. A simplified sample appears below.

AGRICULTURAL ZONE	PERMITTED USES	CONDITIONAL USES	PROHIBITED USES
A2 (low intensity: within 1,500 feet of residential areas)	Low impact crops, organic farming, small livestock, hay and pasture	Greenhouses, poultry and processing plants	Intense livestock, dairies
A1 (high intensity: more than 1,500 feet from residential areas)	Most agricultural practices	Dairies and feedlot operations	Not applicable

¹¹ Minnesota Department of Agriculture, *Planning and Zoning for Animal Agriculture in Minnesota: A Handbook for Local Government* ch IV, 5-6 (June 1996).

Part V

PROGRAM IMPLEMENTATION



Farmland protection programs cannot be developed without taking a myriad other issues into account, such as the impact on housing, economic development opportunities and environmental concerns. Moreover, each community will have a unique set of factors, such as soil quality and local agricultural production, to take into account.

As a result, each local program will be unique. Nevertheless, most local agencies encounter many common issues, such as public involvement and project funding. A comprehensive plan takes a great deal of time and effort to simply develop, let alone implement. The most successful programs are usually the ones that incorporate consensus building techniques, good data and reliable sources of funding.

LAY OF THE LAND

Chance that a citizen trusts the local agency to do what is right in the land use context: 1 in 2 ⁴

Percentage of Californians who claim to have “a lot” of personal experience in local land use decision-making: 6% ⁴

Length of time that California has been the nation’s top producing agricultural state: 53 years ¹

Total funding for conservation easements made available by Proposition 12: \$25 million

Factor by which this exceeds previous funding levels: 4

Funding made available for agricultural preservation by Proposition 40: \$75 million

Estimated total number of acres in conservation easements in California: 350,000

Estimated total number of agricultural acres enrolled in Williamson Act: 16 million

Percentage of agricultural land converted to urban uses between 1988 and 1998: 1.5% ¹

Number of farms in California in 1950: 144,000 ¹

Number of farms in California in 2000: 74,000 ¹

Percentage of these farms that are family or individually operated: 76% ³

Percentage of market value attributable to the 5,000 largest farms: 75% ¹

Number of farms that have annual sales of less than \$250,000: 62,000 ¹

California’s contribution to total national cash receipts from agriculture: 13% ¹

Percentage of federal support programs benefiting agriculture in California: 3% ¹

Percentage of landowners in a national survey who said their property value had not been reduced by government environmental regulations: 70% ⁶

Percentage claiming that they had experienced a large decrease in land value: 8% ⁶

SOURCES: (1) Agricultural Issues Center, *The Measure of California Agriculture 2000* (www.aic.ucdavis.edu) • (2) Poll conducted by Fairbank, Maslin, Maullin & Associates for the Nature Conservancy and the Conservation Fund (July 13, 1999) (3) California Farm Bureau Federation (www.cfbf.org) • (4) Public Policy Institute of California (www.ppic.org), special surveys on Land Use (Nov. 2001) and Growth (May 2001) • (5) Kuminoff *et al*, *Issues Brief: Farmland Conversion: Perceptions and Realities*, Agricultural Issues Center (May 2001) (www.aic.ucdavis.edu) • (6) American Farmland Trust, *Owners’ Attitudes Toward Regulation of Agricultural Land: Technical Report on a National Survey* (1998) (www.farmland.org/cfl/survey.htm).

COLLECT HELPFUL AND ACCURATE LOCAL DATA

Obtaining accurate data on local agriculture helps any farmland protection effort. While farming challenges can be similar across regions, local problems can be quite different. For example, farmland on the outskirts of the San Francisco Bay Area tends to be used for small vegetable or “truck” farms, farmers struggle with high land values and intense development pressure. On the other hand, Central Valley farmers with larger farms may experience less pressure to develop, but may still be willing to sell due to low commodity prices.

Strategies to protect farmland should be tailored to take such factors into account. Demographic and general economic trends should also be considered, along with the local agricultural economy’s strengths and weaknesses. Potential threats to the long-term viability of agriculture in the region are another important consideration. Fortunately, there are a variety of sources available to help local agencies gather this information.

INVENTORY FARMLAND

Most local agencies want to focus their efforts on protecting the highest-quality, most productive farmland. But where exactly are these areas? The California Department of Conservation provides two useful starting points for determining which lands are most threatened and most productive: the Farmland Mapping and Monitoring Program and the Land Evaluation and Site Assessment system.

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FARMLAND MAPPING AND MONITORING PROGRAM

To help facilitate land use planning, the Farmland Mapping and Monitoring Program (FMMP) provides maps and statistical data on agricultural land resources.¹ These maps provide a visual representation of how quickly and where farmland is being developed in each community. Local agencies can also use these maps to explain their land use strategy to the public.

¹ Farmland Mapping and Monitoring Program, *California Farmland Conversion Report 1996-98* (2000) (www.consrv.ca.gov/dlrp/FMMP/fmmp_98rpt.htm). See Cal. Gov’t Code § 65570(b).

**STATE DEPARTMENT OF CONSERVATION
SOIL QUALITY CLASSIFICATIONS**

Prime Farmland: This farmland has the best combination of physical and chemical features to sustain long-term production of agricultural crops. It has the soil quality, growing season and moisture supply needed to produce sustained high yields. The land must have been used for producing irrigated crops at some time during the four years prior to the mapping date.

Farmland of Statewide Importance: This farmland is similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to hold and retain moisture. The land must have been used for producing irrigated crops at some time during the four years prior to the mapping date.

Farmland of Local Importance: This is land of importance to the local agricultural economy, as determined by each county's board of supervisors and a local advisory committee.

Unique Farmland: This is farmland whose lesser quality soils are used for the production of the state's leading agricultural crops. It is usually irrigated, but may include non-irrigated orchards or vineyards. The land must have been farmed at some time during the four years prior to the mapping date.

Grazing Land: Land where existing vegetation is suited to livestock grazing.

Urban and Built-Up Land: This is land occupied by structures with a building density of at least one unit per 1.5 acres.

The FMMP classifies land's suitability for agricultural production based on the soil's physical and chemical composition and the actual land use. Two kinds of maps are compiled: Important Farmland Maps for areas that have modern soil surveys, and Interim Farmland Maps for areas lacking soil survey information. Although the maps do not cover the entire state, they do cover most of the significant agricultural areas. County maps can be ordered directly from the California Department of Conservation.²

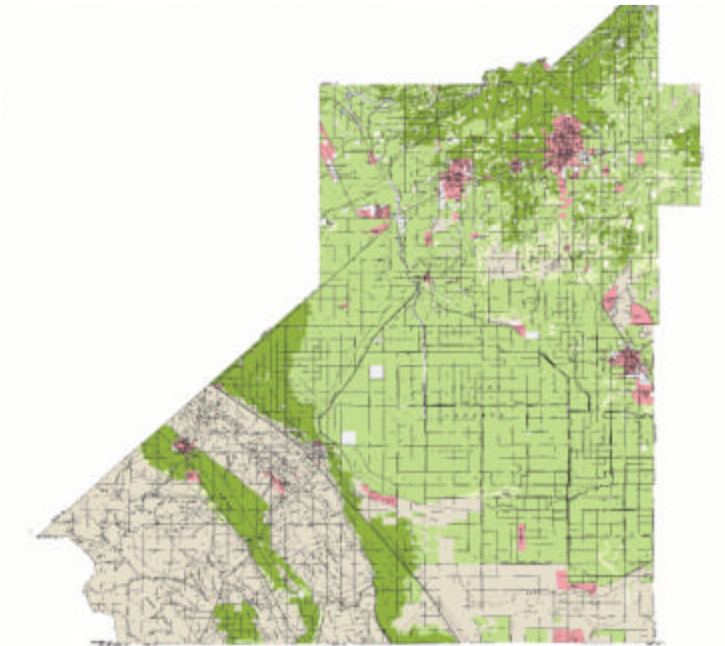
Counties may also ask the state to track additional land by designating land as "Farmland of Local Importance." Counties may use this classification for land that does not meet the criteria of other classifications, but is currently in production or has production capability. To designate such land, the county develops its own definition for Farmland of Local Importance within its boundaries. Examples include:

² To obtain maps, use the order form at www.consrv.ca.gov/dlrp/FMMP/pubs/Orderform1.pdf, or contact the Farmland Mapping and Monitoring Program at fmmp@consrv.ca.gov, (916) 324-0859.

- ***Fresno County:*** All farmable land within Fresno County that does not meet the definitions of Prime, Statewide or Unique is designated Farmland of Local Importance. This includes land that is or has been used for irrigated pasture, dry land farming, confined livestock and dairy, poultry, aquaculture and grazing.
- ***Imperial County:*** Non-irrigated and uncultivated land with Prime and Statewide soils is designated Farmland of Local Importance.

The Department of Conservation takes these definitions into account and maps land accordingly within each county.³

DEPARTMENT OF CONSERVATION MAPS



The Farmland Mapping and Monitoring Program provides colored maps, like this one above of Kings County, that tracks farmland and farmland conversion. The actual maps are in color. In this reproduction, the dark gray areas indicate areas of prime farmland. More information about the program is available by visiting the program's Web site: www.consrv.ca.gov/dlrp/FMMP/.

³ See Farmland Mapping and Monitoring Program, *Farmland of Local Importance Definitions* (last modified Feb. 25, 2002) www.consrv.ca.gov/dlrp/FMMP/fmmp_stats.htm.

LAND EVALUATION AND SITE ASSESSMENT

The Land Evaluation and Site Assessment (LESA) is a method of measuring the quality of specific farmland parcels.⁴ LESA helps to determine which land should be protected and which are suitable for development. The model was originally designed to assist local agencies and individuals in evaluating the agricultural characteristics of specific sites, as indicated in the California Environmental Quality Act (CEQA) guidelines.

The LESA model is composed of six different factors that account for soil quality, size, water availability and location. Each factor is rated separately on a 100-point scale. The factors are then weighted and combined, resulting in a single numeric score. The project score becomes the basis for making a determination about a project's potential significance.

LESA can be a particularly effective tool for local decision-making because it combines objective and subjective criteria. The land evaluation component is based on scientific criteria, such as soil quality. The site assessment component, however, is more subjective. Some jurisdictions use LESA to determine where agriculture is likely to be viable in the future. Others use the scores to determine whether specific parcels should be included in an agricultural zone.

ECONOMIC AND DEMOGRAPHIC DATA

Economic and demographic data are also helpful in developing a farmland protection program. Such data often include the total value of the farm service economy (including processing and employment) and the value of agricultural production by each commodity. Other information that may also be useful includes:

- **Minimum Farm Size:** The minimum parcel size necessary for an economically viable farming operation.
- **Industry Trends:** Factors that affect the production and marketing of various commodities, such as market access, competition, new technologies and potential niche markets.
- **Land Use Patterns:** The history and development of agriculture within the region, as well as the historical growth patterns of urban areas.

THE LESA GUIDEBOOK

The California Department of Conservation published a *Model Instruction Manual* for the LESA process, which provides step-by-step instructions on scoring and rating agricultural land. Forms are also included.

The manual is posted on the Web at:

www.consrv.ca.gov

(keyword search "lesa").

⁴ 7 C.F.R. § 658.4 (1994).

- ***Location of Existing Infrastructure:*** Physical features and infrastructure, such as road sewers and water lines, that have a critical impact on the productivity of agricultural land.
- ***Environmental Issues:*** Any special environmental issues, such as soil salinization, groundwater quality and quantity, air quality, agricultural wastes, etc.
- ***Other Issues of Local Importance:*** Individual communities often have unique issues.

Much of this information is readily available, and the local UC Cooperative Extension Service is a good place to start. In addition, developing new primary data through the use of surveys and interviews can help shape policy by providing additional information about local conditions.

ANALYZING THE DATA

After collecting comprehensive data, what should be done next? Reviewing the data may reveal certain trends in the development of agriculture in the community and threats to it. This information may point the way to preservation options that are more likely to fit the community's unique needs.

For example, in the City of Fresno, a soil quality is helping direct growth to the northwest portion of the city, which has a clay hardpan hinders drainage and makes farming difficult. As a result, the city is trying to encourage development in this area and away from the higher quality soils to the southwest. Analyzing quality local data can inform community-specific protection programs and improve their chances of success.

The following questions may be helpful to ask when discussing growth management policy options:

- Based on agricultural production value, which areas have the highest priority for protection? Which should have medium or low priority?
- Based on the threat of urban conversion, which areas have the highest priority for protection? Which should have medium or low priority?
- Does one crop have a specialized service industry within the region that provides additional jobs?
- Is there an area with a particularly committed group of landowners who would be willing to work together on a program?

- Are there areas of farmland that have already been “lost” due to surrounding development?
- Are there natural barriers that would make it easy to draw a line between agriculture and urban uses?

While this list is by no means all-inclusive, the goal is for local officials to use the data to develop an effective program that balances competing community needs.

RESOURCES FOR AGRICULTURAL DATA AND INFORMATION

The following organizations provide useful information for those interested in a farmland protection. Other resources include farmers involved in protection programs in other jurisdictions, and local surveys of residents and farmers. Links to these and other organizations are available at www.ilsg.org/farmland under the “Helpful Contact Information” heading.

- | | |
|--|--|
| <ul style="list-style-type: none"> • State Department of Conservation • U.S. Department of Food and Agriculture • Governor’s Office of Planning and Research • Local Farm Bureau • County Agricultural Commissioner • Resource Conservation District • Agricultural Issues Center | <ul style="list-style-type: none"> • American Farmland Trust • Local agricultural land trusts • The Great Valley Center • The Tri-Valley Business Council • Agricultural Issues Center • Other jurisdictions with successful programs • UC Cooperative Extension Service • Sustainable farming organizations |
|--|--|

DEVELOP CONSENSUS

Developing community consensus is a key component of any farmland protection program. There are some very effective participation tools for developing land use policy.¹ Many local agencies have created alternative forums, such as town hall meetings and even e-mail discussion groups, to reach more people in their communities. Citizen panels can also develop recommended actions. Offering a number of ways for residents to participate serves as a proactive strategy to address contentious issues before they become major problems — or even lawsuits.

Broad public involvement offers benefits that extend beyond farmland conservation and urban planning. It builds community. Citizens who make contributions to the process often report that they walk away with a feeling of pride and a stronger connection to the community.

ENCOURAGING PUBLIC INVOLVEMENT

As a general rule, public involvement should occur early and often. To be effective, public participation must be structured and meaningful. Endless meetings that lead nowhere can be a considerable drain on agency resources and community patience.

There are several inherent barriers to meaningful participation. Many people dismiss such planning as “mere politics.” For others, the complexity of government structure and finance is overwhelming. Designing an inclusive process means taking these and other issues into account. Public participation strategies should address basic logistical questions and more subtle limitations to participation, such as:

- **Outreach.** Are notices posted where they are likely to be read? Are they published in languages other than English? Are there opportunities to reach a broader audience?
- **Logistics.** Are meetings always scheduled for the same time? Do they often extend late into the evening? Are they easily accessible by public transit? Are interpreters available?

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¹ Many land use decisions require a formal public hearing even after the most inclusive public participation process. For example, a public hearing must be held before a city or county can adopt a general plan or general plan amendment. See Cal. Gov't Code § 65351.

- **Alternatives.** Are there alternatives to participating in a meeting, such as submitting written comments?
- **Efficiency.** Do the meetings achieve their objectives? Does the public have opportunities to make meaningful contributions? Are the materials written clearly, using plain language that is easily understood?

The most important support for broad involvement may come from the local agency, which sets the tone for community dialogue. Officials and staff who welcome diverse public input are more likely to produce a farm preservation program that successfully meets the community's needs.

EIGHT CREATIVE WAYS TO ENCOURAGE PUBLIC INVOLVEMENT

1. **Use Nontraditional Media.** Write articles for publication in the newsletters and Web sites of local stakeholder groups. Highlight issues and identify ways that people can get involved. The local agency can also publish its own newsletter.
2. **Use the Web.** Post important documents and information on the agency's Web site. The City of Citrus Heights uses its Web site to keep people informed about community land use issues.²
3. **Create a Task Force.** Create a task force to discuss issues affecting agriculture and other related issues of common concern.
4. **Use the Public Education and Government Channel.** The local government access channel on cable television can do more than just broadcast meetings. For big projects, consider using it to broadcast information or visioning surveys, and invite the public to respond by submitting their response to a specific telephone number, e-mail account or in person at the next scheduled meeting.
5. **Publish a Participation Guide Brochure.** Help the public understand how local government works. Avoid jargon. A guide can share contact and meeting information to help bring individuals into the process. Post it on the Internet and make it available at meetings.
6. **Hold Town Hall Meetings.** Meet at a "neutral" site to seek input before considering a possibly controversial issue at a typical agency or council meeting. Invite key stakeholders to speak.
7. **Speaker Series.** Invite outside speakers to provide valuable information and perspectives. Presentations can be a one-time event, incorporated into planned programs or part of a series.
8. **Develop a Self-Guided Auto Tour and Survey.** A self-guided auto tour encourages residents to drive by proposed conservation areas. An accompanying survey about community needs and policy options can be made available by mail or on the Internet. Tabulate responses and use the data to support the local planning effort.

² www.ci.citrus-heights.ca.us/planning.html.

POTENTIAL STAKEHOLDER CHECKLIST	
• Farmer–landowners	• Environmental organizations
• County Farm Bureau	• Agricultural tourism industry
• Farmers’ market vendors	• Developers
• Farmworker groups	• Neighborhood groups
• Agricultural product associations	• Housing groups
• Irrigation districts	• County agricultural commissioner
• Local land trusts	• Resource conservation district

STAKEHOLDER AND ADVISORY GROUPS

A stakeholder is a person or group with a significant interest in a program or policy. A stakeholder’s committee represents all the interests most likely to be affected by a proposal. Stakeholder’s committees are an excellent source of technical expertise and can provide a necessary “reality check” when a proposal produces unintended consequences.³

Involving farmers in stakeholder groups is not always easy. Some farmers question the very premise that government should be “protecting” their land. As a result, local agencies should provide farmers (and all stakeholders) opportunities to have frank, open discussions about potential programs. Recognizing the legitimacy of their viewpoint will greatly encourage farmers’ ongoing participation in any resulting program. It also helps to build the program’s credibility in the farming community.

An alternative to a stakeholder process, which usually addresses a single issue, is to form an ongoing advisory committee. Advisory committees provide valuable perspectives on new issues as they arise. Solano County formed a 14-member committee composed of six members from the major commodity producers (grapes, nursery stock, fruit and nut trees, row crops, livestock and field crops), five at-large appointments and three members from agricultural processing operations.⁴ The committee advises the board of supervisors on matters of “agricultural profitability and sustainability.”

³ Stakeholder groups are usually subject to public meeting laws (Ralph M. Brown Act, *see* Cal. Govt Code §§ 54950 and following) unless a majority of a legislative body attends the meetings. However, to be fully inclusive, the local agency may want to devise a strategy – including voluntary meeting law compliance – that will keep the public apprised of developments and encourage participation.

⁴ *See* generally, www.solanocounty.com/em/planning

CONSENSUS-BUILDING PROCESSES

Consensus-building processes involve ongoing dialogue between members of the public, key stakeholder groups, technical professionals and local decision-makers. Such processes do not occur without a lot of effort. Sometimes, positions are staked out before the process begins. Sweeping statements like “The market will not support high-density homes” or “We are losing all of our farmland” are made without supporting data. An inclusive participation process, informed by reliable data, can effectively counterbalance this situation. The following guidelines are generally part of the process:

- ***Be Open-Minded.*** Most participants don’t respond well when someone uses the process to legitimize a predetermined policy. If all participants are open to new ideas, the final product will be probably be quite different than anyone would have expected — and more effective.
- ***Develop Rules for Engagement.*** The participants should agree on rules and protocols for the group. Everyone participating should agree to be bound by the rules. It’s critically important for the stakeholders to be involved in designing the process — involvement creates buy-in.
- ***Provide Reliable, Easily Understood Information.*** Include people who understand farming, housing and other growth-related issues and can speak to the probable impacts of various policy choices. Provide facts in an easy-to-understand format. Unveil “the numbers,” then explain what they mean. For example, explaining how soil quality can influence farm profitability in dollars per acre may build support for developing less valuable — but perhaps more visible — locations.
- ***Consider Hiring a Facilitator.*** Professional facilitators can keep a consensus-building process on track. Their focus on building a sound process — from creating a dialogue to developing assurances — can help the group reach its goals.

Finally, taking the time for everyone to understand opposing viewpoints can help when parties are locked in negotiating a stalemate. Though such a process usually requires a great deal of time, the results are often worth the effort. For example, an ongoing process in the City of Brentwood yielded a comprehensive plan that includes a mix of regulations and incentives to protect agricultural land (see “Brentwood Case Study” page 50).

UNDERSTAND THE TAKINGS ISSUE

The “takings” issue comes up often enough in connection with farmland protection programs that it deserves some consideration here. The term derives from the Takings Clause of the Fifth Amendment of the U.S. Constitution, which states that public agencies may not take property for public use without paying just compensation.¹

In many instances, the takings issue can be avoided by conducting stakeholder meetings and public forums to address the concerns of landowners before serious problems can occur. But a time may come when one or more landowners argue that a proposed regulation will amount to an unconstitutional “taking” of their property. In most cases, however, the local agency is on firm ground. The Takings Clause does not guarantee a landowner the most speculative or profitable use of land. Instead, it requires compensation when a regulation has approximately the same effect as a physical appropriation of property.

WHY MOST FARMLAND PROTECTION MEASURES ARE NOT TAKINGS

Most farmland protection programs will not reach the level of a taking. There are several common misperceptions about what constitutes a taking. Some of this confusion comes from the fact that the courts have been unable to articulate a uniform standard for judging taking claims, opting instead for a case-by-case balancing approach. Thus, it may not always be clear whether a particular action rises to the level of a taking.

Two specific aspects of most farmland protection programs, however, make it difficult for landowners to bring successful takings challenges.

1. ***Farming is Economically Viable.*** Farmland protection programs guarantee that landowners retain an economically viable use: agriculture. As long as land can be put to productive use, it retains value and the regulation does not amount to a taking.

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¹ To the same effect is article 1, section 19 of the California Constitution: “Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid.”

2. ***Conserving Farmland Advances an Important Government Interest.*** Public agencies are advancing an important governmental interest in protecting farmland. Regulations that advance such interests are on firmer legal ground than those that are more arbitrary in nature.²

These two characteristics are not guarantees. But in the overwhelming majority of cases, farmland protection programs that direct urban growth or contain the expansion of urban services not considered takings.

PROACTIVE MEASURES TO AVOID TAKINGS

There are a few simple actions that a local agency can take to reduce the risk of litigation:

- ***Create Realistic Expectations.*** An up-to-date and comprehensive general plan, supported by a master environmental document, lays a solid foundation for all land use regulation. These documents also create realistic expectations among landowners by describing the community's vision for development. Provided with this direction, landowners are more likely to propose new land uses that are consistent with the vision articulated in the general plan, which reduces the potential for litigation.
- ***Include Safety Valves/Variance Provisions.*** Landowners must seek a variance, if one is offered, before going to court. So, a variance procedure that allows for exceptions in cases of extreme economic hardship ensures that the agency has the opportunity to modify its policies to avoid unfair results that might deny all economic use of land.
- ***Draft Sound Findings.*** Providing a thorough explanation of the reasons for an agency's decision makes it less likely that a court will be inclined to second-guess the agency's judgment.³
- ***Be Alert to Risky Situations.*** Some kinds of agency actions seem to attract more takings claims than others. For example, open space zoning, interference with vested rights, and transferable development rights that have no market value are examples of situations that could potentially result in a taking claim.

FOR MORE INFORMATION ABOUT TAKINGS

Visit the Institute for Local Self Government's Web site at: www.ilsg.org/clp.

Posted items include:

- More tips for avoiding takings
- Takings in plain English;
- Case summaries;
- Litigation updates; and
- A brief an ordinance bank.

² *Home Builders Association of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001) (finding in a parallel analysis, that local agency action to provide affordable housing substantially advanced a legitimate state purpose). The state legislature has similarly noted the importance of farmland protection. See e.g., Cal. Gov't Code § 51220.

³ *Findings 101: Explaining a Public Agency Decision*, Western City, May 2000, at 13.

Finally, local agencies must consider the overall fairness of their actions. Courts often view their fundamental role as dispensing justice. A public agency will have an easier time in the courtroom if the regulation was adopted with significant public involvement and ample opportunities to avoid unjust results.

ADDRESSING SPECIFIC ARGUMENTS

Two types of challenges are most common: “diminution in value” and “condition on development” cases. Another type of takings challenge, based on delays in the planning process, is less common.

DECREASE IN PROPERTY VALUE

Most takings challenges are based on the claim that the regulation has diminished the value of land. Down zoning, for example, can significantly decrease the land’s development value.⁴ But the fact that land has a lower market value does not mean a taking has occurred. Landowners are not entitled to the most profitable use of their land. The Takings Clause merely provides that the property owner can put the property to an economically viable use.

When courts review such challenges, they examine the degree to which the regulation has diminished the value of land. In the rare circumstance that a regulation causes a total wipeout (a 100 percent decrease) of all value, the court will usually find that it is a taking.⁵ Alternatively, when a severe diminishment of value — but not a total wipeout — has occurred, courts will usually look at three factors:⁶

- The severity of the loss in value;
- The investment-backed expectations of the property owner; and
- The character of the governmental regulation (whether the regulation compels a physical occupation of the land).

⁴ A down zone in itself does not “take” a property interest. A zoning designation does not confer a “right” to develop land. It is merely a planning designation that is subject to change.

⁵ See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

⁶ *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104 (1978). These factors are sometimes mischaracterized as a balancing test. However, nothing in the *Penn Central* decision indicates that the factors should be balanced against one another. See *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. ___ (2002), available online at www.ilsg.org, keyword search “Tahoe.”

The most important factor is the extent to which the land's value has diminished. The decrease must be substantial. Courts have rejected takings claims even when the property's value diminished by 95 percent.⁷

Although these standards have rarely been applied to find a taking, their imprecise nature allow courts a degree of discretion when reviewing such claims. Thus, in situations where a court perceives that a landowner has been treated unfairly, the court may apply these factors to find a taking.⁸ Accordingly, local agencies should carefully review any farmland protection program that decreases property value by more than 65 percent. This is not to say that a 65 percent reduction in value equates a taking, nor does the figure have any special legal significance, it is just that the nature of the regulation is more likely to be reviewed closely by a court if challenged.

DEVELOPMENT FEES AND CONDITIONS

The common practice of imposing conditions on development is also a source of challenges. Typical conditions include requiring the landowner to dedicate a portion of property for an agricultural buffer, purchase a conservation easement or pay a mitigation fee to offset the loss of farmland. Local agencies are again on solid footing here, particularly if they have adopted the condition of development by an *ordinance* that is applicable to a broad class of landowners.⁹ Courts are more deferential to actions adopted by ordinance, looking only to see that the action reasonably furthers a legitimate governmental purpose — a relatively easy hurdle for the local agency to clear.

In contrast, conditions imposed in an ad hoc fashion on a project-by-project basis must meet a more stringent test. The agency must demonstrate that there is an essential nexus (a direct relationship) and rough proportionality between the condition imposed and the impact of the development.¹⁰ This is also commonly referred to as the *Nollan-Dolan* standard, or heightened scrutiny. This is a tougher, but not impossible, obstacle for public agencies to overcome. The reason for the strict standard is that courts are concerned that local agencies might “leverage” their permit approval authority to obtain excessive conditions from a single property owner. Local agencies can avoid this standard by legislatively adopting conditions so that they apply to a broad class of landowners.

⁷ *Hadacheck v. Sebastian*, 239 U.S. 394 (1915).

⁸ See for example *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) (finding that inherent unfairness in five successive permit denials on a coastal property).

⁹ See *San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

¹⁰ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

DEDICATIONS, FEES AND TAKINGS

As more local agencies rely on mitigation fees as a means of offsetting development, more developers are challenging such fees as a “taking.” However, the fee will generally be upheld if the local agency takes the following precautions:

- ***Conduct an Optional Nexus Study.*** Although not mandatory, the agency may want to invest in a “nexus” study that quantifies the problem and establishes the relationship between new home development and the need for farmland protection.
- ***Adopt an Ordinance.*** Adopt a fee by legislative act that applies to a broad class of landowners, instead of imposing the fee on a case-by-case basis.
- ***Develop a Formula.*** Develop an implementation formula so that all landowners are treated similarly.
- ***Adopt Findings.*** When implementing the act, adopt findings that relate the action as a means of advancing the overall purpose of protecting farmland and the local agricultural economy. The findings can also cite conclusions in the nexus study (if conducted).
- ***Account for the Funds.*** Comply with the Mitigation Fee Act’s provisions.¹¹

DELAY CAUSED BY PLANNING PROCESSES

Finally, another type of claim sometimes arises based on any delay that can be attributed to the local agency in approving the development. These types of claims arise in two cases:

- ***Temporary Moratoria.*** A moratorium is a temporary halt on development in order to study a problem caused by development and adopt a permanent solution.¹² Such claims hardly ever amount to takings because state law provides a set of procedures and a maximum

¹¹ Cal. Gov’t Code §§ 66000 and following.

¹² See *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. ____ (2002), available online at www.ilsg.org, keyword search “Tahoe.”

time period of two years during which local agencies can implement moratoria. Thus, local agencies that follow these provisions almost always survive such a challenge.¹³

- **Delay.** A delay claim arises when a landowner complains that the planning or permit process takes too long. In most cases, however, courts recognize that land use planning takes time and have been reluctant to find a taking on such grounds. Thus, regulations have been upheld even when they take a period of years to implement.¹⁴

To date, the only case that has been held to be a taking in California involved the court's conclusion that the public agency had unreasonably and incorrectly applied a state law.¹⁵ In contrast, reasonable mistakes and delays by a public agency have been upheld.¹⁶ Delays of 10 years or more in developing plans have also been upheld when a special permitting process is still made available to the landowner.¹⁷ Consequently, if the public agency is acting reasonably in its permit approval process, the likelihood of a court finding a taking is slim.

¹³ Cal. Gov't Code § 65858.

¹⁴ *Calprop Corp. v. City of San Diego*, 77 Cal. App. 4th 582 (2000).

¹⁵ *Ali v. City of Los Angeles*, 77 Cal. App. 4th 246 (1999) (finding that city's wrongful denial of a demolition permit in violation of state law effected a temporary regulatory taking).

¹⁶ *Landgate v. California Coastal Commission*, 17 Cal. 4th 1006 (1998).

¹⁷ *Calprop Corp. v. City of San Diego*, 77 Cal. App. 4th 582 (2000).

SECURE FUNDING

There are a significant number of financial resources available to local agencies to assist in their farmland protection efforts. Several philanthropic foundations have made farmland conservation a top priority. Land trusts also provide funds for farmland protection programs. Fees, assessments and other revenue-raising strategies can also support open space and agricultural preservation in many communities.

GRANTS AND FOUNDATION ASSISTANCE

Perhaps the most encouraging news for farmland protection programs is the current widespread interest in farmland preservation. This interest has translated into significant amounts of funding to supplement local farmland protection programs. While the initial financial obligation of protecting farmland falls on local agencies, a number of state and private programs allow these agencies to leverage their funds. Nevertheless, local agencies that apply for such funds should recognize that the application process is competitive and there is no guarantee of success. There is an art to writing successful grant proposals. Identifying funding opportunities and following through takes time.

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FEDERAL PROGRAMS

The Farmland Protection Program (FPP), which is part of the Farm Bill, includes money for purchasing conservation easements.¹ In the past, applying for funding was impractical for most agencies, due to low funding levels. In 1998, for example, Congress committed \$17 million under this program for the purchase of easements nationwide.² Senate and House versions of the Farm Bill, which are being debated as this publication goes to press, indicate that federal funding may be slightly higher for this program in the future.

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¹ H.R. 2646, 107th Cong. § 253 (2001). This program is intended to supplement other sources. Participating state or local agencies must provide at least 50 percent of the funding for the easement.

² 63 Fed. Reg. 54 (1998). See U.S. Department of Agriculture, *Farmland Protection Program Request for Proposals (3/20/98)* (visited Mar. 29, 2002) www.nhq.nrcs.usda.gov/CCS/FB96OPA/FPPrfp2.html. At the time of this publication, Congress was in the process of negotiating a new farm bill. The version proposed in the Senate includes a substantial increase in funding to this program. If passed, upwards of an addition \$50 million may be available for the purchase of easements in California alone.

There are a number of other programs, such as the Conservation Reserve Program, the Wetlands Reserve Program and the Wildlife Habitat Incentives Programs, available to farmers who make environmental improvements to their land. Information on these and other programs can be found on the Natural Resources Conservation Service (NRCS) Web site (see “Contact Information,” page 145). With some initiative, local agencies may be able to identify additional funding from USDA to initiate agricultural marketing programs.

STATE FUNDING

Most state funding for farmland protection programs comes from the Department of Conservation.³ In addition to managing the Williamson Act program (see Strategy 10), the department’s California Farmland Conservancy Program (CFCP) provides grants to local governments and nonprofit organizations to protect agricultural lands at risk for conversion to non-agricultural uses. CFCP grants fund the following activities:

- Voluntary acquisition of conservation easements;
- Temporary purchase of agricultural lands pending placement of a conservation easement;
- Restoration and improvement of land already under easement; and
- Agricultural land conservation planning and policy projects.

Funds raised through bond measures will make CFCP a particularly rich source of support for the next few years. The passage of Proposition 12 in 2000 provided \$25 million for CFCP grants.⁴ In addition, the recent passage of Prop. 40 made another \$75 million available over a five-year period for farmland preservation.⁵ Specific allocation of these funds remains to be determined, but it is likely that the CFCP will administer a significant portion of these funds to purchase of conservation easements.

FOUNDATIONS AND LAND TRUSTS

Many philanthropic foundations and conservation organizations have focused on purchasing land or easements to secure long-term protection for

TOO GOOD TO BE TRUE?

Imagine a state program that provided local agencies with additional discretionary revenue for creating farmland protection areas. Does it sound too good to be true? It may not be. Some agencies may see an increase in local revenues when farmland is enrolled in farm security zones.

For more information, see Strategy 10.

³ See Cal. Pub. Res. Code §§ 10200 and following; Cal. Rev. & Tax. Code §§ 421.5 and 422.5; Cal. Code Regs. title 14, §§ 3000 (1997) and following.

⁴ Cal. Pub. Res. Code §§ 5096.310 and following.

⁵ Cal. Pub. Res. Code §§ 5096.600 and following.

farmland and open space. In recent years, the David and Lucile Packard Foundation has led this effort through its Conserving California Landscapes Initiative, which contributed \$275 million over five years to land preservation in the Mid- Coast, Central Valley and Sierra Nevada regions of the state. However, most of this program’s funding has already been allocated.

The availability of funds from philanthropic foundations is often influenced by fluctuations in the stock market because tax law requires that they give away a fixed percentage of their assets each year and many of their assets are invested in the market. But even when the market is down, funding is usually available for important projects. The American Farmland Trust, for example, helps agencies throughout the state identify funding sources for key parcels of farmland. The California Rangeland Trust pursues funding for preservation of range and ranchlands. And regional land trusts, such as the Merced County Farmlands and Open Space Trust or the Monterey County Agricultural and Historical Land Conservancy, may also have access to resources that are not generally available to local agencies.

Local agencies should also explore opportunities for policy and planning grants. Local community foundations and other organizations may support development of a program to benefit local farmland conservation, particularly if their contribution can be leveraged to obtain additional funding. Foundations review a variety of factors, including interagency cooperation and opportunities for public participation, in determining whether to fund a program.

In one unique example, five cities and two counties in the San Francisco East Bay Area make annual contributions between \$5,000 and \$20,000 to a nonprofit, collaborative planning effort called the Tri-Valley Business Council. A major focus of the program is to protect the region’s agriculture. In turn, the Tri-Valley Business Council has been able to use this support to obtain more than \$500,000 in support from the James Irvine Foundation and federal agencies for implementing its agricultural preservation plan. More information about the program is available on the Council’s Web site (www.tri-valley.org).

LOCAL REVENUE SOURCES

Although public and private grants are an important source of support for agriculture and open space preservation programs, dedicated local funding sources are critical for long-term success. In many cases, public and private funders require local agencies to match grants with local resources. For

CONTACT INFORMATION

**Department of Conservation
Farmland Conservancy Program**

801 K Street, MS 13-71
Sacramento, CA 95814
(916) 324-0850

www.consrv.ca.gov/dlrp/CFCP

**USDA Natural Resource
Conservation Service**

430 G Street, Suite 4165
Davis, CA 95616
(530) 792-5700

www.nrcs.usda.gov/programs

American Farmland Trust

California Regional Office
260 Russell Blvd., Suite D
Davis, CA 95616
(530) 753-1073
www.farmland.org

California Rangeland Trust

1221 H Street
Sacramento, CA 95814
(916) 444-2096
www.rangelandtrust.org

**Conserving California
Landscapes Initiative
Resources Legacy Fund**

555 Capitol Mall, Suite 1550
Sacramento, CA 95814
(916) 442-5057

www.resourceslegacyfund.org

For More Information
visit www.ilsg.org/farmland.

example, the federal Farmland Protection Program requires state and local agencies to provide at least 50 percent of the funds needed to purchase a conservation easement.⁶ Local agencies may take advantage of a variety of potential revenue sources to fund agriculture and open space protection programs. Factors determining the best funding option include the type of agency implementing the program, the program objectives and the degree of public support for these objectives.

FEES ON DEVELOPMENT

Development fees can be charged by local agencies to fund land and easement acquisition programs. (Fee mitigation is described in more detail in Strategy 7.) Typically, a fee is imposed to offset the conversion of agricultural to urban use. The fee is determined by dividing the total cost of the acquisition program proportionately among all development. The fee revenue is then used to purchase title or an easement over farmland in a neighboring agricultural area. A number of agencies have successfully implemented fee programs. For example:

- *The City of Carlsbad* imposed a \$5,000-per-acre fee for the conversion of 312 acres of coastal agricultural land. The city used the funds for erosion controls and easements on an adjoining 670 acres of farmland.
- *The City of Davis* requires proponents of projects that convert farmland to urban use to purchase a conservation easement on farmland of equivalent quality or pay an in-lieu fee.⁷

SALES TAX INCREASE

In cases where there is widespread political support for protecting agricultural lands, a sales tax increase may be an effective method for funding land acquisition programs. For example, Sonoma County voters approved a quarter-cent sales tax increase to fund the Sonoma County Agricultural Land Conservation District. The revenues from the tax exceed \$10 million annually.⁸ To date, Sonoma County has protected more than 28,000 acres with these funds.

Nevertheless, expressions of popular support for open space may not always translate into the votes to pay for it. In November 2000, a measure that would have authorized Placer County to increase its sales tax for open

⁶ Natural Resources Conservation Service, *Farmland Protection Program* (last visited April 3, 2002) www.info.usda.gov/nrcs/fpcp/fpp.htm. See 16 U.S.C. § 3830 (1996).

⁷ *Id.* at 3-12.

⁸ Ryan McCarthy, *Sonoma Supervisor Boosts Placer Legacy*, *Sacramento Bee*, Nov. 14, 1999, at N7.

space (including farmland) acquisition received only 27 percent of the vote. Local agencies considering this option should take such possibilities into account. The percentage by which a local agency can increase its sales tax, however, is capped. Thus, if the local agency implements this option to protect farmland, it cannot raise the sales tax again to address a different funding need.

MELLO-ROOS COMMUNITY FACILITY TAXES

The Mello-Roos Community Facilities Act authorizes local agencies to impose a special tax to finance public facilities, infrastructure and public services. Such taxes can also be used for open space acquisition and maintenance through formation of community facilities districts.¹⁰ The tax must be authorized by a two-thirds vote of the registered voters living within the district. If fewer than 12 voters live within the district, approval requires a two-thirds vote of the district's landowners.¹¹ The two-thirds

FIVE CRITERIA FOR EVALUATING REVENUE OPTIONS⁹

Each agency should conduct its own analysis to determine which, if any, local funding tools are appropriate. The following points may be helpful to consider when conducting the analysis:

- **Total Revenue Generated.** What is the total amount of revenue generated? Will it be sufficient to implement an effective program?
- **Adoption Requirements.** Revenue measures that require a vote of the people may be harder to implement than a mitigation fee program, which often can be adopted by ordinance.
- **Revenue Stability.** Will the revenue source be constant or fluctuate from year to year? A constant level of revenue, such as that generated by bonds and parcel taxes, is preferable.
- **Administrative Cost.** How much revenue will go to administrative costs? High administrative costs reduce the amount of money that can be committed to farmland protection.
- **Regional Considerations.** How does the option fit with the efforts of neighboring jurisdictions? Is it feasible to implement a countywide or regionwide funding strategy?

⁹ 1 Adopted from Bruce Randolph Anderson & Associates, *Implementation Study: Tri-City and County Cooperative Plan for Agriculture and Open Space Preservation* § 4 (2001)

¹⁰ Cal. Gov't Code §§ 53311 and following. See Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (last modified Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html.

vote requirement generally limits the availability of Mello-Roos to large undeveloped parcels with less than 12 registered voters.

The City of Fairfield and County of Solano jointly formed a Mello-Roos district as part of an annexation proceeding to preserve a portion of the range and farmland included in the annexation area. District revenues paid for the land purchase, and now fund additional open space acquisitions. The revenues are passed through to the Solano County Farmlands and Open Space Foundation, a public benefit land trust created to administer these funds. The foundation oversees and manages more than 6,500 acres of farmland, ranchland, wetlands and open space countywide.¹²

ASSESSMENTS

Assessments, sometimes called benefit assessments or special assessments, are levied on real property to finance public improvements that specially benefit the assessed property. The area where the property is specifically benefited, and therefore assessed, is the assessment district. The public improvement financed by an assessment district will be of special benefit to the properties within the district, and of general benefit to properties outside the district. Only the portion of the cost of the improvement that is attributable to the special benefit may be raised through the assessment. Classes of properties pay different assessment amounts, calculated in proportion to the special benefit received.¹³ The Open Space Maintenance Act, for example, authorizes local governments to levy special assessments to improve and maintain open spaces.¹⁴

Prior to Proposition 218, many local agencies created landscape and lighting districts to acquire land for open space and recreation on the basis that these amenities increased property values.¹⁵ However, determining how property is specially benefited by open space has been a challenge since the adoption of Prop. 218.¹⁶ A new assessment requires the approval of two-thirds of the property owners returning mailed ballots through an

¹¹ Since the Mello-Roos taxes already require a two-thirds vote, they are not affected by the voter approval requirements of Proposition 218. However, as with all special taxes, Mello-Roos taxes are subject to reduction or repeal by initiative under Proposition 218.

¹² See Solano County Farmlands and Open Space Foundation Web site (visited Mar. 8, 2002) <http://solanolandtrust.org/>.

¹³ Cal. Const. art. XIIIID, § 2.

¹⁴ Cal. Gov't Code §§ 50575 and following. The definition of "open space" is broad enough to include agricultural lands. See Cal. Gov't Code § 50580.

¹⁵ Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html. The Landscape and Lighting Act of 1972 enables local agencies to acquire land for parks, recreation, and open space. Cal. Sts. & High. Code §§ 22500 and following.

¹⁶ Cal. Const. art. XIIIID, § 2.

assessment ballot proceeding. Voting is weighed in accordance with the amount of the assessment.¹⁷ Local agencies implementing new assessments in pre-existing neighborhoods have to conduct a great deal of community outreach. Creating assessments in new developments is often easier, where the developer of a large tract agrees to create the assessment district before subdividing the property. Once created, the assessment applies to all new lots and homes built or created within the assessment district.

GENERAL OBLIGATION BONDS

General obligation bonds are “IOUs” issued by public entities to finance large public projects. In most circumstances, a specific revenue stream (such as a tax or assessment) must back a bond issue. The agency then uses this revenue stream to repay the bond amount over time, typically 20 to 30 years. General obligation bonds are backed by property tax. Increasing the property tax to repay the debt requires two-thirds voter approval.¹⁸ Since investors perceive property taxes as being less risky than the security for other types of indebtedness, general obligation bonds may be issued at relatively low interest rates. Some examples of how general obligation bonds have been used to fund open space (although not yet farmland) acquisition include:¹⁹

- **Redlands.** In 1987, Redlands passed a \$7.6 million bond with 71 percent of the vote. Approximately half of the funds were designated for land acquisition for open space, trails and recreation facilities.
- **Alameda County.** Voters approved an issue of \$225 million to expand the East Bay Regional Park District’s holdings.

Bonds enable programs to commit large sums to farmland protection while land is still available and relatively affordable. They also distribute the cost of the acquisition over time. On the other hand, increased interest costs raise the overall amount that the agency will pay for the acquisition.²⁰

FOR MORE INFORMATION

Two League of California Cities publications may be of assistance in understanding and obtaining voter approval for revenue measures:

- **Securing Voter Approval of Local Revenue Measures.** Contact CityBooks at (916) 658-8257; and
- ***The Proposition 218 Implementation Guide.*** Available online at www.cacities.org (keyword search: “218”).

¹⁷ A list of cities that have conducted assessment ballot proceedings is available online at www.cacities.org (search keyword “Proposition 218”). The ballots are weighted according to the dollar value of their proposed assessments (the equivalent of one vote per dollar). Thus, a landowner of a lot that has an assessed value of \$50,000 must be weighted twice as heavily as the owner of a \$25,000 lot.

¹⁸ Cal. Const. art. XIII A, § 1(b).

¹⁹ Governor’s Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* www.ceres.ca.gov/planning/open_space/financing.html.

²⁰ State law restricts the use of public funds to advocate for passage of a ballot measure. See *Stanson v. Mott*, 17 Cal. 3d 206 (1976); *Miller v. California Commission on the Status of Women*, 151 Cal. App. 3d 693 (1984). Such expenditures are reportable to the Fair Political Practices Commission. Cal. Gov’t Code § 84203.5. See also Institute for Local Self Government, *Ballot Box Planning: Understanding Land Use Initiatives in California* ch. 7 (2001).

LEASE-PURCHASE AGREEMENTS

Lease-purchase agreements are another land acquisition tool. This arrangement works when local agencies might otherwise be prevented from incurring debt to purchase land.²¹ Instead, the agency leases the land for a period of years with the option to purchase the land at the end of the lease.²² The amount of the lease is equivalent to the principal and interest that would be paid if the transaction were financed as a loan. Certificates of participation (COPs) are a variation of this tool. This technique enables a group of investors, instead of a single purchaser, to purchase land and lease it to a public agency. The investors then transfer the right to receive payments to a trustee, who redistributes the lease payments on a proportional basis.²³

Although this example is not an actual use within the context of farmland protection, the City of Carlsbad successfully entered into a COP arrangement to acquire and preserve the 52 acres of a eucalyptus grove originally planted to provide railroad ties.²⁴ When word of its pending development began circulating, preserving the grove became a hot political issue.²⁵ The city was able to use the COP arrangement to settle the matter.

The cities of Los Altos and Cupertino have also issued COPs for open space purposes. Both used their funds to acquire surplus school district lands to expand or develop local parks.²⁶ Lease-purchase arrangements are probably most appropriate when a public agency needs to act quickly to purchase a single, important parcel of farmland, and local agencies can lock in the land through the lease until the ownership is transferred. The level of paperwork and tracking, particularly for COP arrangements, usually precludes using lease-purchase agreements for a comprehensive farmland protection program.

²¹ See Cal. Const. art. XVI, § 18. Local agencies are constitutionally prohibited from borrowing an amount of money in excess for the amount that can be repaid in a year's time. Lease purchase, certificates of participation and other special fund mechanisms are exceptions to this rule.

²² See, *City of Los Angeles v. Offner*, 19 Cal. 2d 483 (1942); *Dean v. Kuchel*, 35 Cal. 2d 444 (1950).

²³ Under a carefully crafted COP program, investors may be entitled to tax-free investment income (that is, the interest portions of the lease payments). Depending on the local agency's credit rating, this type of financing can therefore be accomplished at a relatively low interest rate. At times, COP financing can be complicated and costly because of the number of players and arrangements involved in making it possible. Also, a local agency must be careful that its actions relative to the acquired land do not invalidate the tax-exempt status of the lease-purchase arrangement. Governor's Office of Planning and Research, *Putting Action into the Open Space Element: Financing Acquisition* (last modified Nov. 1997) www.ceres.ca.gov/planning/open_space/financing.html.

²⁴ *Id.* Pat Storey, *Hosp Grove Once Thought Useless*, *N. County Times*, Mar. 26, 2001, www.nctimes.com/news/2001/20010326/z.html.

²⁵ *Id.*

²⁶ Governor's Office of Planning and Research, *supra*, at note 25.

LOCAL AGENCY FUNDING TOOLS			
	ADOPTION	ADVANTAGES	DISADVANTAGES
GENERAL FUND ALLOCATION	Legislative body authorizes expenditure from general revenues.	Requires approval only by governing body. Does not cost taxpayers extra money.	Competes with other budget priorities; no guarantee of ongoing funding.
DEVELOPMENT IMPACT FEES	Legislative body adopts a fee formula to be applied to projects that convert farmland to housing or commercial uses.	Easy to implement; helps offset negative impact of development; can raise substantial revenues.	Increases housing costs. Agency must track how fees are spent. Funding depends on number of permit applications.
GENERAL TAXES	Implemented upon a majority vote. Sometimes accompanied by an “advisory” measure. ²⁷	Can provide substantial long-term funding. Requires less administration than an assessment district. Agency retains discretion in how funds are spent.	Public may be skeptical of a tax increase, particularly when there is no guarantee that funds will be spent on protection measures.
SPECIAL TAXES	Requires a two-thirds majority vote. Revenues can be spent only for dedicated purposes.	Provides long-term funding for operations and maintenance. Potentially less overhead than an assessment district.	Obtaining a two-thirds majority vote is difficult.
GENERAL OBLIGATION BONDS	Sale of bonds secured by an increase in property tax or assessment. Requires a two-thirds majority vote if based on new taxes.	Provides funding up-front. Increased tax amount sunsets when bonds are paid off.	Not permanent; cannot be used for operation and maintenance. Subject to market and credit rating. High administrative costs.
MELLO-ROOS FINANCING	Requires two-thirds approval of owners of voting electorate in inhabited areas or two-thirds of the landowners in uninhabited areas.	Provides ongoing funding for acquisition, improvement and maintenance. Property need not be located within jurisdiction. Tax formula need not be based on special benefit to taxpayer.	Two-thirds vote requirement generally limits Mello-Roos to large undeveloped parcels with less than 12 registered voters.
ASSESSMENT DISTRICTS	Requires approval of the majority of affected property owners. Votes are weighted according to the dollar value of their proposed assessments.	Can provide ongoing funding for operation and maintenance. Benefit-based assessments may be viewed as the fairest method of funding.	Must identify benefit to assessed properties. Subject to majority protest and election requirements. Requires expensive annual engineer’s report and more accounting than a special tax.

²⁷ See *Coleman v. County of Santa Clara*, 64 Cal. App. 4th 682 (1998). After the Passage of Proposition 218, however, some attorneys believe that courts may now treat such actions as a special tax requiring a 2/3-majority vote.

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We are interested in hearing your comments. We would like to know how you used this guide, what you liked, about it and how you believe it could be improved. This is your chance to shape future Institute publications. You may copy this page and either mail or fax it to:

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WAS THIS *GUIDE* USEFUL TO YOU?

YES NO

WHAT ASPECTS WERE MOST USEFUL? LEAST USEFUL?

DID INFORMATION WITHIN THIS *GUIDE* INFLUENCE A POLICY DECISION?

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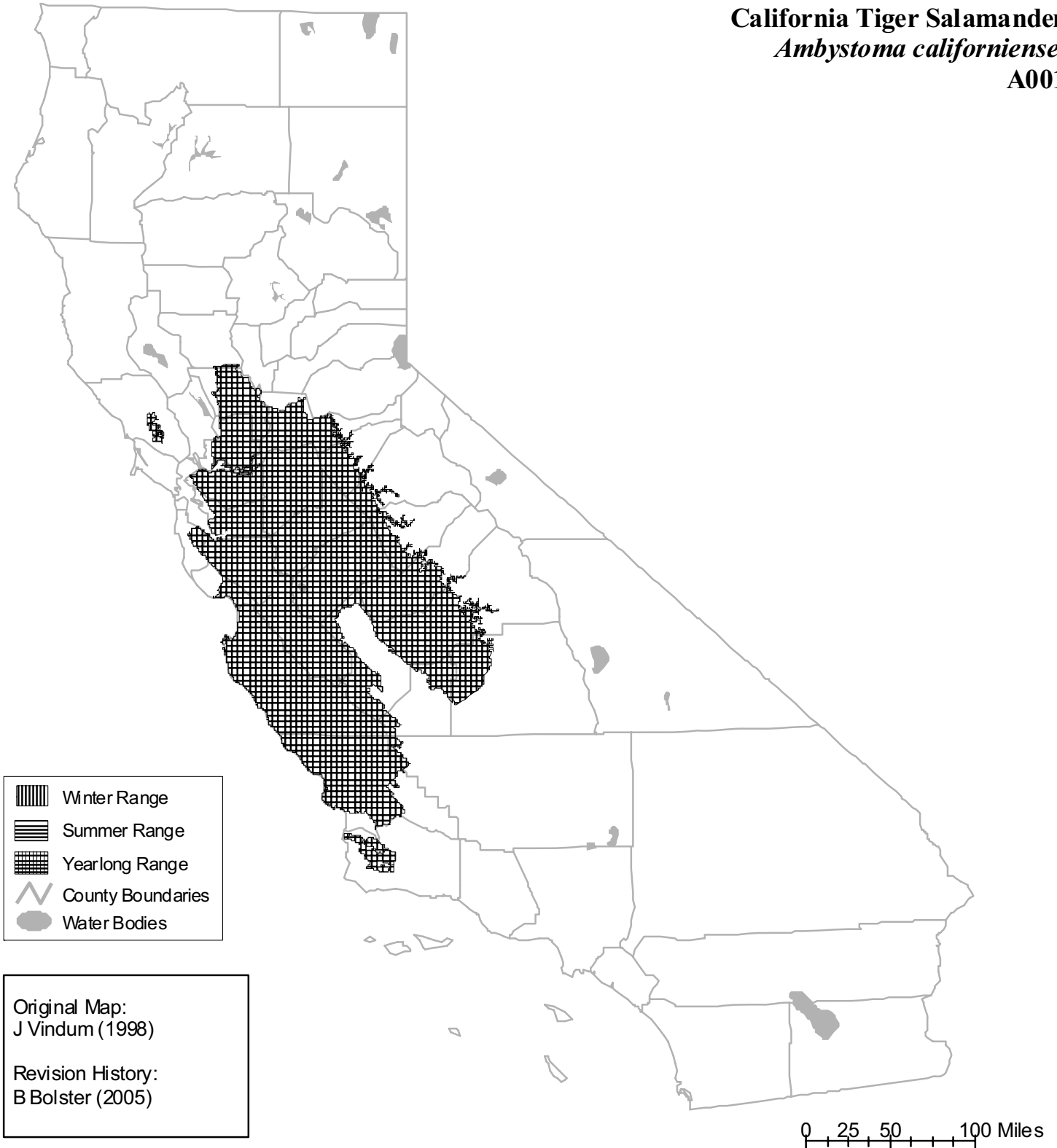
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California Wildlife Habitat Relationships System

California Department of Fish and Game

California Interagency Wildlife Task Group

California Tiger Salamander *Ambystoma californiense* A001



Range maps are based on available occurrence data and professional knowledge. They represent current, but not historic or potential, range. Unless otherwise noted above, maps were originally published in Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, eds. 1988-1990. California's Wildlife. Vol. I-III. California Depart. of Fish and Game, Sacramento, California. Updates are noted in maps that have been added or edited since original publication.

State of California
The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Biogeographic Data Branch
California Natural Diversity Database

STATE & FEDERALLY LISTED ENDANGERED & THREATENED ANIMALS OF CALIFORNIA

July 2010

This is a list of animals found within California or off the coast of the State that have been classified as Endangered or Threatened by the California Fish & Game Commission (state list) or by the U.S. Secretary of the Interior or the U.S. Secretary of Commerce (federal list).

The official California listing of Endangered and Threatened animals is contained in the California Code of Regulations, Title 14, Section 670.5. The official federal listing of Endangered and Threatened animals is published in the Federal Register, 50 CFR 17.11. The California Endangered Species Act of 1970 created the categories of "Endangered" and "Rare". The California Endangered Species Act of 1984 created the categories of "Endangered" and "Threatened". On January 1, 1985, all animal species designated as "Rare" were reclassified as "Threatened".

Animals that are candidates for state listing and animals proposed for federal listing are also included on this list. A state candidate species is one that the Fish and Game commission had formally noticed as being under review by the Department for addition to the State list. A federal proposed species is one for which a proposed regulation has been published in the Federal Register.

Code Designation:	Totals as of July 2010
SE = State-listed as Endangered	46
ST = State listed as Threatened	35
SR = State listed as Rare – old designation, all animals reclassified to Threatened on 1/1/85	0
FE = Federally listed as Endangered (21.2% of all U.S. listed endangered animals as of 7/19/10)	88
FT = Federally listed as Threatened (24.1% of all U.S. listed threatened animals as of 7/19/10)	40
SCE = State candidate (Endangered)	0
SCT = State Candidate (Threatened)	0
SCD = State Candidate (Delisting)	1
FPE = Federally proposed (Endangered)	1
FPT = Federally proposed (Threatened)	1
FPD = Federally proposed (Delisting)	0
Total number of animals listed (includes subspecies & population segments)	157
Total number of candidate/proposed animals for listing	2
Number of animals State listed only	31
Number of animals Federally listed only	71
Number of animals listed under both State & Federal Acts	55

Common and scientific names are shown as they appear on the state or federal lists. If the nomenclature differs for a species that is included on both lists, the state nomenclature is given and the federal nomenclature is shown in a footnote. Synonyms, name changes, and other clarifying points are also footnoted.

Critical Habitat is defined in Section 3 of the federal Endangered Species Act as specific areas, both occupied and unoccupied, that is essential to the conservation of a listed species and that may require special management considerations or protection.

Recovery Plans are discussed in Section 4 of the federal Endangered Species Act. Each plan incorporates site-specific management actions necessary for the conservation and survival of the species.

The "List Date" for **final** federal listing and **final** Critical Habitat designation is the date the listing or designation becomes effective, this is usually not the date of publication of the rule in the Federal Register; it is usually about 30 days after publication, but may be longer.

If a taxa that was previously listed or proposed for listing no longer has any listing status the entry has been grayed out.

For taxa that have more than one status entry, the current status is in bold and underlined.

Changes to this update of the list are denoted by *

Endangered and Threatened Animals of California

	<u>LISTING STATUS</u>		<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>			
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
<u>GASTROPODS</u>								
Trinity bristle snail <i>Monadenia setosa</i> ¹	ST ²	10-02-80						
Morro shoulderband (=banded dune) snail <i>Helminthoglypta walkeriana</i>			FE	1-17-95	Final	3-09-01	Final	1998
White abalone <i>Haliotis sorenseni</i>			FE	6-28-01	*Not prudent	6-28-01	Final	2008
Black abalone <i>Haliotis cracherodii</i>			FE	2-13-09				
<u>CRUSTACEANS</u>								
Riverside fairy shrimp <i>Streptocephalus woottoni</i>			FE	8-03-93	Final ³ Proposed Final	5-12-05 4-27-04 6-29-01	Final	1998
Conservancy fairy shrimp <i>Branchinecta conservatio</i>			FE	9-19-94	Final ⁴ Proposed Final Proposed	2-10-06 12-28-04 8-06-03 9-24-02	Final	2005
Longhorn fairy shrimp <i>Branchinecta longiantenna</i>			FE	9-19-94	Final ⁴ Proposed Final Proposed	2-10-06 12-28-04 8-06-03 9-24-02	Final	2005
Vernal pool fairy shrimp <i>Branchinecta lynchi</i>			FT	9-19-94	Final ⁴ Proposed Final Proposed	2-10-06 12-28-04 8-06-03 9-24-02	Final	2005
San Diego fairy shrimp <i>Branchinecta sandiegoensis</i>			FE	2-03-97	Final Proposed ⁵ Final	1-11-08 4-22-03 10-23-00	Final	1998
Vernal pool tadpole shrimp <i>Lepidurus packardi</i>			FE	9-19-94	Final ⁴ Proposed Final Proposed	2-10-06 12-28-04 8-06-03 9-24-02	Final	2005
Shasta crayfish <i>Pacifastacus fortis</i>	<u>SE</u> ST	2-26-88 10-02-80	FE	9-30-88			Final	1998
California freshwater shrimp <i>Syncaris pacifica</i>	SE	10-02-80	FE	10-31-88			Final	1998
<u>INSECTS</u>								
Zayante band-winged grasshopper <i>Trimerotropis infantilis</i>			FE	2-24-97	Final	3-09-01	Final	1998

¹ Current taxonomy is *Monadenia infumata setosa*.

² On January 1, 1985, all species designated as “rare” were reclassified as “threatened”, as stipulated by the California Endangered Species Act.

³ The Federal Circuit Court vacated critical habitat for the Riverside fairy shrimp on 10-30-02. The judge instructed the USFWS to begin the process of re-designating critical habitat for this species. New critical habitat was proposed 4-27-04 and finalized effective 5-12-05.

⁴ On October 28, 2004 the courts ordered the USFWS to reconsider the areas excluded from the final critical habitat designation made August 6, 2003. The December 28 2004 proposed rule is only for lands previously excluded and does not affect the areas included in the August 6, 2003 final rule. The non-economic exclusions made to the August 6, 2003 final rule were confirmed effective March 8, 2005

⁵ Due to court order the previously designated critical habitat was vacated and the USFWS was directed to re-proposed critical habitat.

	<u>LISTING STATUS</u>		<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>			
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Mount Hermon June beetle <i>Polyphylla barbata</i>			FE	2-24-97			Final	1998
Casey's June beetle <i>Dinacoma caseyi</i>			FPE	7-09-09	Proposed	7-09-09		
Delta green ground beetle <i>Elaphrus viridis</i>			FT	8-08-80	Final	8-08-80	Final	2006 1985
Valley elderberry longhorn beetle <i>Desmocerus californicus dimorphus</i>			FT	8-08-80	Final	8-08-80	Final	1984
Ohlone tiger beetle <i>Cicindela ohlone</i>			FE	10-03-01			Final	1998
Kern primrose sphinx moth <i>Euproserpinus euterpe</i>			FT	4-08-80	Proposed	7-03-78	Final	1984
Mission blue butterfly <i>Icaricia icarioides missionensis</i> ⁶			FE	6-01-76	Proposed	2-08-77	Final	1984
Lotis blue butterfly <i>Lycaeides argyrognomon lotis</i> ⁷			FE	6-01-76	Proposed	2-08-77	Final	1985
Palos Verdes blue butterfly <i>Glaucopsyche lygdamus palosverdesensis</i>			FE	7-02-80	Final	7-02-80	Final	1984
El Segundo blue butterfly <i>Euphilotes battoides allyni</i>			FE	6-01-76	Proposed	2-08-77	Final	1998
Smith's blue butterfly <i>Euphilotes enoptes smithi</i>			FE	6-01-76	Proposed	2-08-77	Final	1984
San Bruno elfin butterfly <i>Callophrys mossii bayensis</i>			FE	6-01-76	Proposed	2-08-77	Final	1984
Lange's metalmark butterfly <i>Apodemia mormo langei</i>			FE	6-01-76	Proposed	2-08-77	Revised	1984
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>			FT	10-18-87	Final Proposed	9-25-08 8-22-07 5-30-01	Final	1998
Quino checkerspot <i>Euphydras editha quino (=E.e.wrighti)</i>			FE	1-16-97	Proposed ⁸ Final Proposed	1-17-08 5-15-02 2-07-01	Final	2003
Carson wandering skipper <i>Pseudocopaodes enus obscurus</i>			FE	8-07-02			Final Draft	2007 2005
Laguna Mountains skipper <i>Pyrgus ruralis lagunae</i>			FE	1-16-97	Final	1-11-07		
Callippe silverspot butterfly <i>Speyeria callippe callippe</i>			FE	12-05-97	Proposed	3-28-80		
Behren's silverspot butterfly <i>Speyeria zerene behrensii</i>			FE	12-05-97			Draft	2004
Oregon silverspot butterfly ⁹ <i>Speyeria zerene hippolyta</i>			FT	7-02-80	Final	7-02-80	Revised	2001
Myrtle's silverspot butterfly <i>Speyeria zerene myrtilae</i>			FE	6-22-92			Final	1998
Delhi Sands flower-loving fly <i>Rhaphiomidas terminatus abdominalis</i>			FE	9-23-93			Final	1997

⁶ Current taxonomy is *Plebejus icarioides missionensis*

⁷ Current taxonomy is *Plebejus idas lotis*

⁸ Proposed rule is to revise designated Critical Habitat

⁹ Current common name is *Hippolyta fritillary*

Endangered and Threatened Animals of California

	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
<u>FISHES</u>								
Green sturgeon – southern DPS <i>Acipenser medirostris</i>			FT ¹⁰	6-06-06	Final Proposed	11-09-09 9-08-08		
Chinook salmon-Winter-run ¹¹ <i>Oncorhynchus tshawytscha</i>	SE	9-22-89	FE ¹² FE	8-29-05 2-03-94	Final	3-23-99	Draft	2009 1997
Chinook salmon-California coastal ESU ¹³ <i>Oncorhynchus tshawytscha</i>			FT ¹⁴ FT ¹⁵	8-29-05 11-15-99	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 2-16-00		
Chinook salmon-Spring-run <i>Oncorhynchus tshawytscha</i>	ST ¹⁶	2-05-99	FT ¹⁷ FT ¹⁸	8-29-05 11-15-99	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 2-16-00	Draft	2009
Coho salmon-Central California Coast ESU <i>Oncorhynchus kisutch</i>	SE ¹⁹	3-30-05	FE ²⁰ FT ²¹	8-29-05 12-02-96	Final	6-04-99	Final (state)	2004
Coho salmon-So. Oregon/No. Calif ESU <i>Oncorhynchus kisutch</i>	ST ²²	3-30-05	FT ²³ FT ²⁴	8-29-05 6-05-97	Final	3-17-00	Final (state)	2004
Little Kern golden trout <i>Oncorhynchus mykiss whitei</i>			FT	4-13-78	Final	4-13-78	Exempt	
Lahontan cutthroat trout <i>Oncorhynchus clarki henshawi</i>			FT FE	7-16-75 10-13-70			Final	1995
Paiute cutthroat trout <i>Oncorhynchus clarki seleniris</i>			FT FE	7-16-75 3-11-67 ²⁵			Revised Final	2004 1985
Steelhead-Northern California ESU ²⁶ <i>Oncorhynchus mykiss</i>			FT ²⁷ FT	2-06-06 8-07-00	Final Proposed	1-02-06 12-10-04		

¹⁰ Includes all spawning populations south of the Eel River

¹¹ Federal: Sacramento River winter run Chinook salmon

¹² The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs, 10 of these in California. The 29 Aug 2005 list date refers to the final designations made as a result of those status reviews.

¹³ ESU = Evolutionarily Significant Unit

¹⁴ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs, 10 of these in California. The 29 Aug 2005 list date refers to the final designations made as a result of those status reviews.

¹⁵ Naturally spawned coastal spring & fall Chinook salmon between Redwood Creek in Humboldt County & the Russian River in Sonoma County.

¹⁶ State listing is for the Sacramento River drainage.

¹⁷ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs, 10 of these in California. The 29 Aug 2005 list date refers to the final designations made as a result of those status reviews.

¹⁸ Federal: Central Valley Spring-Run ESU. Includes populations spawning in the Sacramento River & its tributaries.

¹⁹ The Coho south of San Francisco Bay were state listed in 1995; in February 2004 the Fish and Game Commission determined that the Coho from San Francisco to Punta Gorda should also be listed as Endangered. This changed was finalized by Office of Administrative Law on March 30, 2005.

²⁰ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs, 10 of these in California. The 29 Aug 2005 list date refers to the final designations made as a result of those status reviews.

²¹ The Federal listing is limited to naturally spawning populations in streams between Punta Gorda, Humboldt County & the San Lorenzo River, Santa Cruz County.

²² The Fish and Game Commission determined that the Coho from Punta Gorda to the Oregon border should be listed as Threatened on February 25, 2004. This determination was finalized by the Office of Administrative Law on March 30, 2005.

²³ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs, 10 of these in California. The 29 Aug 2005 list date refers to the final designations made as a result of those status reviews.

²⁴ The Federal listing is for populations between Cape Blanco, Oregon & Punta Gorda, California.

²⁵ All species with a list date of 03-11-67 were listed under the Endangered Species Preservation Act of Oct 15, 1966.

²⁶ Naturally spawned populations residing below impassable barriers in coastal basins from Redwood Creek in Humboldt County to, and including, the Gualala River in Mendocino County.

Endangered and Threatened Animals of California

	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Steelhead-Central California Coast ESU ²⁸ <i>Oncorhynchus mykiss</i>			<u>FT</u> ²⁹ FT	2-06-06 10-17-97	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 3-17-00		
Steelhead-South/Central Calif Coast ESU ³⁰ <i>Oncorhynchus mykiss</i>			<u>FT</u> ³¹ FT	2-06-06 10-17-97	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 3-17-00		
Steelhead-Southern California ESU ³² <i>Oncorhynchus mykiss</i>			<u>FE</u> ³³ FE	2-06-06 10-17-97	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 3-17-00	Draft	2009
Steelhead-Central Valley ESU ³⁴ <i>Oncorhynchus mykiss</i>			<u>FT</u> ³⁵ FT	2-06-06 5-18-98	Final Proposed Rescinded Final	1-02-06 12-10-04 4-30-02 3-17-00	Draft	2009
Bull trout <i>Salvelinus confluentus</i>	SE	10-02-80	FT	12-01-99	*Proposed (revised) ³⁶ Final	1-14-10 10-26-05		
Delta smelt <i>Hypomesus transpacificus</i>	<u>*SE</u>	1-20-10	FT	3-05-93	Final	12-19-94	Final	1996
Longfin smelt <i>Spirinchus thaleichthys</i>	ST	12-09-93						
Eulachon – southern DPS <i>Thaleichthys pacificus</i>	<u>*ST</u> SCE	4-09-10 2-02-08						
Mohave tui chub <i>Gila bicolor mohavensis</i>			*FT	5-17-10				
Owens tui chub <i>Gila bicolor snyderi</i>	SE	6-27-71	FE	10-13-70			Final	1984
Cowhead Lake tui chub <i>Gila bicolor vaccaceps</i>			withdrawn FPE	10-11-06 3-30-98				
Tecopa pupfish (Extinct) <i>Cyprinodon nevadensis calidae</i>	delisted SE	1987 6-27-71	delisted FE	1-15-82 10-13-70				
Bonytail ³⁷ <i>Gila elegans</i>	<u>SE</u> SR	1-10-74 6-27-71	FE	4-23-80	Final	3-21-94	Revised Revised	2002 1990

²⁷ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs. The 6 Feb 2006 list date refers to the final designations made as a result of those status reviews. There was no change in listing status for the steelhead ESUs in California.

²⁸ Coastal basins from the Russian River, south to Soquel Creek, inclusive. Includes the San Francisco & San Pablo Bay basins, but excludes the Sacramento-San Joaquin River basins.

²⁹ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs. The 6 Feb 2006 list date refers to the final designations made as a result of those status reviews. There was no change in listing status for the steelhead ESUs in California.

³⁰ Coastal basins from the Pajaro River south to, but not including, the Santa Maria River.

³¹ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs. The 6 Feb 2006 list date refers to the final designations made as a result of those status reviews. There was no change in listing status for the steelhead ESUs in California.

³² Coastal basins from the Santa Maria River (inclusive), south to the U.S.-Mexico Border.

³³ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs. The 6 Feb 2006 list date refers to the final designations made as a result of those status reviews. There was no change in listing status for the steelhead ESUs in California.

³⁴ The Sacramento and San Joaquin Rivers and their tributaries.

³⁵ The NMFS has completed comprehensive status reviews for 27 west coast salmon & steelhead ESUs. The 6 Feb 2006 list date refers to the final designations made as a result of those status reviews. There was no change in listing status for the steelhead ESUs in California.

³⁶ There is no designated or proposed Critical Habitat for bull trout in California.

³⁷ Federal: Bonytail chub

	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Sacramento splittail <i>Pogonichthys macrolepidotus</i>			deleted ³⁸ FT	9-22-03 3-10-99				
Colorado squawfish ³⁹ <i>Ptychocheilus lucius</i>	SE	6-27-71	FE	3-11-67	Final	3-21-94	Revised Revised	2002 1991
Lost River sucker <i>Deltistes luxatus</i>	<u>SE</u> SR	1-10-74 6-27-67	FE	7-18-88	Proposed	12-01-94	Final	1993
Modoc sucker <i>Catostomus microps</i>	<u>SE</u> SR	10-02-80 1-10-74	FE	6-11-85	Final	6-11-85	Exempt	
Santa Ana sucker <i>Catostomus santaanae</i>			FT ⁴⁰	5-12-00	*Proposed (revised) Final	12-09-09 2-03-05		
Shortnose sucker <i>Chasmistes brevirostris</i>	<u>SE</u> SR	1-10-74 6-27-71	FE	7-18-88	Proposed	12-01-94	Final	1993
Razorback sucker <i>Xyrauchen texanus</i>	<u>SE</u> SR	1-10-74 6-27-71	FE	10-23-91	Final	3-21-94	Revised Final	2002 1998
Desert pupfish <i>Cyprinodon macularius</i>	SE	10-02-80	FE	3-31-86	Final	3-31-86	Final	1993
Cottonball Marsh pupfish <i>Cyprinodon salinus milleri</i>	ST	1-10-74						
Owens pupfish <i>Cyprinodon radiosus</i>	SE	6-27-71	FE	3-11-67			Final	1998
Thicktail chub (Extinct) <i>Gila crassicauda</i>	delisted SE	10-02-80 1-10-74						
Unarmored threespine stickleback <i>Gasterosteus aculeatus williamsoni</i>	SE	6-27-71	FE	10-13-70	Designati on should not be made ⁴¹ Proposed	9-17-02 11-17-80	Final	1985
Tidewater goby <i>Eucyclogobius newberryi</i>			With- drawn FPD ⁴² <u>FE</u>	12-09-02 6-24-99 2-04-94	Final Proposed Final	3-03-08 11-28-06 11-20-00	Final	2005
Rough sculpin <i>Cottus asperrimus</i>	ST	1-10-74						

AMPHIBIANS

California tiger salamander (central valley DPS) <i>Ambystoma californiense</i>	*ST ⁴³ 44	5-20-10	FT ⁴⁵	9-03-04	Final ⁴⁶ Proposed ⁴⁷	9-22-05 8-10-04		
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³⁸ On 23 June 2000, the Federal Eastern District Court of Calif. found the final rule to be unlawful and on 22 Sept 2000 remanded the determination back to the USFWS for a reevaluation of the final decision. After a thorough review the USFWS removed the Sacramento splittail from the list of threatened species.

³⁹ Current nomenclature and federal listing: Colorado pikeminnow

⁴⁰ Populations in the Los Angeles, San Gabriel and Santa Ana River basins.

⁴¹ Full explanation of this situation is given in the Federal Register notice.

⁴² Proposal to delist refers to populations north of Orange County only.

⁴³ The state listing refers to the entire range of the species.

⁴⁴ The Fish and Game Commission determined that the California tiger salamander should be listed as Threatened on May 20, 2010. This determination still needs to be finalized by the Office of Administrative Law.

Endangered and Threatened Animals of California

	State	<u>LISTING STATUS</u>		<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
		List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
California tiger salamander (Santa Barbara County DPS) <i>Ambystoma californiense</i>	*(ST)		FE 45	9-15-00	Final ⁴⁸	11-24-04		
California tiger salamander (Sonoma County DPS) <i>Ambystoma californiense</i>	*(ST)		FE 45	3-19-03	Proposed ⁴⁹	8-18-09 8-02-05		
Santa Cruz long-toed salamander <i>Ambystoma macrodactylum croceum</i>	SE	6-27-71	FE	3-11-67	Proposed	6-22-78	Draft	1999
Siskiyou Mountains salamander <i>Plethodon stormi</i>	SCD	9-30-05						
Scott Bar salamander <i>Plethodon asupak</i>	<u>ST</u>	6-27-71						
Techachapi slender salamander <i>Batrachoseps stebbinsi</i>	ST ⁵⁰	6-27-71						
Kern Canyon slender salamander <i>Batrachoseps simatus</i>	ST	6-27-71						
Desert slender salamander <i>Batrachoseps aridus</i> ⁵¹	SE	6-27-71	FE	6-04-73			Final	1982
Shasta salamander <i>Hydromantes shastae</i>	ST	6-27-71						
Limestone salamander <i>Hydromantes brunus</i>	ST	6-27-71						
Black toad <i>Bufo exsul</i> ⁵²	ST	6-27-71						
Arroyo toad ⁵³ <i>Bufo californicus</i> ⁵⁴			FE	1-17-95	Proposed (Revised) Final Proposed ⁵⁵ Final	10-13-05 5-13-05 2-14-05 4-27-04 3-09-01	Final	1999
California red-legged frog ⁵⁶ <i>Rana aurora draytonii</i>			FT	5-20-96	*Final Proposed ⁵⁷ Final	4-16-10 9-16-08 4-12-01	Final	2002

⁴⁵ In 2004 the California tiger salamander was listed as “threatened” statewide. The Santa Barbara County and Sonoma County Distinct Vertebrate Population Segments (DPS), formerly listed as “endangered”, were reclassified to “threatened”. On Aug 19 2005 U.S. District court vacated the downlisting of the Sonoma and Santa Barbara populations from “endangered” to “threatened”. Therefore, the Sonoma & Santa Barbara populations are once again listed as “endangered”

⁴⁶ Final rule published Aug 23, 2005 is for the central valley population only.

⁴⁷ Critical Habitat proposal published Aug 10, 2004 is for the central valley population only.

⁴⁸ Final rule published Nov 24, 2004 is for the Santa Barbara County population only.

⁴⁹ Proposed rule published Aug 2, 2005 is for the Sonoma County population only. The proposed rule published Aug 18, 2009 encompasses the same geographic area as the Aug 2, 2005 proposal.

⁵⁰ Since this newly described species was formerly considered to be a subpopulation of *Plethodon stormi*, and since *Plethodon stormi* is listed a Threatened under the California Endangered Species Act (CESA), *Plethodon asupak* retains the designation as a Threatened species under CESA.

⁵¹ Current taxonomy: *Batrachoseps major aridus*.

⁵² Current taxonomy: *Anaxyrus exsul*

⁵³ Former taxonomy: *Bufo microscaphus californicus*.

⁵⁴ Current taxonomy: *Anaxyrus californicus*

⁵⁵ The Federal Circuit Court vacated critical habitat for the Arroyo toad on 10-30-02. The judge instructed the USFWS to begin the process of re-designating critical habitat for this species. New critical habitat was first proposed on 4-27-04 and proposed with revisions on 2-14-05. A new final rule became effective 5-13-05.

⁵⁶ Current taxonomy: *Rana draytonii*

⁵⁷ Proposed rule is for revised Critical Habitat boundaries

	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Mountain yellow-legged frog – Southern California DPS ^{58,59} <i>Rana muscosa</i>			FE	8-01-02	Final Proposed	10-16-06 9-13-05		
<u>REPTILES</u>								
Desert tortoise <i>Gopherus agassizii</i>	ST	8-03-89	FT	4-02-90	Final	2-08-94	*Draft Revised Final	2008 1994
Green sea turtle <i>Chelonia mydas</i>			FT FE	7-28-78 10-13-70	Final	3-23-99	Revised	1998
Loggerhead sea turtle – North Pacific DPS ⁶⁰ <i>Caretta caretta</i>			*FPE FT	3-16-10 7-28-78	Proposed	3-19-80	Revised	1998
Olive (=Pacific) Ridley sea turtle <i>Lepidochelys olivacea</i>			FT	7-28-78	Proposed	3-19-80	Revised	1998
Leatherback sea turtle <i>Dermochelys coriacea</i>			FE	6-02-70	Proposed (Revised) Final	1-05-10 3-23-99	Revised	1998
Barefoot banded gecko ⁶¹ <i>Coleonyx switaki</i>	ST	10-02-80						
Coachella Valley fringe-toed lizard <i>Uma inornata</i>	SE	10-02-80	FT	9-25-80	Final	9-25-80	Final	1985
Blunt-nosed leopard lizard <i>Gambelia silus</i> ⁶²	SE	6-27-71	FE	3-11-67			Final	1998
Flat-tailed horned lizard <i>Phrynosoma mcallii</i>			Withdrawn ⁶³ FPT ⁶⁴	6-28-06 11-29-93				
Island night lizard <i>Xantusia riversiana</i>			FT	8-11-77			Final	1984
Southern rubber boa <i>Charina bottae umbratica</i> ⁶⁵	ST	6-27-71						
Alameda whipsnake <i>Masticophis lateralis euryxanthus</i>	ST	6-27-71	FT	12-05-97	Final Proposed ⁶⁶ Vacated ⁶⁷ Final	11-01-06 10-18-05 5-09-03 10-03-00	Draft	2003
San Francisco garter snake <i>Thamnophis sirtalis tetrataenia</i>	SE	6-27-71	FE	3-11-67			Final	1985
Giant garter snake <i>Thamnophis couchi gigas</i> ⁶⁸	ST	6-27-71	FT	10-20-93			Draft	1999

⁵⁸ Federal listing refers to the distinct population segment (DPS) in the San Gabriel, San Jacinto & San Bernardino Mountains only.

⁵⁹ The current common name for this species is Sierra Madre yellow-legged frog.

⁶⁰ 1978 listing was for the worldwide range of the species. The Mar 16, 2010 proposed rule is for the north pacific DPS (north of the equator & south of 60 degrees north latitude).

⁶¹ Current nomenclature: Barefoot gecko.

⁶² Current taxonomy: *Gambelia sila*. is the scientific name and bluntnose leopard lizard is the common name

⁶³ On June 28, 2006 the USFWS determined that the proposed listing was not warranted and the proposed rule that had been reinstated on Nov 17, 2005 was withdrawn.

⁶⁴ On November 17, 2005, the U. S. District Court for the District of Arizona vacated the January 3, 2003 withdrawal of the proposed rule to list the flat-tailed horned lizard and reinstated the 1993 proposed rule.

⁶⁵ Current taxonomy: *Charina umbratica*.

⁶⁶ The proposed rule redesignates Critical Habitat that was vacated in 2003.

⁶⁷ Due to legal action on 9 May 2003, the Critical Habitat designation has been completely vacated; there is currently no Critical Habitat for Alameda whipsnake.

⁶⁸ Current taxonomy and Federal listing: *Thamnophis gigas*.

Endangered and Threatened Animals of California

LISTING STATUS

CRITICAL HABITAT

RECOVERY PLAN

	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
BIRDS								
Short-tailed albatross <i>Phoebastria albatrus</i>			FE	8-30-00			Final	2009
California brown pelican ⁶⁹ (Recovered) <i>Pelecanus occidentalis californicus</i>	<u>delisted</u> SE	6-03-09 6-27-71	<u>delisted</u> FE	12-17-09 2-20-08 10-13-70			Final	1983
Aleutian Canada goose (Recovered) <i>Branta canadensis leucopareia</i> ⁷⁰			<u>delisted</u> FT FE	3-20-01 12-12-90 3-11-67			Final	1991
California condor <i>Gymnogyps californianus</i>	SE	6-27-71	FE	3-11-67	Final	9-22-77	Revised	1996
Bald eagle <i>Haliaeetus leucocephalus</i>	<u>SE</u> (rev) SE	10-02-80 6-27-71	<u>delisted</u> ⁷¹ FT FE(rev) FE	8-08-07 7-06-99 8-11-95 2-14-78 3-11-67			Final	1982
Swainson's hawk <i>Buteo swainsoni</i>	ST	4-17-83						
American peregrine falcon (Recovered) <i>Falco peregrinus anatum</i>	<u>delisted</u> SE	11-04-09 6-27-71	<u>delisted</u> FE	8-25-99 6-02-70	Final	9-22-77	Final	1982
Arctic peregrine falcon (Recovered) <i>Falco peregrinus tundrius</i>			<u>delisted</u> FT FE	10-05-94 3-20-84 6-02-70				
California black rail <i>Laterallus jamaicensis coturniculus</i>	ST	6-27-71						
California clapper rail <i>Rallus longirostris obsoletus</i>	SE	6-27-71	FE	10-13-70			Final	1984
Light-footed clapper rail <i>Rallus longirostris levipes</i>	SE	6-27-71	FE	10-13-70			Revised Final	1985 1979
Yuma clapper rail <i>Rallus longirostris yumanensis</i>	<u>ST</u> SE	2-22-78 6-27-71	FE	3-11-67			Final	1983
Greater sandhill crane <i>Grus Canadensis tabida</i>	ST	4-17-83					Draft (state)	
Western snowy plover ⁷² <i>Charadrius alexandrinus nivosus</i>			FT	4-05-93	Final Proposed Final	10-31-05 8-16-05 12-07-99 ⁷³	Final Draft	2007 2001
Mountain plover ⁷⁴ <i>Charadrius montanus</i>			*FPT	6-29-10				
California least tern <i>Sterna antillarum browni</i>	SE	6-27-71	FE	10-13-70			Revised Final	1985 1980

⁶⁹ Federal: Brown pelican, *Pelecanus occidentalis*.

⁷⁰ Current taxonomy: *Branta hutchinsii leucopareia*, and common name is now cackling goose.

⁷¹ The Post-delisting Monitoring Plan will monitor the status of the bald eagle over a 20 year period with sampling events held once every 5 years.

⁷² Federal status applies only to the Pacific coastal population.

⁷³ The Dec 7, 1999 designation was remanded & partially vacated by the US District Court for the District of Oregon on July 2, 2003.

⁷⁴ The Jun 29, 2010 proposed rule reinstates that portion of the Dec 5, 2002 proposed rule concerning the listing of the plover as threatened. It doesn't reinstate the portion of the rule regarding a special rule under section 4(d) of the ESA.

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	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Marbled murrelet <i>Brachyramphus marmoratus</i> ⁷⁵	SE	3-12-92	FT	9-30-92	Proposed ⁷⁶ Final	7-31-08 5-24-96	Final	1997
Xantus's murrelet <i>Synthliboramphus hypoleucus</i>	ST ⁷⁷	12-22-04						
Western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i>	<u>SE</u> ST	3-26-88 6-27-71						
Elf owl <i>Micrathene whitneyi</i>	SE	10-02-80						
Northern spotted owl <i>Strix occidentalis caurina</i>			FT	6-22-90	Final Proposed Final	9-12-08 6-17-07 1-15-92	Final Draft	2008 2007
Great gray owl <i>Strix nebulosa</i>	SE	10-02-80						
Gila woodpecker <i>Melanerpes uropygialis</i>	SE	3-17-88						
Gilded northern flicker ⁷⁸ <i>Colaptes auratus chrysoides</i>	SE	3-17-88						
Willow flycatcher <i>Empidonax traillii</i>	SE ⁷⁹	1-02-91						
Southwestern willow flycatcher <i>Empidonax traillii extimus</i>	(SE)		FE	3-29-95	Final Proposed Final ⁸⁰	11-18-05 10-12-04 7-22-97	Final	2002
Bank swallow <i>Riparia riparia</i>	ST	6-11-89					Final (state)	1993
Coastal California gnatcatcher <i>Poliptila californica californica</i>			FT	3-30-93	Final Proposed ⁸¹ Final	1-18-08 4-24-03 10-24-00	Exempt	
San Clemente loggerhead shrike <i>Lanius ludovicianus mearnsi</i>			FE	8-11-77			Final	1984
Arizona Bell's vireo <i>Vireo bellii arizonae</i>	SE	3-17-88						
Least Bell's vireo <i>Vireo bellii pusillus</i>	SE	10-02-80	FE	5-02-86	Final	2-02-94	Draft	1998
Inyo California towhee ⁸² <i>Pipilo crissalis eremophilus</i>	SE	10-02-80	FT	8-03-87	Final	8-03-87	Final	1998
San Clemente sage sparrow <i>Amphispiza belli clementeae</i>			FT	8-11-77			Final	1984
Belding's savannah sparrow <i>Passerculus sandwichensis beldingi</i>	SE	1-10-74						
Santa Barbara song sparrow (Extinct) <i>Melospiza melodia graminea</i>			delisted FE	10-12-83 6-04-73				

⁷⁵ Federal: *Brachyramphus marmoratus marmoratus* with a proposal (7-31-08) to change the name to *Brachyramphus marmoratus*.

⁷⁶ Proposed rule to revise the previously designated Critical Habitat.

⁷⁷ The Fish and Game Commission determined that Xantus's murrelet should be listed as a Threatened species February 24, 2004. As part of the normal listing process, this decision was reviewed by the Office of Administrative Law. The listing became effective on Dec 22, 2004.

⁷⁸ Current taxonomy: Gilded flicker (*Colaptes chrysoides*).

⁷⁹ State listing includes all subspecies.

⁸⁰ On May 11, 2001 the 10th Circuit Court of Appeals vacated the previously designated Critical Habitat

⁸¹ Due to court order the previously designated critical habitat was vacated and the USFWS was directed to re-propose critical habitat.

⁸² Federal: Inyo California (=brown) towhee.

	<u>LISTING STATUS</u>			<u>CRITICAL</u>	<u>RECOVERY</u>			
	State	List Date	Federal	HABITAT	Effective List Date	Effective Date	Version	Date
<u>MAMMALS</u>								
Buena Vista Lake shrew <i>Sorex ornatus relictus</i>			FE ⁸³		4-05-02	Final Proposed	2-23-05 8-19-04	Final 1998
Lesser long-nosed bat <i>Leptonycteris yerbabuenae</i>			FE		10-31-88			Final 1997
Riparian brush rabbit <i>Sylvilagus bachmani riparius</i>	SE	5-29-94	FE		3-24-00			Final 1998
Point Arena mountain beaver <i>Aplodontia rufa nigra</i>			FE		12-12-91			Final 1998
San Joaquin antelope squirrel ⁸⁴ <i>Ammospermophilus nelsoni</i>	ST	10-02-80						
Mohave ground squirrel ⁸⁵ <i>Spermophilus mohavensis</i>	ST	6-27-71						
Pacific pocket mouse <i>Perognathus longimembris pacificus</i>			FE		9-26-94			Final 1998
Morro Bay kangaroo rat <i>Dipodomys heermanni morroensis</i>	SE	6-27-71	FE		10-13-70	Final	8-11-77	Draft revision Final 1982 1982
Giant kangaroo rat <i>Dipodomys ingens</i>	SE	10-02-80	FE		1-05-87			Final 1998
Stephens' kangaroo rat <i>Dipodomys stephensi</i> ⁸⁶	ST	6-27-71	FE		9-30-88			
San Bernardino kangaroo rat <i>Dipodomys merriami parvus</i>			FE ⁸⁷		9-24-98	Final ⁸⁸ Final	11-17-08 5-23-02	
Tipton kangaroo rat <i>Dipodomys nitratooides nitratooides</i>	SE	6-11-89	FE		7-08-88			Final 1998
Fresno kangaroo rat <i>Dipodomys nitratooides exilis</i>	<u>SE</u> SR	10-02-80 6-27-71	FE		3-01-85	Final	1-30-85	Final 1998
Salt-marsh harvest mouse <i>Reithrodontomys raviventris</i>	SE	6-27-71	FE		10-13-70			Final 1984
Amargosa vole <i>Microtus californicus scirpensis</i>	SE	10-02-80	FE		11-15-84	Final	11-15-84	Final 1997
Riparian woodrat <i>Neotoma fuscipes riparia</i>			FE ⁸⁹		3-24-00			Final 1998
Sierra Nevada red fox <i>Vulpes vulpes necator</i>	ST	10-02-80						
San Joaquin kit fox <i>Vulpes macrotis mutica</i>	ST	6-27-71	FE		3-11-67			Final 1998
Island fox <i>Urocyon littoralis</i>	ST ⁹⁰	6-27-71						
San Miguel Island Fox <i>Urocyon littoralis littoralis</i>	(ST)		FE		4-05-04	Final ⁹¹ (none) Proposed ⁹²	12-09-05 10-07-04	

⁸³ Federal: Buena Vista Lake ornate shrew

⁸⁴ Current taxonomy: Nelson's antelope squirrel

⁸⁵ Current taxonomy: Xerospermophilus mohavensis

⁸⁶ Federal: includes *Dipodomys cascus*.

⁸⁷ Federal: San Bernardino Merriam's kangaroo rat

⁸⁸ This final revised designation constitutes a reduction of approximately 25,516 acres from the 2002 designation of Critical Habitat.

⁸⁹ Federal: Riparian (=San Joaquin Valley) woodrat

⁹⁰ State listing includes all 6 subspecies on all 6 islands. Federal listing is for only 4 subspecies on 4 islands

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	<u>LISTING STATUS</u>			<u>CRITICAL HABITAT</u>		<u>RECOVERY PLAN</u>		
	State	List Date	Federal	Effective List Date	Designation	Effective Date	Version	Date
Santa Rosa Island Fox <i>Urocyon littoralis santarosae</i>	(ST)		FE	4-05-04	Final ⁹¹ (none) Proposed 92	12-09-05 10-07-04		
Santa Cruz Island Fox <i>Urocyon littoralis santacruzae</i>	(ST)		FE	4-05-04	Final ⁹¹ (none) Proposed 92	12-09-05 10-07-04		
Santa Catalina Island Fox <i>Urocyon littoralis catalinae</i>	(ST)		FE	4-05-04	Final ⁹¹ (none) Proposed 92	12-09-05 10-07-04		
Guadalupe fur seal <i>Arctocephalus townsendi</i>	ST	6-27-71	<u>FT</u> FE	1-15-86 3-11-67			Draft (revised)	2007
Stellar (=northern) sea lion <i>Eumetopias jubatus</i>			FT	4-05-90	Final	3-23-99	Revised Final	2008 1992
Wolverine <i>Gulo gulo</i>	ST	6-27-71						
Southern sea otter <i>Enhydra lutris nereis</i>			FT	1-14-77			Revised Final	2003 1981
Pacific fisher <i>Martes pennanti(pacifica)</i> DPS	SCT or SCE ⁹³	*Listing Not warranted						
Gray whale (Recovered) <i>Eschrichtius robustus</i>			delisted FE	6-15-94 6-02-70				
Sei whale <i>Balaenoptera borealis</i>			FE	6-02-70				
Blue whale <i>Balaenoptera musculus</i>			FE	6-02-70			Final	1998
Fin whale <i>Balaenoptera physalus</i>			FE	6-02-70			Draft	2006
Humpback whale ⁹⁴ <i>Megaptera novaeangliae</i>			FE	6-02-70			Final	1991
Right whale ⁹⁵ <i>Eubalaena japonica</i> ⁹⁶			FE	6-02-70			Final	1991
Sperm whale <i>Physeter macrocephalus</i>			FE	6-02-70			Draft	2006
Killer whale (Southern resident DPS) <i>Orcinus orca</i>			FE ⁹⁷ FE	4-04-07 2-16-06 12-22-04			Final	2008
California (=Sierra Nevada) bighorn sheep <i>Ovis canadensis californiana</i> ⁹⁸	<u>SE</u> ST	8-27-99 6-27-71	FE	1-03-00	Final Proposed	9-04-08 7-25-07	Final Draft	2008 2003

⁹¹ The USFWS did not find any habitat on the 4 islands occupied by the foxes that meets the definition of Critical Habitat under the Act. Therefore, the final rule does not designate any Critical Habitat

⁹² The USFWS did not find any habitat on the 4 islands occupied by the foxes that meets the definition of Critical Habitat under the Act. Therefore, the proposal is that zero Critical Habitat be designated.

⁹³ The Fish and Game Commission notice of finding states that the Pacific fisher is a candidate for listing as either an endangered or a threatened species. At the June 23, 2010 meeting the Commission determined that the listing was not warranted.

⁹⁴ Also known as Hump-backed whale.

⁹⁵ Also known as Black right whale.

⁹⁶ The scientific name was clarified in the Federal Register Vol. 68, No. 69 April 10, 2003.

⁹⁷ The killer whale was listed as endangered by the NMFS on Feb 16, 2006 and by the USFWS on Apr 4, 2007.

⁹⁸ Current & Federal taxonomy: Sierra Nevada bighorn sheep (*Ovis canadensis sierrae*)

	<u>LISTING STATUS</u>			<u>CRITICAL</u>	<u>RECOVERY</u>			
	State	List Date	Federal	<u>HABITAT</u>	Effective Date	Version	Date	
Peninsular bighorn sheep DPS ⁹⁹ <i>Ovis canadensis cremnobates</i>	ST	6-27-71	FE	Effective List Date 3-18-98	Designation Final Proposed (Revised) Final	Effective Date 5-14-09 10-10-07 3-05-01	Final	2000

⁹⁹ Current taxonomy: the subspecies *O.c. cremnobates* has been synonymized with *O.c. nelsoni*. Peninsular bighorn sheep are now considered to be a Distinct Vertebrate Population Segment (DPS).

Letter 18 Marsha A. Burch, Attorney At Law

Comment 18A: *This office represents the San Joaquin Raptor Rescue Center and Protect Our Water with respect to the above-referenced Merced Vision 2030 General Plan (“GP” or “Project”). Thank you for the opportunity to provide these comments on the Draft EIR (“DEIR”) for the Project on behalf of our clients.*

Response 18A: The City appreciates the opportunity to address the comments of the San Joaquin Raptor Rescue Center and Protect Our Water.

Comment 18B: *As explained below, the DIER does not comply with the California Environmental Quality Act (“CEQA”) in certain essential respects. The GP also violates State Planning law.*

Response 18B: The commenter raises a number of issues that reflect the commenter’s interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Please see the following responses to specific comments.

Comment 18C: *The following represent the critical concerns:*

- *Faulty Assumptions Regarding Population Increases.*

The City admits that the GP preferred alternative exceeds the potential population projections for 2030. (DEIR, p. ES-8.) It is disturbing to note that the DEIR goes on to state that the Project will not induce growth, finding the impact to be less than significant with “no mitigation measure required.” (DEIR, p. ES 34.) Other sections of the DEIR admit that the GP will induce growth. (DEIR, p. 3.12-9.)

The City begins with a completely unrealistic population projection (116,800) that is based on historic growth rates during a housing boom, and then ignores the growth inducing nature of the decision to pursue a Project that will accommodate almost three times the population increase over the assumed projection. The DEIR states that the “General Plan at buildout (between 152,063 and 328,956 persons) exceeds that projected for 2030 (116,800). Figure 4-1 shows the Reduced Project Area Alternative. (DEIR, p. 4-10.)

Designating more land than is necessary to accommodate the projected population increase is the definition of growth inducing, and the Reduced Growth Alternative provides an alternative that would avoid this significant impact. The DIER’s analysis falls short of CEQA’s requirements by failing to reveal to the public and the decision-makers that the over-expansion of the urban boundary will induce growth, and by failing to include adequate mitigation and/or pursue the reduced growth alternative as the preferred project. (A copy of a recent Merced County Superior Court decision addressing these very issues is attached for your reference. The Project and DEIR in their present form violate the same laws as those alleged to be violated by the challenged City of Livingston’s general plan update.)

Response 18C: Page 3.12-8 explains that while the growth rate between 2000 and 2010 was an annual rate of 2.7 percent, and the Merced County Association of Government predicts a 2.0 percent growth rate annually until 2030, the City has chosen to use a 3.0 percent annual, estimated growth rate to predict growth. The DEIR states, "...the annual growth rate would depend on a variety of factors including demographic, economic and market conditions that could cause growth to occur at a faster or slower rate than three percent." The DEIR also states that (direct) growth "would occur even without adoption of the 2030 General Plan, since the existing 2015 General Plan allows for growth within the City limits and the Sphere of Influence."

The next page explains that the population would indirectly increase as the result of the adoption of expanded City limits that would include populated areas now under the jurisdiction of the County. Thus, the indirect growth inducement would not be caused by substantially increased population growth, but instead by a larger, populated land area to be included within the City. The point of this statement was to note that this indirect growth could result in a potential impact to services if the City were unable to provide infrastructure. Page 5-3 further explains: "Induced growth is any growth that exceeds planned growth and results from new development that would not have taken place in the absence of the proposed project. For example, a project could induce growth by lowering or removing barriers to growth or by creating or allowing a use such as an industrial facility that attracts new population or economic activity. CEQA Guidelines also indicate that the topic of growth should not be assumed to be either beneficial or detrimental. Negative impacts associated with growth inducement occur only where the projected growth would cause adverse environmental impacts."

The City respectfully disagrees with the idea that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

A legislative body, like a City Council, should be able to plan appropriately for the future without being artificially tied to a fixed planning horizon, such as 20 years, or a population prediction prepared by a third party. In looking to the future, a longer range makes sense so that infrastructure and services can be planned and sized to be sustainable over the long term. Having a longer range view and including territory for it does not automatically mean the inclusion of a larger area is growth-inducing. The General Plan's goals, policies, and implementing actions, including the compact urban form, anti-leap-frog development policies, and the annexation policies of the City are the context in which the issue is determined. In addition, the annexation requirements within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 pertaining the annexation as well as Merced County LAFCO's own

annexation policies will preclude such premature growth. Inclusion of a larger area simply allows for sound long-term, long-range planning by the City.

Comment 18D: *Additionally, the City admits that the updated “Housing Element is required to include an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs,” and then goes on to say that the Housing Element is being prepared separately and will be finalized by the end of 2010. (DEIR, p. 3.12-5.) In other words, the City is analyzing the housing needs and inventory by adopting a land use map allowing for tremendous growth, without having the information necessary to support the analysis.*

Response 18D: Housing Elements are prepared on a schedule determined by the State Department of Housing and Community Development. The Housing Element is revised every seven years, so that housing needs are reevaluated in a timely manner. The 2009 Draft Housing Element was prepared based on the 2015 General Plan land use map, so that the two documents remained internally consistent, as required by law. (The City Council adopted the revised Housing Element on May 16, 2011 in response to comments received from the California Department of Housing and Community Development on the 2009 draft.) It is also important to note that the Housing Element must consider the City’s zoning ordinances, specific plans and other documents, as well as data from the U.S. Census, State Department of Finance, and other sources that is current at the time the document is prepared. Therefore, in 2016 when the next Housing Element is prepared, if current data indicate that the population has increased at a slower (or faster) rate than anticipated in the 2030 General Plan, housing needs will be assessed based on that current information – not on population estimates included in the 2030 General Plan.

Comment 18E: *The City simply admits that the increased City SOI/SUDP is more than is necessary to accommodate population projections. This results in the unnecessary identification of farmland and open space for conversion to urban uses. This is an abuse of discretion and a violation of the State Planning Laws and of CEQA.*

Response 18E: See Comment Letter 15, Responses 15B, 15D, and 15E. As noted in Response 18C, a legislative body should be able to plan for the long-term and long-range. While promoting infill and redevelopment within the existing City is an important goal, there are many conflicting State policies which the City needs to address. For example, the State encourages the preservation of farmland, open space, habitat, etc. while at the same time pressuring local governments to provide for affordable housing. Because of the high costs associated with redeveloping existing sites and the State’s continued drain on Redevelopment funding, meeting the affordable housing goal may practically be limited to undeveloped sites. Consequently, meeting these conflicting State policies will require the greatest flexibility possible.

Comment 18F: B. Impacts to agriculture

The DEIR states that “the Plan Update could result in conversion of approximately 8,750 acres of undeveloped land to developed urban land within the proposed SUDP/SOI and outside the City limits of Merced, of which 1,898 acres are Prime Farmland.” (DEIR, p. 3.2-4.) The DEIR includes one mitigation measure in the form of a completely unenforceable “policy” of

“encouraging” farming outside of the City limits, and “working cooperatively” with organizations endeavoring to preserve farmland in the region. (DEIR, p. 3.2-5.)

Upon finding a significant environmental effect, CEQA mandates mitigation unless no possible measures exist. (Pub. Res. Code § 21002.) Mitigation is divided into operative categories. (CEQA Guidelines §15370.) In general, mitigation includes avoiding or altering the causative action (§15370(a),(b)), attacking the resultant impact through restoration, rehabilitation or preservation (§15370(c), (d)) or compensating for impact through resource replacement or substitution (§15370(e)). The Legislature has found that conservation easements, which fall into the later category, may be used to mitigate impacts associated with conversion of unique land types. (Pub. Res. Code § 21083.4 (b) [Conversion of oak woodlands may be mitigated through direct purchase of oak woodland conservation easements or contribution of funds to a conservation easement acquisition program].)

Response 18F: As the Commenter notes under Comment 18F, the potential for the conversion of approximately 8,750 acres of land would occur within the SUDP/SOI, which is outside the City limits. The City has a limited ability to effect change outside its city limits, and therefore, impacts to those agricultural lands will be significant and unavoidable. The City understands that the requirement to lessen impacts through the implementation of mitigation measures is not relieved when the mitigation measure would not reduce the impacts to a less than significant level. However, the Public Resources Codes referenced above also clearly state that “the requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures...” The City has included policies in the General Plan Update and mitigation measures in the DEIR that will protect agricultural resources to the extent feasible and practical. Mitigation to address loss of agricultural lands due to development in accordance with the land use designations established by the proposed 2030 General Plan, such as requiring agricultural conservation easements, or in-lieu fees for their purchase, are a matter of policy and/or law yet to be established by the City of Merced. To include such mitigation measures in the DEIR, as suggested by the commenter, would be speculative and unenforceable absent established City policy or ordinance to ensure implementation. Also, please see Response to Comment 16.B regarding conservation easements.

Urban Expansion Implementing Action 1.1.f on page 2-26 of the Draft *Merced Vision 2030 General Plan* outlines the City’s position on agricultural land preservation programs as follows:

1.1.f Work with Merced County and the other cities in the County to develop a County-wide agricultural land preservation policy.

A number of years ago, there was an effort to establish a Countywide Agricultural Preservation Strategy (CAPS) in which the cities in Merced County and the County worked on ways to address preservation of prime agricultural land. That effort ultimately failed and the County of Merced has imposed agricultural mitigation on certain large development projects, such as the University Community, on a case-by-case basis. However, in order to assure fairness and to be truly effective, a comprehensive strategy for dealing with agricultural preservation needs to be established

Countywide. The City of Merced is committed to working with the County and the other cities to resolve this issue.

Addressing the issue of farmland preservation and mitigation from a County-wide perspective is important so that the adopted policies are not piecemeal or conflicting. This will ensure no jurisdiction is placed at a competitive disadvantage like the City of Merced has been in early on requiring new development to participate in the costs of regional transportation infrastructure when other communities in the County found artful ways to avoid it or simply declined to participate.

Comment 18G: *The DEIR for the Project, however, does not include any specific measures to mitigate the adverse environmental impact of eliminating prime and Important Farmland. Mitigation Measure 3.2-1 includes a laundry list of possible mitigation measures. The measure contains no performance standards and is entirely unenforceable.*

This is an example of an area of impact where the EIR concludes that the impact will be significant and unavoidable, and then improperly abandons the effort of development and adoption of mitigation measures. The requirement that mitigation measures be adopted depends upon the economic and technical feasibility and practicality of the measures, and whether they will substantially lessen the significant environmental effects of the project. (Pub. Res. Code §§ 21002, 21081(a)(3); A Local & Regional Monitor v. City of Los Angeles (1993) 12 Cal.App.4th 1773, 1790.) The requirement is not abated simply because the measures will not lessen the effects to below a level of significance. Accordingly, a statement of overriding considerations does not exempt a project from mitigation if there are feasible measures that would reduce substantially, albeit not eliminate, the significant environmental effects of the project

Response 18G: Please see Response 18F.

Comment 18H: *The protection of prime farmland in California occupies a central positioning numerous state laws and CEQA itself. Mitigation may include “[c]ompensating for the impact by replacing or providing substitute resources or environments.” (CEQA Guidelines § 15370(e).) Conservation easements are an appropriate and desirable means of protecting agricultural lands against conversion to urban use. (Pub. Res. Code §§ 10201-10202.) The Legislature has determined that the preservation of the limited supply of agricultural land is necessary for the maintenance of California’s agricultural economy and the state’s economy. (Govt. Code § 51220.) In 1979, the Legislature provided for the enforceability of conservation easements. (See Civ. Code §§ 815-816.) The Legislature found and declared that “the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.” (Civ. Code § 815.) The Agricultural Land Stewardship Program Act of 1995 establishes a state program to promote the establishment of agricultural easements. (Pub. Res. Code § 10200 et seq.)*

Response 18H: Please see Response to 18F.

Comment 18I: *The Legislature also declared the intent, among other things, to “(c) Encourage long-term conservation of productive agricultural lands in order to protect the agricultural*

economy of rural communities, as well as that of the state, for future generations of Californians. [¶] (d) Encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land. [¶] (e) Encourage local land use planning decisions that are consistent with the state's policies with regard to agricultural land conservation....” (Pub. Res. Code § 10202.)

The DEIR concludes that the Project will result in the conversion of 1,898 acres of prime farmland. (DEIR, p. 3.2-4.) The direct effects of conversion include the loss of the land converted. The indirect effects of the instant Project, among others, include the resultant increased development pressures on remaining farmland. (DeVita v. County of Napa (1995) 9 Cal.4th 763, 791.)

Response 18I: The DEIR concludes, on page 3.2-4, that the General Plan Update *could* (italics added) “result in conversion of approximately 8,750 acres of undeveloped land to developed urban land within the proposed SUDP/SOI and outside the City limits of Merced, of which 1,898 are Prime Farmland.” The City has the ability, and the responsibility, to minimize potential impacts to those farmlands within the City limits only, and the County is responsible for managing lands within the SUDP/SOI that are outside the City limits. The City and County are working together to design and implement measures that will discourage low-density residential, commercial, and industrial development throughout the SUDP/SOI and the City has indicated its willingness through General Plan policy to work with the County and other cities to develop a County-wide agricultural preservation policy. Please also see Responses to 18c and 18F.

Comment 18J: *The DEIR fails to evaluate feasible, enforceable mitigation measures as required by CEQA.*

Many jurisdictions require purchase of conservation easements as mitigation for the conversion of agricultural lands to urban uses. The following are references to policies from the general plans and agricultural mitigation programs showing that agricultural mitigation is feasible and widely accepted as effective:

1. *City of Brentwood Municipal Code Chapter 17.730*
2. *City of Davis Municipal Code Chapter 40A.03.0*
3. *City of Gilroy Agricultural Mitigation Policy*
4. *Santa Clara County Local Agency Formation Council Agricultural Mitigation Policies*
5. *City of Winters Habitat Mitigation Policy*
6. *Yolo County Code (excerpts of Title 8: Land Development and Zoning, Chapter 2:Zoning, Article 24: General Provisions)*
7. *Yolo County Local Agency Formation Commission Agricultural Conservation Policy*
8. *Stanislaus County Agricultural Element*
9. *Stanislaus County Agricultural Mitigation Program Guidelines*
10. *South Livermore Valley Area Plan*
11. *Napa County General Plan*
12. *Solano County General Plan*
13. *City of Stockton Public Facilities Fee Program*

Response 18J: Please see Response 18F.

Comment 18K: C. Global Warming:

The City simply claims that there are no existing thresholds of significance applicable to the Project, nor are there regulatory requirements that presently exist that the Project would violate. (DEIR, p. 3.17-13.) The City ignores the fact that for various impacts evaluated under CEQA there are no universally accepted thresholds of significance, and this does not excuse an agency from evaluating the impact and adopting feasible mitigation measures.

CEQA requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Res. Code § 21002.1 (b).) This requirement is the “core of an EIR.” (Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County (1990) 52 Cal.3d 553, 564-65.) Global warming is an “effect on the environment” under CEQA, and an individual project’s incremental contribution to global warming can be cumulatively considerable. (See Pub. Res. Code, § 21083.05(a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.)

In a white paper on Global Warming Measures specifically for general plans, the Attorney General has provided information regarding feasible mitigation measures for the reduction in GHG emissions. (A copy of the January 22, 2010, white paper is attached.) The Project approval must include adoption of true mitigation measures that will be implemented (e.g, through ordinances, programs, development standards, or land use designations) to reduce or avoid environmental impacts. (See CEQA Guidelines, § 15126.4(a)(2).) Each mitigation measure should be paired with an enforceable, achievable standard.

Response 18K: As discussed in the DEIR, implementation of the General Plan will result in significant, cumulatively considerable and unavoidable impacts. The DEIR provides numerous mitigation measures in the Air Quality Section 3.3 to reduce greenhouse gas emissions (see pages 3.3-18 through 3.3-24 of the DEIR). For further clarification, page 3.17-16 of the DEIR is hereby amended as follows:

Mitigation Measures

Mitigation Measures #3.3-1a through #3.3-2 will serve to reduce global climate change impacts. However, ~~Even with the proposed policies and implementation actions in the proposed General Plan, the impact will remain **significant, cumulatively considerable and unavoidable.** No additional mitigation measures are available.~~

With regard to thresholds, the SJVAPCD Guidance document did not address greenhouse emissions at a programmatic level. Guidance proposed by the SJVAPCD was limited to industrial, residential and commercial projects, not general plans.

Contrary to the assertions of the commenter, the City did evaluate the impacts of greenhouse from implementation of the General Plan. The threshold of significance for greenhouse gas emissions established by the City in the DEIR was qualitative and not quantitative. As stated on page 3.17-3 of the DEIR:

“Given the challenges associated with determining a project-specific significance criteria for GHG emissions when the issue must be viewed on a global scale, a quantitative significance criteria is not proposed for the Project. **For this analysis, a project’s incremental contribution to global climate change would be considered significant if due to the size or nature of the project it would generate a substantial increase in GHG emissions relative to existing conditions.**” (Emphasis added)

The DEIR used a qualitative threshold for analyzing the Project’s GHG emissions impacts. CEQA permits an agency to determine the threshold of significance it will apply to a project and makes no distinction on when it may opt to use a qualitative significance threshold. (See CEQA Guidelines, § 15064.7(a). CEQA permits an agency to determine the threshold of significance it will apply to a project and makes no distinction on when it may opt to use a qualitative significance threshold. (See CEQA Guidelines, § 15064.7(a) [“[a] threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect...”])

Although not identified in the DEIR as a greenhouse gas mitigation measure, the implementation of Mitigation Measure #3.3-2 under criteria pollutants also serves to reduce greenhouse gas emissions. Additionally, as stated on page 3.17-10 of the DEIR, the Merced Vision 2030 General Plan contains a number of policies that apply to global climate change and are designed to ensure that global climate change impacts are minimized as development occurs in accordance with the General Plan (refer to pages 8-24 through 8-35 of the Sustainable Development Chapter of the Draft *Merced Vision 2030 General Plan*, dated August 2010). However, in consideration of the comment received, the following mitigation measures are added to the Final EIR. The measures included are derived from implementation actions identified in the Merced Vision 2030 General Plan, which was available for public review at the same time as the Draft EIR beginning in August 2010. Therefore, these mitigation measures (in the form of policies and implementing actions) have been available for public review as part of the public review of the General Plan document itself. Implementation of these mitigation measures do not result in any additional impacts.

The following mitigation measures have been added to the DEIR (page 3.17-16) as follows:

Mitigation Measure #3.17-1a:

Per Sustainable Development Implementing Action SD 1.1.g of the Merced Vision 2030 General Plan, the City of Merced will work closely with the SJVAPCD to develop and implement uniform standards for determining “thresholds of significance” for greenhouse gas impacts for use in the City’s CEQA review process. The SJVAPCD has issued its “Guidance for Valley Land Use Agencies

in Addressing GHG Impacts for New Projects Under CEQA". The City will use the recommended threshold of Best Performance Measures and/or 29 percent below Business-As-Usual for new development with the City of Merced.

Mitigation Measure #3.17-1b:

Per Sustainable Development Implementing Action SD 1.1.g of the Merced Vision 2030 General Plan and as required by recent changes in CEQA, the City shall address the issue of Climate Change and Greenhouse Gas Emissions in environmental documents prepared by the City. Techniques and best practices for evaluation these issues are currently being developed by various government agencies and interest groups and the City will keep track of these developments and endeavor to remain up-to-date in evaluation methods.

Mitigation Measure #3.17-1c:

Per Sustainable Development Policy SD 1.7 and Implementing Action SD 1.7.a of the Merced Vision 2030 General Plan, the City will develop a Climate Action Plan (CAP) that identifies greenhouse gas emissions within the City as well as ways to reduce those emissions. The Plan will parallel the requirements adopted by the California Air Resources Board specific to this issue. The City will include the following key items in the Plan:

- Inventory all known, or reasonably discoverable, sources of greenhouse gases in the City,
- Inventory the greenhouse gas emissions level in 1990, the current level, and that projected for the year 2020, and
- Set a target for the reduction of emissions attributable to the City's discretionary land use decisions and its own internal government operations.
- Within one year of adoption of the CAP, the City should complete a review of its existing policies and ordinances in order to ensure implementation of the CAP.

Mitigation Measure #3.17-1d:

Per Sustainable Development Implementing Action SD 1.7.c of the Merced Vision 2030 General Plan, the City shall consider the following measures for new development:

- When approving new development, require truck idling to be restricted during construction.

- Require new development to implement the following design features, where feasible, many of these features are included as draft Best Performance Measures established by the SJVAPCD for new development:

1. Recycling:

- Design locations for separate waste and recycling receptacles;
- Reuse and recycle construction and demolition waste;
- Recover by-product methane to generate electricity; and,
- Provide education and publicity about reducing waste and available recycling services.

2. Promote pedestrian, bicycle and transit modes of travel through informational programs and provision of amenities such as transit shelters, secure bicycle parking and attractive pedestrian pathways.

3. Large canopy trees should be carefully selected and located to protect the building(s) from energy consuming environmental conditions, and to shade 50% of paved areas within 15 years.

4. Encourage mixed-use and high-density development to reduce vehicle trips, promote alternatives to vehicle travel and promote efficient delivery of services and goods.

5. Impose measures to address the "urban heat island" effect by, e.g. requiring light-colored and reflective roofing materials and paint; light-colored roads and parking lots; shade trees in parking lots and shade trees on the south and west sides of new or renovated buildings.

6. Transportation and motor vehicle emission reduction:

- Use low or zero-emission vehicles, including construction vehicles;
- Create car sharing programs;
- Create local "light vehicle" networks, such as neighborhood electric vehicle (NEV) systems;
- Provide shuttle service to public transit;
- During construction, post signs that restrict truck idling;
- Set specific limits on idling time for commercial vehicles, including delivery and construction vehicles;
- Coordinate controlled intersections so that traffic passes more efficiently through congested areas. Where signals are installed, require the use of Light Emitting Diode (LED) traffic lights; and,

- Assess transportation impact fees on new development in order to facilitate and increase public transit service.

7. Water Use Efficiency:

- Use of both potable and non-potable water to the maximum extent practicable; low flow appliances (i.e., toilets, dishwashers, shower heads, washing machines, etc.); automatic shut off valves for sinks in restrooms; drought resistant landscaping; “Save Water” signs near water faucets;
- Create water efficient landscapes;
- Use gray water. (Gray water is untreated household waste water from bathtubs, showers, bathroom wash facilities, and water from washing machines); and,
- Provide education about water conservation and available programs and incentives.

8. Energy Efficiency:

- Automated control system for heating/air conditioning and energy efficient appliances;
- Utilize lighting controls and energy-efficient lighting in buildings;
- Use light colored roof materials to reflect heat;
- Take advantage of shade (save healthy existing trees when feasible), prevailing winds, landscaping and sun screens to reduce energy use;
- Install solar panels on carports and over parking areas;
- Increase building energy efficiency percent beyond Title 24 requirements. In addition implement other green building design ((i.e., natural daylighting and on-site renewable, electricity generation); and
- Require that projects use efficient lighting

Effectiveness of Mitigation Measures:

Mitigation Measures #3.17-1a through #3.17-1d will ensure that global climate change impacts are minimized as development occurs in accordance with the General Plan. However, even with the proposed policies and implementation actions in the proposed General Plan, the impact will remain **significant, cumulatively considerable and unavoidable.**

CEQA Section 15088.5(e) requires that an EIR which has been made available for public review, but not yet certified, be recirculated whenever significant new information has been added to the EIR. The entire document need not be recirculated, if revisions are limited to specific portions of the document. The recirculated portions or document must be sent to responsible and trustee agencies for consultation and fresh public notice must be given in the manner provided for a draft EIR. New information is not presumed to be significant simply because it is new. Indeed, pursuant to State CEQA Guidelines Section 15088.5:

New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect . . . that the project’s proponents have declined to implement.

State CEQA Guidelines, § 15088.5(a):

In order to be “significant,” the new information must constitute one of the following:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
3. A feasible project alternative or mitigation measure considerably different from other previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponent decline to adopt it.
4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(State CEQA Guidelines, §15088.5(a)(1)-(4); Laurel Heights II, 6 Cal.4th at 1120.)

The addition of these mitigation measures does not represent significant new information because they do not result in new or substantially increased significant impacts, and therefore no recirculation is required. These mitigation measures are derived from policies and implementing actions contained in the Draft *Merced Vision 2030 General Plan*, which was available for public review during the same time frame as the DEIR, beginning in August 2010.

The commenter referenced the Global Warming Measures for general plans, prepared by the California Attorney General and published in January 2010. Although the DEIR did not include these measures as mitigation, they were included in the Merced Vision 2030 General Plan as policies and implementing actions (refer to Sustainable Development Policy SD 1.8 on pages 8-33 through 8-35 of the Draft *Merced Vision 2030 General Plan*, dated August 2010). As such, the Merced 2030 Vision General Plan was consistent with the intent of the Attorney General

Guidance document in adopting measures which serve to reduce the impacts of greenhouse gases. Below is a table of the measures recommended by the Attorney General in the 2010 report and a determination of the General Plan’s consistency with those measures. As shown below, the General Plan included policies and implementation actions that are consistent with the exemplary and innovative local sustainability and climate policies and measures identified by the Attorney General (again, please refer to Sustainable Development Policy SD 1.8 on pages 8-33 through 8-35 of the Draft *Merced Vision 2030 General Plan*, dated August 2010). The commenter’s comments with regard to “true” mitigation measures and enforceable achievable standards is addressed under Response 18M.

Strategy	Consistency
<p>Smart growth, jobs/housing balance, transit-oriented development, and infill development through land use designations, incentives and fees, zoning, and public-private partnerships</p>	<p>Consistent.</p> <p>Urban Expansion Policies: Establishment of urban limit lines (Policies UE-1.1, UE-1.2, & UE-1.3), Encouragement of Compact and In-fill Development (Policies U.E-1.2; Land Use L-2.8 & L-3.2: and Public Facilities P-1.2</p> <p>Land Use Policies: Encouragement of Mixed-use Development (Policies L-1.1, L-1.2, L-1.7, L-2.7), Increased residential densities (Policies L-1.2, L-1.7, L-3.1), Encouragement of Transit-Oriented Development or the City’s Village Concept, (Policies L-3.1; Transportation T-1.5; Urban Design UD-1.1 through UD-1.5), Pedestrian-oriented or pedestrian-friendly developments (Policies L-2.7, L-3.1, L-3.3; Transportation T-2.7 & T-2.8), Locating services near employment centers (Policies L-1.1, L-1.2, L-1.7, L-2.1, L-2.4, L-2.6, and L-2.9)</p> <p>Sustainable Development Policies: Healthy Built Environment (Policy SD-4.1)</p>
<p>Create transit, bicycle, and pedestrian connections through planning, funding, development requirements, incentives and regional cooperation; create disincentives for auto use</p>	<p>Consistent.</p> <p>Transportation Policies: Dedicated transit corridors or “Transitways” and emphasis on public transit (Policies T-2.1, T-2.2, T-2.3), An interconnected street system (Policies Land Use L-2.7 and L-3.3: Transportation T-1.2 and T-1.3, Trip reduction measures (Land Use L-2.9, Transportation T-2.9), Encouragement of bicycles as a transportation option (Land Use L-3.3; Transportation T-2.4, T-2.5, T-2.6; Public Facilities P-5.2; Open Space OS-3.2)</p>

Strategy	Consistency
Energy- and water-efficient buildings and landscaping through ordinances, development fees, incentives, project timing prioritization, and other implementing tools	<p>Consistent.</p> <p>Public Facilities Policies: Higher development fees based on distance from City center (Policies P-1.1 & P-1.3), Water conservation (Policies Public Facilities P-3.1; and Open Space OS-5.1), Recycled water (Policies P-3.2, P-4.2)</p>
Green procurement and alternative fuel vehicle use through municipal mandates and voluntary bid incentives	<p>Consistent.</p> <p>Sustainable Development Policies:</p> <p>Provide Public Facilities and Operations That Can Serve as a Model for the Private Sector in Implementation of Air Quality Programs (SD-1.5)</p>
Alternative fuel facilities and infrastructure through land use designations, zoning, and public/private partnerships	<p>Consistent.</p> <p>Sustainable Development Policies: Promotion of solar energy technology and other alternative energy resources (SD-3.1), Energy conservation features and alternative energy sources (SD-3.2)</p>
Renewable energy generation (utility and residential) through feasibility evaluations, land use designations, zoning, permit streamlining, incentives and financing	<p>Consistent.</p> <p>Sustainable Development Policies: Promotion of solar energy technology and other alternative energy resources (SD-3.1), Energy conservation features and alternative energy sources (SD-3.2)</p>
Waste diversion, recycling, water efficiency, energy efficiency and energy recovery in cooperation with public services districts and private entities	<p>Consistent.</p> <p>Public Facilities Policies: Solid waste diversion targets (Policies P-6.1 & P-6.2)</p>
Urban and rural forestry through tree planting requirements and programs; preservation of agricultural land and resources that sequester carbon; heat island reduction programs	<p>Consistent.</p> <p>Open Space Policies: Urban forest management & shade tree planting (Policies OS-1.4 and Transportation T-2.7)</p>
Community outreach and education to foster community involvement, input, and support for GHG reduction planning and implementation	<p>Consistent.</p> <p>Sustainable Development Policies: Educate the public on the impact of individual transportation, lifestyle, and land use decisions on air quality (SD-1.4)</p>

Strategy	Consistency
Regional cooperation to find cross-regional efficiencies in GHG reduction investments and to plan for regional transit, energy generation, and waste recovery facilities	<p>Consistent.</p> <p>Sustainable Development Policies: Coordinated and Cooperative Inter-Governmental Air Quality Programs and Reduction in the Generation of Greenhouse Gases (GHG) from New Development (SD-1.2, SD-1.3, SD-1.5)</p>
Source of Measures: California Attorney General, "Sustainability and General Plans: Examples of Policies to Address Climate Change California Attorney General's Office", January 2010	
Source of Consistency Determination: Quad Knopf, 2011	

Comment 18L: 1. Energy consumption

The California Natural Resources Agency recently reaffirmed that "CEQA's requirement to analyze and mitigate energy impacts of a project is substantive, and is not merely procedural." (http://ceres.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf, p. 71.)

Pursuant to CEQA Greenhouse Gas Guidelines promulgated under SB 97, Appendix F of the Guidelines was revised to clarify that an EIR shall consider energy implications of the proposed project, and where applicable, items that should be considered include the energy supply and energy use patterns of the region, the effects of the project on local and regional energy supplies, and measures to reduce energy consumption. (CEQA Guidelines, Appendix F.)

The DEIR fails to conform to Appendix F. To properly assess the Project's energy consumption, the City should provide information on the extent to which onsite renewable energy is being used in the City, and discuss whether the City currently has any programs or requirements relating to energy efficiency, renewable energy or green building requirements.

The FEIR does not address energy impacts directly, but the Project includes several permissive policies encouraging energy conservation.

The City is required by CEQA to adopt all feasible mitigation measures, and yet it relies entirely on a series of vague and aspirational measures aimed at reducing energy consumption. Given their vagueness, uncertainty and lack of enforceability, the DEIR does not, and cannot, quantify or describe the actual energy conservation benefits that will result from these measures. As noted by the Attorney General in "Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions, California Attorney General's Office," "[w]hile a menu of hortatory GHG policies is positive, it does not count as adequate mitigation because there is no certainty that the policies will be implemented." (See attached.)

The City does not have a single specific and enforceable policy to reduce non-renewable energy consumption.

Response 18L: While the DEIR did not specifically call out Energy Conservation as a separate topic, it did discuss energy use as part of the General Plan build out in a qualitative manner in accordance with the programmatic nature of the EIR and consistent with Appendix F. According to the CEQA Guidelines (Section 15168[a]), a local agency may prepare a program-level EIR to address a series of actions that can be characterized as one large project and are related geographically, as logical parts of a chain of contemplated events, through rules, regulations, or plans that govern the conduct of a continuing program, or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways. This EIR was prepared as a Program EIR. As a Program EIR, this document serves as a first-tier document that assesses and documents the broad environmental impacts of a program with the understanding that a more detailed site-specific environmental review may be required to assess future projects implemented under the program. As individual projects with specific site plans and facilities are planned, the City will evaluate each project to determine the extent to which this EIR covers the potential impacts of the project and to what extent additional environmental analysis may be required for each specific future project. (see Public Resources Code, Sections 21083.3, 21093, 21094; CEQA Guidelines, Sections 15152, 15168, 15183.)

The proposed Merced Vision 2030 General Plan itself would not result in changes to energy consumption patterns. However, development and land use activities that occur pursuant to the General Plan would consume energy. It is the intent of the General Plan to minimize the consumption of non-renewable energy resources. The commitment of non-renewable energy resources was discussed in the DEIR at page 5-2. Briefly re-stated, development allowed under the proposed General Plan would irretrievably commit nonrenewable resources to the construction and maintenance of buildings, infrastructure and roadways. Buildout of the proposed General Plan also represents a longterm commitment to the consumption of fossil fuels, including natural gas and gasoline. Increased energy would be required for construction, lighting, cooling and heating of residences, and transportation of people within, to, and from the Planning Area. The proposed General Plan policies and standards promoting energy conservation (Transportation and Circulation Policy T-1.5, Urban Development Policy UD-2.2, Open Space, Conservation, and Recreation Policy OS-5.1, and Sustainable Development Policies SD-3.1 and SD-3.2) would result in some savings in non-renewable energy supplies. The DEIR also discusses the potential impacts of increased electricity and natural gas usage resulting from buildout of the General Plan on page 5-9. Growth in the region will continue to require construction/expansion of utility infrastructure, and as noted in Section 3.13, without definitive plans, it cannot be determined at this time whether these potential impacts would be substantial and would therefore have to be characterized as significant and unavoidable. The analysis is consistent with the programmatic nature of the EIR. While there are no aspects of the Merced Vision 2030 General Plan that would foreseeably result in the inefficient, wasteful, or unnecessary consumption of energy during construction and operational activities, the level of detail necessary to make a determination of less than significant is unavailable and therefore the DEIR conservatively concluded that development under the proposed General Plan would irretrievably commit nonrenewable resources and result in cumulatively significant and unavoidable impacts to electricity and gas.

The *Merced Vision 2030 General Plan* relies on the concept of “sustainable development” as a means of accommodating expected future growth. It is the intent of the *Merced Vision 2030 General Plan* to accommodate growth and development without unnecessarily consuming limited non-renewable energy resources. In addition, Mitigation Measure 3.17.1d has been added to the Final EIR to address greenhouse gas emissions and consequently energy conservation. This mitigation measure is based on policies and implementing actions contained in the Draft *Merced Vision 2030 General Plan*, which was available for public review during the same time frame as the DEIR, beginning in August 2010.

Comment 18M: 2. Proposed Mitigation for the Project’s Greenhouse Gas Impacts is Vague, Unenforceable, and Improperly Deferred

*While the DEIR properly acknowledges that Project greenhouse gas impacts are significant, it fails to adopt all feasible mitigation and alternatives to minimize this impact as required under CEQA. (Pub. Res. Code § 21002.) Like its treatment of energy impacts, mitigation for the full range of the Project’s greenhouse gas impacts is improperly vague, unenforceable and deferred. As recently set forth by the Court of Appeal in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, “the novelty of greenhouse gas mitigation measures is one of the most important reasons that mitigation measures timely be set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena.” (Id.)*

*Rather than propose meaningful mitigation for the Project’s greenhouse gas impacts in the EIR, the City simply provides a list of hortatory policies that the City claims will mitigate greenhouse gas emissions. (DEIR, p. 3.7-10 to 3.712.) There is not even a commitment to the preparation of a climate action plan. In invalidating an EIR for improperly deferring mitigation of greenhouse gas impacts, the Court in *Communities For a Better Environment v. City of Richmond*, held that the “solution was not to defer the specification and adoption of mitigation measures until a year after Project approval; but, rather, to defer approval of the Project until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment.” In that case, the City of Richmond had included a commitment to develop a climate action plan. In this case, the City has not even come close to that type of commitment. If the City of Richmond’s promise to prepare a Climate Action Plan within a year was insufficient, the City of Merced’s vague analysis and permissive policies with no mention of a Climate Action Plan most certainly is not enough.*

With only vague, permissive policies as currently contemplated, land uses would be locked in that could frustrate attainment of emission reduction objectives. The time to analyze and commit to sustainable, low-carbon growth is when the General Plan is developed, not after.

Response 18M: One of the guiding principles of the *Merced Vision 2030 General Plan* to encourage sustainable and green development. The *Merced Vision 2030 General Plan* is a strategy for accommodating population growth in a manner that minimizes adverse “physical” impacts of growth and development. As stated previously, the DEIR was prepared at a programmatic level. As a Program EIR, this document serves as a first-tier document that assesses and documents the broad environmental impacts of a program with the understanding

that a more detailed site-specific environmental review may be required to assess future projects implemented under the program. The commenter agrees that the DEIR properly acknowledged that Project greenhouse gas impacts are significant, but disagrees with the mitigation measures to minimize this impact. The DEIR did not include many of the policies and implementing actions of the General Plan as mitigation measures, however key implementing actions have been included in the Final EIR as mitigation measures. The mitigation measures allow the City to address the impacts of the General Plan at a programmatic level and require the City to make project-specific determinations and implementation of further mitigation measures as development occurs in accordance with the General Plan.

The qualitative analysis of greenhouse gas impacts has shown that the Project's incremental contribution to global climate change is significant because it would generate a substantial increase in GHG emissions relative to existing conditions. Policies in the General Plan and the mitigation measures derived from the implementing actions of the General Plan and incorporated in this Final EIR would reduce the impacts of greenhouse gases. Specific performance criteria have been included for the mitigation measures, particularly as they relate to the incorporation of the SJVAPCD's threshold of significance for greenhouse gases. Adoption of the SJVAPCD threshold ensures that all development will implement Best Performance Measures or demonstrate that they have reduced their emissions by 29 percent below Business-As-Usual. Compliance with the SJVAPCD's threshold of significance for greenhouse gases will ensure that the build-out of the General Plan does not interfere with the attainment of emission reduction objectives, as the SJVAPCD threshold is based on California's AB32 Scoping Plan.

It should be noted that the City has committed to preparing a Climate Action Plan as an implementing action of its General Plan and incorporated the commitment in this Final EIR as Mitigation Measure #3.17-1c. This commitment to preparing a Climate Action Plan (CAP) should not be construed as deferred mitigation as the City had made a determination as to the significance of the General Plan's greenhouse gas impacts. The CAP is currently underway with the goal to be completed by no later than September 2012, but will likely be completed by the end of 2011. Technological and financial constraints as well as the desire to emphasize public outreach have required the City to proceed at a slower and more comprehensive pace. However, the City's has committed to specific performance criteria, mainly ensuring that the City's of Merced's greenhouse gas emissions are reduced to 1990 levels by the year 2020 in accordance with AB32 and Executive Order S-3-05.

Comment 18N: D. Biological Resources

The DEIR's analysis of impacts to biological resources is inadequate. For example, the bird list is incomplete. One missing piece is any discussion of rookeries. Merced County has significant problems associated with protecting rookeries, and yet they are not mentioned. Additionally, the DIER fails to mention that California tiger salamander, which is now listed as threatened by state of California.

Response 18N: The CDFG and USFWS do not provide information on rookeries in general, except that all nesting raptors are protected under the Migratory Bird Treaty Act. Specific nesting information is provided by these agencies only for sensitive species. Information on

nesting and nurseries is included for each bird listed as either a federally or state sensitive species.

The City assumes that the intent of the comment regarding the California Tiger Salamander was to point out that the species' status is not a California Species of Concern. California Tiger Salamander is included on Table 3.4-2 of the DEIR, and includes the statement that the potential for its occurrence in the plan area is high. Although its listing status has changed since the DEIR was drafted, CEQA requires that the DEIR utilize the information available at the time the Notice of Preparation (NOP) was publically announced. Its status was changed from a California Species of Concern to a State Threatened status in early 2010 – long after the NOP was announced. Despite the change in status, the mitigation measure included in the DEIR (#3.4-1f) is appropriate.

Also note that individual projects proposed within the City or the SUDP/SOI will require project-level environmental documents. These environmental documents must also include mitigation measures that will protect sensitive species as listed at the time that document is prepared, including standardized measures adopted by the CDFG and/or USFWS. Therefore, if rookeries for a particular species of concern and/or California Tiger Salamanders are included in a proposed project area, they must be addressed in that project's environmental document(s).

Comment 180: *E. Water supply*

An EIR must inform decision-makers and the public of the intended sources of water for the project, and the environmental impacts of exploiting those sources. (Vineyard Area Citizens for Responsible Growth, Inc. v. Rancho Cordova (2007) 40 Cal.4th 412, 431, citing Stanislaus Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182, 206.) Such analysis cannot be deferred. (Ibid.) “An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.” (Ibid.)

The DEIR does not adequately analyze the impacts of the Project on water supply. Instead, it acknowledges that increased use of the aquifer would result in an impact that would be significant and that no mitigation is available.(DEIR, p. 3.8-16.)

The DEIR does not even attempt to mitigate the impacts, and abandons the DEIR's reliance on GP goals and policies as mitigation, and simply determines that no mitigation is available.

This approach is insufficient. “An EIR that neglects to explain the likely sources of water and analyze their impacts, but leaves long-term water supply considerations to later stages of the project, does not serve the purpose of sounding an ‘environmental alarm bell’ (Laurel Heights Improvement Assn. v. Regents of the University of California (1988) 47 Cal.3d 376, 392) before the project has taken on overwhelming ‘bureaucratic and financial momentum.’ (Id. at 395.)” (Vineyard, supra, 40 Cal.4th at 441.) Thus, the water supply analysis fails to comport with CEQA.

Response 18O: The commenter's opinion is noted, but the City respectfully disagrees. The DEIR, Section 3.8, fully analyzes water supply issues and describes the adequacy of the projected water supply. Further, corroborating information (not including any additional project impacts or mitigation measures) is provided in response to other water-related comments (e.g., the response to Comment 15G). However, the Commenter's conclusion that the Draft EIR abandons the reliance on General Plan goals and policies as mitigation is incorrect. This reliance coupled with reading the Draft EIR in the context of existing laws and regulations is critical to understanding how a Program level EIR evaluating a policy-centered document operates. The laws and regulations which set this context include Title 24's water conservation mandates, the Water Measurement Law mandating water meters over time found in Water Code Section 500 et seq., and the Water Conservation Act of 2009 mandating a 20% reduction in water use by 2020 pursuant to Water Code Section 10608 et seq. What the commenter's comment misses is that the context of these laws and regulations coupled with the General Plan's goals and policies as mitigation is that no new or additional mitigation measures are required. Mitigation measures are included in the discussion of policies and plan implementation measures under Impact #3.8-2, p. 3.8-15 of the DEIR. Following that discussion it is concluded that neither these policies and actions or further mitigation measures would reduce the impact to less than significant.

Comment 18P: *F. Violation of State Planning Laws*

1. GP is internally inconsistent

Under California law, a general plan must be integrated and internally consistent, both among the elements and within each element. (Govt. Code §65300.5.) If there is internal inconsistency, the general plan is legally inadequate. For example, a general plan was found to be internally inconsistent where a portion of the circulation element concluded that existing roads were sufficient for projected traffic increases, while another section of the circulation element indicated that traffic conditions were deteriorating as a result of continued subdivision development. (Concerned Citizens of Calaveras County v. Board of Supervisors (1985) 166 Cal.App.3d 90, 103.)

The GP has competing goals and policies, where one encourages infill and concentric growth adjacent to existing developed areas with little discussion in the General Plan or DEIR, but with vague references to open space and protection of farmland. The GP, however, allows for the unmitigated conversion of almost 2,000 acres of farmland when the area is not even necessary to accommodate projected population increases.

California law requires internal consistency in a general plan. This legal requirement is mandatory, and not up to a discretionary determination by the decision makers of a willingness to comply.

Response 18P: The General Plan must balance between encouraging infill and planning for future growth that will exceed infill capacities. It does not create an inconsistency to analyze both.

That said, as noted in Response to Comment 16B, and Responses 18F and 18I, the City has the ability to protect only those lands included within the City limits. Figure 3.2-1 provides a map of important farmland, and includes the City limits and proposed SUDP/SOI. Very little farmland (approximately 114 acres) of the “almost 2,000 acres” noted is within the City’s jurisdiction. Areas proposed for eventual inclusion in the City include several partially-developed areas designated as farmland. These areas will be required to prepare community plans and associated environmental documents that include protection of farmland. Until these documents have been prepared, these areas cannot be annexed into the City.

The overreaching goals of the General Plan Urban Expansion Chapter are: a compact urban form (including infill, and control of annexation both by annexation policies in the General Plan and recognizing the interaction between these City policies and LAFCO’s own annexation policies); preservation of agriculturally significant areas; and efficient urban expansion. Specific policies to protect farmland include: UE-1.1 (page 2-24); L-2.2 (page 44); L-3.7 (page 3-65); and OS-2.1 (page 7-27). There are no policies that conflict or are inconsistent with the goal to protect and preserve agricultural lands as indicated by the Commenter.

Comment 18Q: 2. Open Space Lands Act of 1972 (Govt. Code § 65560 et seq.)

The GP also violates the Open Space Lands Act of 1972. (Govt. Code § 65560 et seq.) There are multiple Government Code sections contained in the Act that require a City to provide for protection of open space. (See Govt. Code §§ 65561, 65562, 65563, 65566 and 65567.) The City must have an open space preservation plan, and any action taken by the City to update its general plan must be consistent with the required plan. (Id.) The GP violates this statutory scheme and the EIR failed to account for the requirements.

Because of the issues raised above, we believe that the DEIR fails to meet the requirements of the California Environmental Quality Act and the State Planning Laws.

The Plan and the DEIR should be substantially revised to comply with these laws.

Response 18Q: California Government Code requires that an open-space element be included as one of seven mandated elements in a general plan (Govt. Code § 65302.(e)). This element is often combined with the conservation element. The City has included a combined, “Open Space, Conservation, and Recreation” element (Chapter 7), which was updated from the 2015 General Plan. The open space element must include: officially adopted goals and policies; a program for completion and adoption by December 31, 1973; and an action program consisting of specific programs (Govt. Code § 65563 and 65564). In 2004, the City adopted its updated “Parks and Open Space Master Plan,” which is consistent with the Open Space, Conservation, and Recreation element. These documents address all the requirements of Government Code. The Commenter failed to indicate how the City “violates this statutory scheme,” and the comment is therefore insufficient for a more detailed response.

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October 22, 2010

Kim Espinosa, Planning Manager
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VIA EMAIL

RE: Notice of Completion, Draft Environmental Impact Report (DEIR)
City of Merced General Plan Update
SCH #2008071069

Dear Ms. Espinosa:

Below you will find our initial comments (and questions) regarding the DEIR. We are reserving the right to provide additional written comments, and oral comments at the appropriate public meeting(s).

Comment #1

Due to the proposed expansion of the Specific Urban Development Plan area, the City of Merced's "Storm Drain Master Plan", dated April 19, 2002, needs to be amended, particularly the "watersheds" identified in Figure ES-1 and the impact of the UC Merced area.

Comment #2

Private and/or parochial schools need be allowed and be substituted (i.e. "in place of") public schools for the purpose of satisfying the General Plan "Floating School Site" land use designation.

Comment #3

Upon Local Agency Formation Commission (LAFCO) approval of any particular annexation and pre-zoning application, and recordation of a "Pre-Annexation Agreement" for property which includes one or more public facilities (i.e. park, school, fire and/or police station, water well site, corporation, storage and/or maintenance yard, etc.), the City shall acquire that property designated for such public uses within three (3)

	A
	B
	C
	D

months and school district(s) need be committed to purchasing the specific area designated for public education within three (3) months.

Absent this commitment/requirement, the actions of the City and LAFCO would amount to confiscation of property without just compensation through the zoning and land use designation of an applicant's property, thus denying the applicant the continued use and enjoyment of the property while the property owner would continue to be responsible for the up-keep and maintenance, including the payment of property taxes.

D cont.

Comment #4

The City should consider establishing a "Form-based Zoning" code for the purpose of implementing "Village Community" design guidelines.

E

Comment #5

For the land use category labeled "Business Park": the City's municipal code, Title 20 "Zoning", does not describe the allowed uses, permitted uses, restricted uses, conditions or restrictions for this land use designation. This land use category was first conceptualized with the City's 1997 General Plan Update and over the past 13 years the City has neglected to describe "Business Park" in their municipal code and has failed to provide development guidelines and building standards for this land use designation.

F

Comment #6

The area extending east from Bellevue Ranch (toward UC Merced) does not have a distinguishable land use. How is that undistinguishable land use accounted for in the various land-use tables, within the DEIR, particularly Sec. 3.9 ("Land Use and Planning")?

G

Comment/Question #7

"Parks": Do private ("gated") parks count towards city park land mitigation fee requirements? Or, in lieu of?

H

Comment #8

Given the California Regional Water Control Board's mandate to require up-grading of the city's existing wastewater treatment plant as well as the planned expansion to tertiary levels, this general plan up-date must analyze and evaluate how the city can abide by the California Water Code, particularly Sections 10631 and 10633, State Water Resources Control Board Regulations 68-16 and 77-1 and the California Code of Regulations, Title 22.

I

Comment/Question #9

Assuming sewer demand at 1,000 gallons per acre and the combined SUDP/SOI will be 33,463 acres, at the completion of the city's sewer plant expansion to 20 million gallons per day some land in the SUDP/SOI will not have sewer service available. The EIR should be revised and amended to include a process or procedure for determining the priority of receiving and accepting applications for sewer connections and provision of service.

J

Air quality impacts from sewer line manhole covers venting "VOC's" has not been analyzed.

K

Quote from the State of California, "General Plan Guidelines", 2003 Edition, Page 24

"At the general plan level, discussions about environmental justice involve a central land use concept: compatibility. The primary purpose of planning, and the source of government authority to engage in planning, is to protect the public health, safety, and welfare. Incompatible land uses may create health, safety, and welfare issues for the community...environmental justice problems indicate a failure of land use planning to deliver on its original promise—reducing the harmful effects of incompatible land uses."

Page 24

"Residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust), and exposure to hazardous materials.

L

Specific examples of land use incompatibility include....

- Residential and school uses adjacent to major thoroughfares, such as highways."

At the Merced General Plan Update stakeholders meeting on March 15, 2007, a consultant from Quad Knopf stated that noise and air quality will play a big role in determining land use.

Since the City's last General Plan Update (1997) significant legislation has been passed by the state legislature and signed into law by the Governor, including SB 375 and AB 32, together with the introduction of the State of California, "General Plan Guidelines", 2003 Edition.

Comment #10

The 2030 General Plan Land Use Diagram will necessarily need to be revised in order to reconcile the obvious conflicts with circulation, noise and air quality, particularly relating to previously established land use patterns.

Quote from the State of California, “General Plan Guidelines”, 2003 Edition, Page 51

“The *Twain Harte* (*Twain Harte Homeowners Association, Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664) and *Concerned Citizens* (*Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County* (1985) 166 Cal.App.3d 90) decisions also discussed the close relationship between the land use and circulation elements. Pursuant to the decisions of the *Concerned Citizens*, *Twain Harte*, and *Camp v. Mendocino* (*Camp v. County of Mendocino* (1981) 123 Cal.App.3d 334) courts, the general plan must reflect both the anticipated level of land development (represented in the land use element) and the road system necessary to serve that level (represented in the circulation element). The road systems proposed in the circulation element must be ‘closely, systematically, and reciprocally related to the land use element of the plan’ (*Concerned Citizens, supra, at p. 100*)

According to Government Code §65302(f), the noise element is to be used as ‘a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.’ When the noise element is inadequate, the land use element may be invalid, as in the *Camp* case.

The purpose of the land use element is to designate ‘the proposed general distribution and general location and extent of uses of the land.’ The land use element should focus on the future growth and physical development of the community and planning area.”

Page 87

“Local governments must ‘analyze and quantify’ noise levels and the extent of noise exposure through actual measurement or the use of noise modeling. Technical data relating to mobile and point sources must be collected and synthesized into a set of noise control policies and programs that ‘minimizes the exposure of community residents to excessive noise.’ Noise level contours must be mapped and the conclusions of the element used as a basis for land use decisions. The element must include implementation measures and possible solutions to existing and foreseeable noise problems. Furthermore, the policies and standards must be sufficient to serve as a guideline for compliance with sound transmission control requirements. The noise element directly correlates to the land use, circulation, and housing elements.

M

The noise element must be used to guide decisions concerning land use and the location of new roads and transit facilities since these are common sources of excessive noise levels.”

Page 202

“A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for. . . .

- Primary arterials and major local streets.”

Comment #11

Again, the 2030 General Plan Land Use Diagram will necessarily need to be revised in order to resolve the obvious conflicts with circulation, noise and air quality, particularly relating to previously established land use patterns, so that these Elements will be correlated and integrated, as required by Government Code §65300.5.

Quote from the State of California, “General Plan Guidelines”, 2003 Edition, Page 55

“By statute, the circulation element must correlate directly with the land use element. The circulation element also has direct relationships with the housing, open-space, noise and safety elements.

The circulation system is one of the chief generators of physical settlement patterns and its location, design, and constituent modes have major impacts on air quality...environmental noise...and other environmental components.”

Page 89

“Guidance for zoning and development through the adoption of....compatibility zoning, and other land use strategies.

The evaluation of new residential and other sensitive uses for consistency with noise standards in areas adjacent to a major source of noise.”

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M cont.

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The *Concerned Citizens* court defined the term “correlated” as follows:

“‘Correlated’ means ‘closely, systematically, or reciprocally related....’ [Webster’s Third New International Dictionary (1981) p. 511]. Section 65302 therefore requires that the circulation element of a general plan, including its major thoroughfares, be closely, systematically, and reciprocally related to the land use element of the plan.

...the *Twain Harte* case indicates that the courts may look beyond the circulation element to supporting documents (e.g., other sections of the general plan) when such evidence is not readily apparent (*Twain Harte, supra*, at p. 701). To be on the safe side, local governments should provide explicit evidence of correlation in both their circulation and land use elements.

The *Twain Harte* case indicates that the courts will not automatically presume the existence of correlation simply because a local government has adopted both its circulation and land use elements. Although general plans, as legislative enactments of the police power, will be presumed valid by the courts (if they are reasonably related to promoting or protecting the health, safety, or welfare, and are not arbitrary and capricious), such plans must nevertheless be in substantial compliance with state law. (See *Camp* at p. 348 and *Buena Vista Gardens Apartments Association v. City of San Diego Planning Department* (1985) 175 Cal. App.3d 289, 298.) In other words, the courts will review a plan for its actual compliance with the requirements of the state’s general plan statutes. In this case, the court used the *General Plan Guidelines* to help determine compliance.”

Comment #12

Because the font size for the “2030 Output Model-Mitigated” (traffic) is so tiny, and because the “2030 General Plan Land Use Diagram” lacks roadway identifications (other than for highways), we are not able to review, analyze and comment on the appropriateness or accuracy of the Draft Merced Vision 2030 General Plan EIR.

The “2030 General Plan Land Use Diagram” does not relate very well to the circulation plan, as is required by General Plan Guidelines, (2003 Edition) for instance:

- A) No light-rail designation,

O cont.

P

- B) No identification of the “Campus Parkway”,
- C) No identification of the proposed Atwater-Merced expressway alignment.

Without proper correlation of the circulation plan with the land use plan adverse and unwanted noise, glare and air quality conflicts and issues will be glossed-over, or may not even be identified. [Government Code §65300.5]

P cont.

The land use plan was released to the public for comment in September 2007, without the benefit of reviewing its correlation to the Circulation Plan, which was not available to the public until September 2010. [CEQA Guidelines, sections 15140 and 15150]

Comment #13

The City must be committed to fire station development in relation to “goals, policy’s and implementing actions” in order to achieve 4-6 minute emergency response times (safety element) and cease ignoring the City’s own standards by claiming discretionary authority afforded Charter cities under the Government Code.

Q

Comment #14

Regarding bicycle and vehicle safety and according to the City of Merced’s police department accident reports, there are nearly 45 accidents **per year** (average over the last 10 years) involving bicycles and vehicles. Expand existing General Plan Policy T-1 to include; require all bicycles to be periodically inspected and licensed for functional safety, and bicyclists must a) be of a minimum age (established by ordinance), b) be licensed (pass written, operational and eye examinations, and c) carry written evidence of accident insurance. We want to encourage **SAFE BICYCLING**, particularly when sharing the pavement with automobiles.

R

As we expand our bikeway system and as bicycle uses increase, adequate safety policies **must** be established, or in some cases enhanced, particularly for on-street bikeways (Class II and Class III).

(Note: City of Dinuba Municipal Code, Chapter 10.40 (“Bicycles”) and City of Davis Municipal Code (6.0.0 Bicycles) should both be reviewed by the City for guidance.)

Comment #15

On Page 3 of “Appendix L” reference is made to: “ECO:LOGIC. *City of Merced Sewer Master Plan* (January, 2007).”

S

This reference is false, deceitful and a misrepresentation. The actual document is labeled (on its cover) as a “DRAFT”; it has been “accepted” by the Merced City Council, without

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the public having an opportunity to review, analyze and comment. There has been no California Environmental Quality Act (CEQA) assessment, and therefore cannot legitimately be labeled a "Master Plan".

S cont.

We very much appreciate you providing us with the opportunity to comment and look forward to working with the City of Merced towards a "Final" EIR.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rick Telegan", written over the word "Sincerely,".

RICK TELEGAN

RT:sw

Letter 19 Rick Telegan, 3rd Millennium Investments

Comment 19A: *Below you will find our initial comments (and questions) regarding the DEIR. We are reserving the right to provide additional written comments, and oral comments at the appropriate public meeting(s).*

Response 19A: Comment is noted.

Comment 19B: Comment #1

Due to the proposed expansion of the Specific Urban Development Plan area, the City of Merced's "Storm Drain Master Plan", dated April 19, 2002, needs to be amended, particularly the "watersheds" identified in Figure ES-1 and the impact of the UC Merced area.

Response 19B: The City understands that documents associated with management of infrastructure must be updated in order to accurately reflect planning and design elements in areas currently outside its jurisdiction. The City will work closely with the County of Merced, Merced Irrigation District, and the City of Atwater to address “erosion, sedimentation, and other non-point pollutants of concern...” (General Plan Update, page 11-11).

Comment 19C: Comment #2

Private and/or parochial schools need be allowed and be substituted (i.e. "in place of") public schools for the purpose of satisfying the General Plan "Floating School Site" land use designation.

Response 19C: Floating park and school sites are defined as, “public parks, golf courses, greens, commons, playgrounds, landscape areas and similar types of public and private open spaces.” (General Plan Update, page 3-88). Page 3-9 of the Draft *Merced Vision 2030 General Plan* and page 3.9-8 of the Draft EIR will be revised as follows:

General Plan page 3-9:

OS-PK (Open Space/Parks and Recreation)

To provide public and private open space for outdoor recreation both passive and active. OS-PK areas may be designated in areas containing public parks, golf courses, greens, commons, playgrounds, landscape areas and similar types of public and ~~public~~ private open spaces.

DEIR page 3.9-8:

OS-PK (Open Space-Park/Recreation)

To provide public and private open space for outdoor recreation both passive and active. OS-PK areas may be designated in areas containing public parks, golf

courses, greens, commons, playgrounds, landscape areas and similar types of public and ~~public-private~~ open spaces.

In addition, the "School" land use designation was mistakenly omitted from the discussion of General Plan land use designations. Therefore, the definition of "Public/Government" on pages 3.9-8 of the Draft EIR and pages 3-9 and 3-87 of the Draft *Merced Vision 2030 General Plan*, which does mention schools, has been expanded as follows:

DEIR page 3.9-8:

OTHER

P/G or School (Public/Government or School)

To provide public facilities such as schools, fire stations, police stations, public buildings (libraries, courthouse, public offices, etc.) and similar types of public uses and facilities.

General Plan page 3-9:

OTHER

P/G or School (Public/Government or School)

To provide public facilities such as schools, fire stations, police stations, public buildings (libraries, courthouse, public offices, etc.) and similar types of public uses and facilities.

General Plan page 3-87:

6) Other Land Use Designations

A) P/G or School (Public/Government or School)

a. Purpose and Intent: To provide public facilities such as schools, fire stations, police stations, public buildings (libraries, courthouse, public offices, etc.) and similar types of public uses and facilities.

It is not the intent of the City to exclude private or parochial schools, but rather to provide appropriate land for open space and school use in existing and future development throughout the City.

Comment 19D: *Comment #3*

Upon Local Agency Formation Commission (LAFCO) approval of any particular annexation and pre-zoning application, and recordation of a "Pre-Annexation Agreement" for property

which includes one or more public facilities (i.e. park, school, fire and/or police station, water well site, corporation, storage and/or maintenance yard, etc.), the City shall acquire that property designated for such public uses within three (3) months and school district(s) need be committed to purchasing the specific area designated for public education within three (3) months.

Absent this commitment/requirement, the actions of the City and LAFCO would amount to confiscation of property without just compensation through the zoning and land use designation of an applicant's property, thus denying the applicant the continued use and enjoyment of the property while the property owner would continue to be responsible for the up-keep and maintenance, including the payment of property taxes.

Response 19D: We interpret the commenter's recommendation to mean that the City should formulate a policy stating that it will purchase land that has been designated, zoned, or annexed for public facilities within three months of that action. If that is the intent of the recommendation, it is one that is a legal and financial matter that is beyond the scope of the DEIR to address. Please note that it is the City's intent to set aside various lands for public use so that public (and private) school districts, the City, and private service providers have the ability to purchase lands directly from land owners when the need for the service arises.

Comment 19E: Comment #4

The City should consider establishing a "Form-based Zoning" code for the purpose of implementing "Village Community" design guidelines.

Response 19E: Comments regarding the City's municipal code are policy issues separate from the General Plan Update and are outside the scope of the DEIR.

Comment 19F: Comment #5

For the land use category labeled "Business Park": the City's municipal code, Title 20 "Zoning", does not describe the allowed uses, permitted uses, restricted uses, conditions or restrictions for this land use designation. This land use category was first conceptualized with the City's 1997 General Plan Update and over the past 13 years the City has neglected to describe "Business Park" in their municipal code and has failed to provide development guidelines and building standards for this land use designation.

Response 19F: As with Response to Comment 19E, the Commenter's concern with the City's municipal code are outside the scope of the DEIR for the General Plan Update. The General Plan Update (page 3-8) does provide a general description and appropriate uses of lands designated as BP (Business Park) as, "areas for a mix of commercial, office, and industrial uses with shared access and parking facilities. Uses could include a wide variety of light manufacturing, warehousing, office, research and development, and service business activities."

Comment 19G: Comment #6

The area extending east from Bellevue Ranch (toward UC Merced) does not have a distinguishable land use. How is that undistinguishable land use accounted for in the various land-use tables, within the DEIR, particularly Sec. 3.9 ("Land Use and Planning")?

Response 19G: Figure 2-3 of the DEIR (page 2-13) is a map of the 2030 Specific Urban Development Plan/Sphere of Influence Boundary. On this map the area to which the commenter refers is designated as the Bellevue Road Corridor Community Plan (See General Plan Update, beginning on page 3-72, and the concept map on page 3-93). This area is shown conceptually as a mix of uses, including a "mixed use" conceptual designation which would be refined further through the Community Plan process as described in the General Plan text. Those areas within the Community Plan area not designated as a specific land use category are included in the various land use tables under the "Other Lands" category.

Comment 19H: Comment/Question #7

"Parks": Do private ("gated") parks count towards city park land mitigation fee requirements? Or, in lieu of?

Response 19H: The requirement for park land is determined by California Government Code §66477, also known as the 1975 Quimby Act. Page 3.13-5 of the DEIR states that cities and counties must pass ordinances requiring that developers set aside land, donate conservation easements, or pay fees for park improvements. The regulation does not distinguish between private or gated communities and other types of residential development required to comply with the regulation. The City encourages the development of parks with policies such as Policy OS-3.1 and the Implementing Actions associated with this policy (pages 7.28 through 7.30), especially 3.1.e, "Use the City's Park Dedication Ordinance to develop the City's park system," which addresses the location of parks.

Comment 19I: Comment #8

Given the California Regional Water Control Board's mandate to require up-grading of the city's existing wastewater treatment plant as well as the planned expansion to tertiary levels, this general plan up-date must analyze and evaluate how the city can abide by the California Water Code, particularly Sections 10631 and 10633, State Water Resources Control Board Regulations 68-16 and 77-1 and the California Code of Regulations, Title 22.

Response 19I: The DEIR fully discusses wastewater treatment capacities and planned treatment capabilities to assure full compliance with the Regional Water Quality Control Board's enforcement of pertinent State regulations (see p. 3.16-3).

Comment 19J: Comment/Question #9

Assuming sewer demand at 1,000 gallons per acre and the combined SUDP/SOI will be 33,463 acres, at the completion of the city's sewer plant expansion to 20 million gallons per day some

land in the SUDP/SOI will not have sewer service available. The EIR should be revised and amended to include a process or procedure for determining the priority of receiving and accepting applications for sewer connections and provision of service.

Response 19J: The commentor's assumption of sewer demand of 1,000 gallons per acre and a combined SUDP/SOI for a total of 33,463 acres is an inaccurate assumption. Some of the land to be annexed is currently zoned for rural residential, and in some of these rural residential areas, landowners have a private septic system. Other areas are within various community plan or specific plan areas, and wastewater disposal will be addressed before annexation occurs. Page 2-32 of the General Plan Update includes Implementation Actions for Policy UE-1.5, intended to address concerns about services in the rural areas to be annexed. For example, not all residents in these areas will receive City wastewater disposal right away. Also, as is noted under Implementing Action 1.6.a.d, to be included within the City's SUDP/SOI, the area must meet several criteria including, "The property owner is committed to finance the City's Wastewater Treatment Plant & capacity is available." The DEIR estimates that the expanded wastewater treatment facility will accommodate a population of 174,000 residents, and will be more than sufficient through the planning period.

Comment 19K: *Air quality impacts from sewer line manhole covers venting "VOC's" has not been analyzed.*

Response 19K: VOC analysis from man holes is not required by the San Joaquin Valley Air Pollution Control District, although it is required by at least one other air district in the State. When required, an analysis would be conducted on a project level basis, so that a new industry, petroleum refinery or other potential source of VOC emissions would include its findings in an EIR prepared specifically for that project.

Comment 19L:

Quote from the State of California, "General Plan Guidelines", 2003 Edition, Page 24

"At the general plan level, discussions about environmental justice involve a central land use concept: compatibility. The primary purpose of planning, and the source of government authority to engage in planning, is to protect the public health, safety, and welfare. Incompatible land uses may create health, safety, and welfare issues for the community.... environmental justice problems indicate a failure of land use planning to deliver on its original promise-reducing the harmful effects of incompatible land uses."

Page 24

"Residential and school uses are harmed by incompatible land uses that have environmental effects, such as noise, air emissions (including dust), and exposure to hazardous materials.

Specific examples of land use incompatibility include

- *Residential and school uses adjacent to major thoroughfares, such as highways."*

At the Merced General Plan Update stakeholders meeting on March 15, 2007, a consultant from Quad Knopf stated that noise and air quality will play a big role in determining land use.

Since the City's last General Plan Update (1997) significant legislation has been passed by the state legislature and signed into law by the Governor, including SB 375 and AB 32, together with the introduction of the State of California, "General Plan Guidelines", 2003 Edition.

Response 19L: As the commenter noted, at the March 2007 public meeting, the City relayed the importance of developing parcels for schools, open space, and residential use compatible with land uses that have environmental effects. In order to make adjacent land uses compatible, the City will both 1) encourage or require fewer environmental impacts in future land use where appropriate (e.g., reduction to air emissions), and 2) ensure that proposed land uses are compatible with existing uses (i.e., designate a buffer between school and manufacturing/industrial uses). Land use designations within the existing 2015 Specific Urban Development Plan boundary were only minimally changed in the 2030 General Plan Update; however, the designations allow some flexibility. Specific projects will be evaluated by the City as they are proposed, and a separate environmental report, permits, and approval will be required for each. In this way, the residents and the City can determine the compatibility of a proposed project with surrounding land uses.

Comment 19M and 19N:

Comment #10

The 2030 General Plan Land Use Diagram will necessarily need to be revised in order to reconcile the obvious conflicts with circulation, noise and air quality, particularly relating to previously established land use patterns.

Quote from the State of California, "General Plan Guidelines", 2003 Edition, Page 51

"The Twain Harte (Twain Harte Homeowners Association, Inc. v. County of Tuolumne (1982) 138 Cal. App. 3d 664) and Concerned Citizens (Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County (1985) 166 Cal. App. 3d 90) decisions also discussed the close relationship between the land use and circulation elements. Pursuant to the decisions of the Concerned Citizens, Twain Harte, and Camp v. Mendocino (Camp v. County of Mendocino (1981) 123 Cal.App. 3d 334) courts, the general plan must reflect both the anticipated level of land development (represented in the land use element) and the road system necessary to serve that level (represented in the circulation element). The road systems proposed in the circulation element must be 'closely, systematically, and reciprocally related to the land use element of the plan' (Concerned Citizens, supra, at p. 100)

According to Government Code §65302(f), the noise element is to be used as 'a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of

community residents to excessive noise.' When the noise element is inadequate, the land use element may be invalid, as in the Camp case.

The purpose of the land use element is to designate 'the proposed general distribution and general location and extent of uses of the land.' The land use element should focus on the future growth and physical development of the community and planning area."

Page 87

"Local governments must 'analyze and quantify' noise levels and the extent of noise exposure through actual measurement or the use of noise modeling. Technical data relating to mobile and point sources must be collected and synthesized into a set of noise control policies and programs that 'minimizes the exposure of community residents to excessive noise.' Noise level contours must be mapped and the conclusions of the element used as a basis for land use decisions. The element must include implementation measures and possible solutions to existing and foreseeable noise problems.

Furthermore, the policies and standards must be sufficient to serve as a guideline for compliance with sound transmission control requirements. The noise element directly correlates to the land use, circulation, and housing elements. The noise element must be used to guide decisions concerning land use and the location of new roads and transit facilities since these are common sources of excessive noise levels."

Page 202

"A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for

- *Primary arterials and major local streets."*

Comment #11

Again, the 2030 General Plan Land Use Diagram will necessarily need to be revised in order to resolve the obvious conflicts with circulation, noise and air quality, particularly relating to previously established land use patterns, so that these Elements will be correlated and integrated, as required by Government Code §65300.5.

Response 19M and 19N: The City appreciates the commentor's research into the issues of circulation and noise, and their importance in the General Plan Update and, more specifically the Land Use Element. The General Plan Update identified noise-sensitive land uses as, "hospitals, rest homes, schools, and long-term medical care facilities." It also noted that, "significant noise sources include traffic on major roadways and highways, railroad operations, airports, representative industrial activities, and fixed noise sources." In order to ensure that existing sensitive noise receptors, such as schools and hospitals, are not exposed to long-term noise above

acceptable decibel levels, the City must restrict newly proposed uses such as highway expansions, and certain types of manufacturing or industrial uses within close proximity (see General Plan Update, page 10-4). The City has restricted future residential use around airports, and has typically designated manufacturing and industrial uses in areas away from sensitive noise receptors. Also, as explained in Response 19L, environmental documents must be prepared for proposed projects, and may or may not be approved by the City, depending on whether or not each is considered a compatible land use.

Comment 190: *Quote from the State of California, "General Plan Guidelines", 2003 Edition, Page 55*

"By statute, the circulation element must correlate directly with the land use element. The circulation element also has direct relationships with the housing, open-space, noise and safety elements.

The circulation system is one of the chief generators of physical settlement patterns and its location, design, and constituent modes have major impacts on air quality ... environmental noise ... and other environmental components."

Page 89

"Guidance for zoning and development through the adoption of... compatibility zoning, and other land use strategies.

The evaluation of new residential and other sensitive uses for consistency with noise standards in areas adjacent to a major source of noise."

At the Citizen's Advisory Committee meeting on February 7, 2007, Kim Hutson, a Planning Consultant with Quad Knopf stated the "circulation element" needs to track the "land use element".

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Response 19O: The City understands the Commenter's concerns regarding the ability to evaluate planned circulation improvements and expansion. The correlation of the circulation element and land use element are described further in Response 19P.

Comment 19P: Comment #12

Because the font size for the "2030 Output Model-Mitigated" (traffic) is so tiny, and because the "2030 General Plan Land Use Diagram" lacks roadway identifications (other than for highways), we are not able to review, analyze and comment on the appropriateness or accuracy of the Draft Merced Vision 2030 General Plan EIR.

The "2030 General Plan Land Use Diagram" does not relate very well to the circulation plan, as is required by General Plan Guidelines, (2003 Edition) for instance:

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- B) No identification of the "Campus Parkway",*
- C) No identification of the proposed Atwater-Merced expressway alignment.*

Without proper correlation of the circulation plan with the land use plan adverse and unwanted noise, glare and air quality conflicts and issues will be glossed-over, or may not even be identified. [Government Code §65300.5]

The land use plan was released to the public for comment in September 2007, without the benefit of reviewing its correlation to the Circulation Plan, which was not available to the public until September 2010. [CEQA Guidelines, sections 15140 and 15150]

Response 19P: Major arterials can be found on page 4-8 of the General Plan Update, in Figure 4.2, Major Regional Routes. The proposed Atwater-Merced expressway and Campus Parkway are identified on this map as well as on the Circulation Map (Figure 4.1). Page 6-6 of the General Plan Update defines the use of the term "Transit-Oriented Development" as opposed to

“Transit-Ready Development.” Because the City recognizes the advantages of light-rail, but does not yet have plans in place for the installation of light-rail, this type of mass transit will not be indicated on the map. Figure 4.8 illustrates the existing rail lines in the City (page 4-23). All of these figures also include highway numbers that correlate to their locations on the Land Use Diagram the Commenter references.

Comment 19Q: Comment #13

The City must be committed to fire station development in relation to "goals, policy's and implementing actions" in order to achieve 4-6 minute emergency response times (safety element) and cease ignoring the City's own standards by claiming discretionary authority afforded Charter cities under the Government Code.

Response 19Q: In 2010, the City’s ISO ranking was a Class 2 (Class 1 is the highest level of protection on a 1 – 10 scale). The City recognizes that the areas currently served by the five existing stations will need to change in order to continue to provide protection in the larger SUDP/SOI. Fire protection services are analyzed and revised under the City’s Fire Department Master Facilities Plan and is highly affected by the financial resources available to the City to construct new fire facilities. On page 5-4 of the General Plan Update, it states, “The Department has a goal of maintaining a response time of four to six minutes for the first crew to arrive at a fire or medical emergency within an assigned district....As the City continues to grow in population and area, the fire protection system will have to change if it is to maintain this response time standard. This would require two existing stations to be relocated and five new facilities with personnel and equipment to be added to the system.” Policy P-2.1 (pages 5-25 and 5-26) and Policy S-4.1 (pages 11-34) and associated implementing actions address these changing needs. Policy P-2.1 calls for the City to “Maintain and enhance public protection facilities, equipment and personnel to the maximum extent feasible within the resource constraints of the City to serve the City’s needs.”

Comment 19R: Comment #14

*Regarding bicycle and vehicle safety and according to the City of Merced's police department accident reports, there are nearly 45 accidents **per year** (average over the last 10 years) involving bicycles and vehicles. Expand existing General Plan Policy T-1 to include; require all bicycles to be periodically inspected and licensed for functional safety, and bicyclists must a) be of a minimum age (established by ordinance), b) be licensed (pass written, operational and eye examinations, and c) carry written evidence of accident insurance. We want to encourage **SAFE BICYCLING**, particularly when sharing the pavement with automobiles.*

*As we expand our bikeway system and as bicycle uses increase, adequate safety policies **must** be established, or in some cases enhanced, particularly for on-street bikeways (Class II and Class III). (Note: City of Dinuba Municipal Code, Chapter 10.40 ("Bicycles") and City of Davis Municipal Code (6.0.0 Bicycles) should both be reviewed by the City for guidance.)*

Response 19R: The City wholeheartedly agrees with the Commenter’s concerns regarding encouraging safe bicycling, and appreciates the referenced codes from the City of Dinuba and

Davis. The City's Municipal Code, which is a separate document from the General Plan Update but is consistent with the General Plan Update and other City policy documents, may include codes regarding bicycle safety issues in the future, but no specific ordinance language has yet to be proposed or considered by the City Council.

The City is currently involved in implementing the Merced Bike Plan, which it hopes will include a Bike Friendly Community designation from the League of American Bicyclists. The response from the League to the City's application for this designation (dated October 25, 2010) included suggestions to improve cycling and awarded the City an "Honorable Mention" designation. Among these suggestions was, "Continue to expand public education campaigns to promote the share the road message and the rights and responsibilities of all users." This and other information is available on the City's website at http://www.cityofmerced.org/depts/cityclerk/boards_n_commissions/bicycle_advisory_commission/2011_bicycle_advisory_commission/2011_bicycle_advisory_commission_staff_reports.asp.

Comment 19S: Comment #15

On Page 3 of "Appendix L" reference is made to: "ECO:LOGIC. City of Merced Sewer Master Plan (January, 2007)."

This reference is false, deceitful and a misrepresentation. The actual document is labeled (on its cover) as a "DRAFT"; it has been "accepted" by the Merced City Council, without the public having an opportunity to review, analyze and comment. There has been no California Environmental Quality Act (CEQA) assessment, and therefore cannot legitimately be labeled a "Master Plan".

We very much appreciate you providing us with the opportunity to comment and look forward to working with the City of Merced towards a "Final" EIR.

Response 19S: The correct name of the document is "Draft City of Merced Sewer Master Plan.". The Master Plan was accepted by the City Council in 2007; however, to date, it has not been adopted.

The City has contracted with ECO:LOGIC Engineering and Erler & Kalinowski, Inc. for the wastewater facility design and permitting. The City has also selected Environmental Science Association to complete the required environmental documentation. OVERAA Construction was awarded the construction contract and Carollo Engineering will oversee construction management.



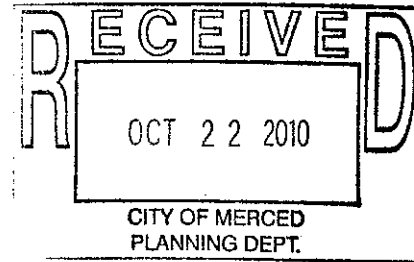
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October 22, 2010

VIA FACSIMILE AND E-MAIL



Kim Espinosa, Planning Manager
City of Merced
678 West 18th Street
Merced, CA 95340

RE: **UC Merced's Comments on Draft Program Environmental Impact Report,
City of Merced Vision 2030 General Plan (SCH# 2008071069)**

Dear Ms. Espinosa:

On behalf of the University of California, Merced ("UC Merced" or the "University"), we appreciate the opportunity to provide comments on the Draft Program Environmental Impact Report for the City of Merced Vision 2030 General Plan (DPEIR). In general, the DPEIR does not reflect the land use map of the UC Merced campus and University Community approved by the University of California, Board of Regents (University) and the US Army Corps of Engineers ("Corps") in 2009. The DPEIR should be clarified to reflect the land use plans for the UC Merced campus and University Community that were analyzed in the 2009 UC Merced and University Community Environmental Impact Statement/Environmental Impact Report ("2009 UC Merced and University Community EIS/EIR").

BACKGROUND

The University provided detailed comments in its August 18, 2008 letter regarding the Notice of Preparation for the City of Merced Vision 2030 General Plan Environmental Impact Report. That letter also included a background discussion that described the University's efforts to revise the campus and community footprint. For your convenience, we have updated that discussion and include it below.

In 1988, the University initiated planning for a new campus to accommodate projected growth in student enrollment. The University focused this effort in the San Joaquin Valley and in 1995 selected the Lake Yosemite Site in eastern Merced County. The Merced Vision 2015 General

A

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Plan, adopted in 1997, adjusted the City's Sphere of Influence (SOI) to accommodate this 7,000-acre site.

In late 2000, in response to input from the agencies and public concern regarding the potential impacts on vernal pools and biological resources from locating at the original site, the University shifted the campus to the southwestern portion of the VST property. This change also entailed a corresponding relocation of the adjacent community to the south of the VST property. This shift reduced the size of the campus from approximately 2,000 acres to 1,250 acres, and reduced the size of the supporting University Community from 5,000 acres to 2,133 acres.

The University adopted a Long Range Develop Plan (LRDP) and certified an EIR for the 1,250 acre campus in 2002. Following the certification of the 2002 LRDP EIR, UC Merced submitted an application to the Corps for a Clean Water Act Section 404 permit to fill a total of approximately 86 acres of wetlands present on the campus site. Concurrently, the County of Merced submitted an application for a CWA Section 404 permit to fill 4.5 acres of wetlands to build certain backbone infrastructure needed to serve the campus located within the boundaries of the University Community. In 2004, the County of Merced adopted a Specific Urban Develop Plan (SUDP) and certified an EIR for the University Community.

In late 2007, representatives of UC Merced and Merced County consulted with representatives of the federal environmental permitting agencies and environmental groups on potential revisions to the 2002 footprint of the campus and community. Following these discussions, the University submitted a revised Clean Water Act Section 404 permit application to the U.S. Army Corps of Engineers ("Corps") for a further reduced 815-acre campus and 1,950-acre community.

Since then, the University and Corps have revised the LRDP and certified an EIR/EIS to satisfy the requirements of CEQA (relative to the revised LRDP) and NEPA (relative to the Corps' permitting process), respectively. The University and Corps certified the EIR/EIS in March 2009 and the Corps issued a Section 404 permit to UC Merced on April 29, 2009.

Unfortunately, the City of Merced's revised SOI includes the 2002 footprints for the campus and community instead of 2009.

Although the lands included in the revised footprint are currently located within the County, the City provides extra-territorial water and sewer service to 104 acres of already-developed property within the campus in accordance with a 2003 "Services Contract" between the City and UC Merced. Section 11 of the Services Contract requires UC Merced to enter into an "Agreement to Annex" this already-served property to the City upon specified terms and conditions. This arrangement is consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, which allows these kinds of extra-territorial service arrangements "in anticipation of a later change in organization" such as an annexation. Gov't Code § 56133(b). This property has not yet been annexed to the City.

The University believes that annexation of the UC Merced campus (including the already-served portion) and Community North, for which the University is joint owner (collectively referred to as the "Project Site") should remain a preferred option for a number of reasons – one of which is UC Merced's ability to access City services rather than having to develop its own stand-alone service facilities. Notably, the Draft Merced Vision 2030 General Plan ("Draft

B cont.

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D

General Plan”) indicates the City also believes annexation is desirable. For example, Implementing Action 1.4.a states: “Incorporate the UC Merced campus area as part of the City’s SUDP/Sphere of Influence and begin planning for the eventual annexation of the Campus.” Similarly, Implementing Action 1.4.b states that “the University Community should be incorporated into the City of Merced, and should not be part of the unincorporated County, or a separate City.” This position is consistent with other City Council resolutions and planning directions, as well as with the current Sphere of Influence boundary that was drawn to including the UC Merced campus and the University Community when the two entities were originally slated for location to the northeast of the current proposed sites.

D cont.

OVERALL COMMENTS ON THE DPEIR

Given the University’s and the City’s desire to establish an efficient process for the City’s potential annexation of the Project Site, the University’s overarching comment on the DPEIR is that the DPEIR should evaluate the land use plans analyzed in the UC Merced EIS/EIR and approved by the University and the Corps in 2009 as aspects of the Draft General Plan. In addition, the DPEIR should evaluate the potential annexation of the Project Site to the City of Merced.

E

1. The DPEIR Should Incorporate the 2009 Land Use Map of the Project Site.

The University submitted comments by letter dated August 18, 2008 on the Notice of Preparation for the City of Merced Vision 2030 General Plan Draft Environmental Impact Report. Materials depicting a 2008 version of the University’s land use plans were attached to that letter. (The letter and its attachments are included in Appendix A of the DPEIR.) The City did not incorporate those land use plans in the DPEIR, and as a result the figures depicting the Project Site reflect the 2002 footprint design that has been superseded. Since that comment letter, these plans have been slightly revised, and that set of revised land use plans was evaluated in the 2009 UC Merced EIS/EIR and approved by the University and the Corps in 2009. These 2009 land use plans should be included for analysis in the DPEIR as an aspect of the Draft General Plan. For your convenience, these plans are attached as Exhibit A. Given that the 2009 footprint and land uses for the Project Site have now been approved, the DPEIR should also incorporate where appropriate project information in the 2009 UC Merced EIS/EIR relative to the Project Site.

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The City should also revise the Draft General Plan to incorporate the 2009 land use plans. Accordingly, any figure in the Draft General Plan that includes an older version of the footprint or land use plans should be revised to reflect the 2009 footprint. (See, for example, Figure 2.3 showing the Merced 2030 Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI), and Figure 2.4a showing the General Plan Study Areas.) The Draft General Plan should also be revised where appropriate to reflect the acreages associated with the 2009 land use plans for the Project Site. (See, for example, the discussion on page 2-16 of the Draft General Plan regarding the approximate acreage of the areas proposed for inclusion in the Draft SUDP/SOI.) We note that the Land Use Chapter in the Draft General Plan includes a set of “Conceptual Land Use Plans for Proposed Community Plans.” Four of these plans depict various versions of the illustrative land use plans for the campus and University Community. These plans should be removed and replaced with the 2009 land use plans for the Project Site.

H

I

2. The DPEIR Should Evaluate the City's Potential Annexation of the Project Site.

In general, the DPEIR should evaluate the City's potential for annexation of the Project Site and LAFCO's role in that annexation.

J

a. The DPEIR Should Cover the Requirements of the Cortese-Knox-Hertzberg Act.

The discussion of the City's possible annexation of the Project Site should include an analysis of this annexation in light of the legal requirements of the Cortese-Knox-Hertzberg Act. The Act contains several requirements, but for purposes of this comment letter, we wish to underscore two of those requirements in particular.

First, the DPEIR should reflect the fact that every boundary change determination made by LAFCO must be consistent with the SOI established for the local agency affected by such determination. Gov't Code § 56375.5. Annexation of the Project Site therefore must be consistent with the City's SOI boundary. Accordingly, the DPEIR should evaluate the annexation of the Project Site, in addition to the revision to the City's SOI boundary to include the Project Site as reflected in the 2009 land use plans. The EIR's discussion regarding revisions to the SOI boundary should also cover LAFCO's requirement to conduct a "service review of the municipal services provided in the county or other appropriate area designated by [LAFCO]." *Id.* § 56430(a).

K

Second, the DPEIR should reflect the fact that the Cortese-Knox-Hertzberg Act requires, as a condition to any annexation, that a city "prezone" the territory to be annexed. Gov't Code § 56375(a). The Act further specifies that "[t]he decision of a [LAFCO] with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city." *Id.* We believe this rezoning requirement would be satisfied if the City incorporated the approved land uses for the Project Site, as analyzed in the 2009 UC Merced EIS/EIR and shown in the enclosed materials, into the City's updated General Plan.

L

Both of these requirements, in addition to the other requirements of the Cortese-Knox-Hertzberg Act, should be fully discussed in the General Plan EIR.

b. The DPEIR Should Cover the General Plan's Annexation Conditions.

The DPEIR's discussion of the Project Site's potential for annexation should also include a consideration of the Policies and Implementing Actions identified in Implementing Action 1.3.f of the City's existing General Plan and Implementing Action 1.3.g of the City's Draft General Plan for future annexation requests. This discussion should confirm that the potential annexation of the Project Site satisfies the "conditions" identified in the Draft General Plan as Policy UE-1.3, Implementing Action 1.3.g for annexation requests. These conditions include:

M

- (a) Is the area contiguous to the current City limits and within the City's SUDP/SOI? Do the annexed lands form a logical and efficient City limit and include older areas where appropriate to minimize the formation of unincorporated peninsulas?

(b) Is the proposed development consistent with the land use classifications on the General Plan Land Use Diagram (Figure 3.1)?	N
(c) Can the proposed development be served by the City water, sewer, storm drainage, fire and police protection, parks, and street systems to meet acceptable standards and service levels without requiring improvements and additional costs to the City beyond which the developer will consent to provide or mitigate?	O
(d) Will this annexation result in the premature conversion of prime agricultural land as defined on the Important Farmland Map of the State Mapping and Monitoring Program? If so, are there alternative locations where this development could take place without converting prime soils?	P
(e) Will a non-agricultural use create conflict with adjacent or nearby agricultural uses? If so, how can these conflicts be mitigated?	Q
(f) Does annexation of the area help the City reach one of the following goals?	R
(1) Does annexation of the area bring the City closer to annexation of the UC Merced campus and University Community?	
(2) Does the area contain significant amounts of job-generating land uses, such as industrial, commercial, office, and business/research & development parks?	S
(3) Does the project provide key infrastructure facilities or other desirable amenities, such as the extension of major roads, utility trunk lines, parks and recreational facilities, etc.?	T

The DPEIR should evaluate whether annexation of the Project Site satisfies each of these conditions and all other conditions and criteria identified in the Draft General Plan with respect to future annexation requests.

c. The DPEIR Should Identify LAFCO as a Responsible Agency.

As a general rule, LAFCOs must comply with CEQA before approving an annexation. *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263. In our experience, a city, county, or special district involved in an annexation generally assumes the role of lead agency, while the LAFCO functions as a responsible agency, for the purposes of CEQA review. A "responsible agency" is defined as a "public agency which proposes to carry out or approve a project, for

which [a] lead agency is preparing or has prepared an EIR.” 14 Cal. Code Regs. § 15381. The term also includes “all public agencies other than the lead agency which have discretionary approval power over the project.” *Id.* Because LAFCO would rely upon the General Plan EIR for any future annexation determination relative to the Project Site, LAFCO should be identified in the General Plan EIR as a “responsible agency,” and it should be given the opportunity to provide input to the City regarding potential environmental impacts resulting from the potential annexation of the Project Site to the City.

V cont.

SPECIFIC COMMENTS ON THE DPEIR

We have the following specific comments on the DPEIR, arranged below by chapter in the DPEIR.

1. Executive Summary

W

- Table ES-1 titled “Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)” should be updated to reflect the 2009 land use plans for the Project Site.

- The section regarding the “Proposed Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)” on page ES-5 should be updated to reflect the 2009 land use plans for the Project Site. Discussion item 3 on page ES-6 in particular should be modified to reflect the correct number of acres that will be included to take in the property between the current City limit/SUDP and the Project Site.

X

Y

2. Project Description (Chapter 2)

Z

- In general, the DPEIR’s Project Description should discuss the City’s potential annexation of the Project Site, as described above, and the fact that the updated General Plan will include the land uses proposed for the Project Site. The DPEIR should depict the Project Site’s 2009 land use plans on all relevant maps and drawings. As discussed above, each of the figures in the DPEIR that show the Project Site depict the 2002 version of the Project Site’s footprint. The land use plans analyzed in the 2009 UC Merced EIS/EIR show the revised boundaries of the Project Site and should be used instead.

AA

- The DPEIR sets forth on page 2-1 several “Planning Principles,” one of which mentions the UC Merced project: “Connectivity between existing and planned urban areas. Examples include the northeast area toward UCM, the University Community, and South Merced.” This Planning Principle should be clarified so that it refers to connectivity between existing urban areas and the proposed Project Site. In addition, the City should consider other Planning Principles that specifically bear on the potential annexation of the Project Site. For example:

BB

CC

<ul style="list-style-type: none"> ○ Commit to annexation of the Project Site as revised to ensure logical and previously approved development of eastern Merced. ○ Continue planning efforts to integrate UC Merced Project Site into Merced. ○ Evaluate feasibility of extending City services to the Project Site. 	CC cont.
<ul style="list-style-type: none"> ● Table 2-1 titled “Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)” should be updated to reflect the 2009 land use plans for the Project Site. 	DD
<ul style="list-style-type: none"> ● Figure 2-4 depicting the “Merced Vision 2030 General Plan EIR 2030 Land Use Map” should be revised to reflect the 2009 land use plans for the Project Site. 	EE
<ul style="list-style-type: none"> ● The section regarding the “Proposed Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)” on page 2-7 should be updated to reflect the 2009 land use plans for the Project Site. Discussion item 3 on page 2-7 in particular should be modified to reflect the correct number of acres that will be included to take in the property between the current City limit/SUDP and the UC Merced campus and community. 	FF
<ul style="list-style-type: none"> ● The section regarding the “Proposed Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)” on page 2-7 should be updated to reflect the 2009 land use plans for the Project Site. Discussion item 3 on page 2-7 in particular should be modified to reflect the correct number of acres that will be included to take in the property between the current City limit/SUDP and the UC Merced campus and community. 	GG
<ul style="list-style-type: none"> ● Table 2-1 in the DPEIR titled “Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)” sets forth land uses and their acreages within the city limits of Merced. If necessary, the City should recalculate these acreages in light of the Project Site’s revised boundaries, as shown in the attached materials. 	HH
<ul style="list-style-type: none"> ● The DPEIR states that “most of the changes” to the City’s General Plan are “due to the new location of the UC Merced campus and its adjacent University Community.” DPEIR at 2-9. The DPEIR also states that “[m]odifications were made to the City’s SUDP/Sphere of Influence to add the University Community area and to remove areas north and east of Lake Yosemite that have been identified as significant wetlands preservation areas.” DPEIR at 2-9. As noted above, the updated General Plan should use the 2009 land use plans analyzed in the 2009 UC Merced EIS/EIR. 	II
<p>3. Aesthetics (Chapter 3.1)</p>	
<ul style="list-style-type: none"> ● Figure 3.1-8 depicting the “Merced Vision 2030 General Plan EIR Scenic Corridors” should be revised to reflect the 2009 land use plans for the Project Site. 	JJ

4. Agricultural and Forest Resources (Chapter 3.2)

- Figure 3.2-1 depicting the “Merced Vision 2030 General Plan EIR Important Farmland Map” should be revised to reflect the 2009 land use plans for the Project Site. KK
- Figure 3.3-2 depicting the “Merced Vision 2030 General Plan EIR Williamson Act Lands” should be revised to reflect the 2009 land use plans for the Project Site. LL
- Page 3.2-4 refers to an approximate acreage of undeveloped land that could result in conversion to developed land, and Page 3.2-6 refers to an approximate acreage of land currently designated for agricultural use that could be affected by the proposed SUDP/SOI. This acreages may need to be revised in light of the 2009 land use plans for the Project Site. MM

5. Biological Resources (Chapter 3.4)

- Figure 3.4-1 depicting the “Merced Vision 2030 General Plan EIR National Wetlands Inventory” should be revised to reflect the 2009 land use plans for the Project Site. NN
- Figure 3.4-2 depicting the “Merced Vision 2030 General Plan EIR CNDDDB Occurrences – Plants” should be revised to reflect the 2009 land use plans for the Project Site. OO
- Figure 3.4-3 depicting the “Merced Vision 2030 General Plan EIR CNDDDB Occurrences – Wildlife” should be revised to reflect the 2009 land use plans for the Project Site. PP
- Figure 3.4-4 depicting the “Merced Vision 2030 General Plan EIR San Joaquin Valley Orcutt Grass Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. QQ
- Figure 3.4-5 depicting the “Merced Vision 2030 General Plan EIR Hairy Orcutt Grass Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. RR
- Figure 3.4-6 depicting the “Merced Vision 2030 General Plan EIR Green Tuctoria Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. SS
- Figure 3.4-7 depicting the “Merced Vision 2030 General Plan EIR Conservancy Fairy Shrimp Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. TT

<ul style="list-style-type: none"> Figure 3.4-8 depicting the “Merced Vision 2030 General Plan EIR Vernal Pool Fairy Shrimp Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. 	UU
<ul style="list-style-type: none"> Figure 3.4-9 depicting the “Merced Vision 2030 General Plan EIR Vernal Pool Tadpole Shrimp Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. 	VV
<ul style="list-style-type: none"> Figure 3.4-10 depicting the “Merced Vision 2030 General Plan EIR California Tiger Salamander Critical Habitat Map” should be revised to reflect the 2009 land use plans for the Project Site. 	WW
<p>6. Geology and Soils (Chapter 3.6)</p>	
<ul style="list-style-type: none"> Figure 3.6-1 depicting the “Merced Vision 2030 General Plan EIR Soils Map” should be revised to reflect the 2009 land use plans for the Project Site. 	XX
<p>7. Hazards and Hazardous Materials (Chapter 3.7)</p>	
<ul style="list-style-type: none"> Figure 3.7-2 depicting the “Merced Vision 2030 General Plan EIR Airport Compatibility Zones” should be revised to reflect the 2009 land use plans for the Project Site. 	YY
<p>8. Hydrology and Water Quality (Chapter 3.8)</p>	
<ul style="list-style-type: none"> Figure 3.8-1 depicting the “Merced Vision 2030 General Plan EIR FEMA Flood Zones” should be revised to reflect the 2009 land use plans for the Project Site. 	ZZ
<ul style="list-style-type: none"> Figure 3.8-2 depicting the “Merced Vision 2030 General Plan EIR Inundation Zones” should be revised to reflect the 2009 land use plans for the Project Site. 	AAA
<p>9. Land Use and Planning (Chapter 3.9)</p>	
<ul style="list-style-type: none"> On page 3.0-12, the DPEIR states that the “intent of the 2030 General Plan update was not to replace the 2015 plan, but to update selected elements to reflect changes in state law, and new issues (such as the 2009 UC Merced campus) that arose since the 2015 plan was adopted.” In addition to the UC Merced campus, this sentence should refer to the University Community. 	BBB
<ul style="list-style-type: none"> Table 3.9-3 titled “Merced Planning Land Use Summary (2015 General Plan SUDP vs. 2030 General Plan SUDP/SOI)” sets forth land uses and their acreages within the 2030 General Plan SUDP/SOI. If necessary, the City should recalculate these acreages in light of the Project Site’s revised boundaries. Acreages specified on page 3.9-17 may also require revising to reflect the 2009 land use plans for the Project Site. 	CCC
	DDD

- On page 3.9-21, the DPEIR states, “Development of the General Plan will ultimately involve expansion to the City’s SUDP/SOI and annexations. . . . Policy UE-1.4 calls for the City to continue joint planning efforts on the UC Merced and University Community plans.” This discussion on page 3.9-21 should also reflect the fact that Implementing Action 1.4.a in Policy UE-1.4 further states, “Incorporate the UC Merced campus area as part of the City’s SUDP/Sphere of Influence and begin planning for the eventual annexation of the Campus.” This discussion should also note that Implementing Action 1.4.b refers to the implementation of City Council Resolution #2006-89, which establishes the City Council’s position that “[t]he University Community should be incorporated into the City of Merced, and should not be part of the unincorporated County, or a separate City.” (Draft General Plan at p. 2-30.)

EEE

10. Noise (Chapter 3.11)

- Figure 3.11-1 depicting the “Merced Vision 2030 General Plan EIR Noise Measurement Site Locations” should be revised to reflect the 2009 land use plans for the Project Site.

FFF

- Table 3.11-10 titled “Existing and Predicted General Plan Build Out Traffic Noise Levels Merced General Plan – City of Merced, California” identifies “Distance to Ldn Contours General Plan Build Out.” If necessary, the City should recalculate these distances in light of the Project Site’s revised boundaries.

GGG

11. Population and Housing (Chapter 3.12)

- The first paragraph on page 3.12-2 states that by 2030 the City’s projected population is 116,800 persons. This statistic is also included in Table 3.12-2, “Population Estimates and Projections, 2000-2030, City of Merced and Merced County.” However, the last sentence in the first paragraph states: “It is worth noting that the projected population within the City of Merced SUDP/SOI, as proposed by the General Plan, would be approximately 155,000 in 2030.” Based on page 2-1, we assume that 155,000 reflects the population that would be generated by the UC Merced campus and University Community in 2030. (Page 2-1 further notes that “[b]y the year 2035, the UC Merced campus is expected to contribute approximately 37,135 people to the urban growth of the City’s urban area; the urban population of Merced is expected to approach 200,000 people by 2035.”) It is unclear from this discussion whether the analysis in this chapter is predicated on a population of 155,000 instead of 116,800. The DPEIR should clarify this point.

HHH

- The Age Characteristics discussion on pages 3.12-2 and 3.12-3 does not reflect the fact that the UC Merced campus and University Community likely will generate a younger population demographic. The DPEIR should clarify that the UC Merced campus and University Community may have this effect on the City’s demographics, because it could result in, for example, an increase in renter rather than owner-occupied housing demand.

III

12. Recreation (Chapter 3.13)

- Figure 3.13-1 depicting the “Merced Vision 2030 General Plan EIR Parks and Open Space” should be revised to reflect the 2009 land use plans for the Project Site. JJJ

- The discussion in Impact #3.13-1 states: “Based on the expected 2030 population of approximately 116,800 persons, there would be a need to provide a total of 180 acres of additional parkland to maintain this policy.” This number is inconsistent with the 155,000 population projected for the City in 2030. (See DPEIR page 2-1.) Please revise this discussion to reflect the 155,000 population. KKK

- The discussion in Impact #3.13-2 states: “Future development assumed under the 2030 General Plan could result in a total population of 116,800.” As discussed above, this number is inconsistent with the 155,000 population projected for the City in 2030. Please revise this discussion to reflect the 155,000 population. LLL

13. Public Services (Chapter 3.14)

- The discussion in Impact #3.14-1 states: “Growth allowed under the General Plan would result in a potential population increase of approximately 36,200 additional residents by 2030 (General Plan buildout).” This is inconsistent with the discussion in the Land Use and Planning Chapter, which states: “The 2030 General Plan includes planning for infrastructure elements (utilities and roadways) to improve the quality of life for City residents and to support an additional 74,000 residents by 2030.” (See DPEIR p. 3.9-19.) Based on our calculations, 74,000 additional residents is more accurate than 36,200 additional residents; 74,000 is the difference between 155,000 (the City’s projected population in 2030) and 80,985 (the City’s current population in 2010). (See DPEIR p. 2-1.) The analysis in Impact #3.14-1 and to the extent necessary the remainder of this chapter should assume 74,000 additional residents, rather than 36,200. MMM

- The discussion in Impact #3.14-3 states: “Implementation of the proposed General Plan is projected to increase the population by approximately 36,200 new residents by the year 2030.” This should be revised to reflect 74,000 additional residents. See comment above. NNN

14. Transportation/Traffic (Chapter 3.15)

- Figure 3.15-1 depicting the “Merced Vision 2030 General Plan EIR Circulation Map” should be revised to reflect the 2009 land use plans for the Project Site. The legend of the revised figure should continue to note that “Specific Plan Area Circulation Patterns to be Determined”. OOO

<ul style="list-style-type: none"> • Figure 3.15-2 depicting the “Merced Vision 2030 General Plan EIR Regional Routes” should be revised to reflect the 2009 land use plans for the Project Site. 	PPP
<ul style="list-style-type: none"> • Figure 3.15-6 depicting the “Merced Vision 2030 General Plan EIR Railroads” should be revised to reflect the 2009 land use plans for the Project Site. 	QQQ
<ul style="list-style-type: none"> • Figure 3.15-7 depicting the “Merced Vision 2030 General Plan EIR Bicycle Routes” should be revised to reflect the 2009 land use plans for the Project Site. 	RRR
<p>15. Utilities/Services (Chapter 3.16)</p>	
<ul style="list-style-type: none"> • This chapter does not clearly indicate whether it reflects the 2009 land use plans for the Project Site in evaluating the potential environmental impacts related to utilities and other services required by the City as envisioned under the 2030 General Plan. Please confirm that this chapter assumed the 2009 land use plans for the Project Site. 	SSS
<p>16. Greenhouse Gas Emissions (Global Climate Change) (Chapter 3.17)</p>	
<ul style="list-style-type: none"> • The acreages listed on page 3.17-1 regarding “[p]roposed additional General Plan areas outside Existing General Plan area, within the SUDP/SOI” should be revised to reflect the 2009 land use plans for the Project Site. 	TTT
<p>17. Project Alternatives (Chapter 4)</p>	
<ul style="list-style-type: none"> • Figure 4.1 depicting the “Merced Vision 2030 General Plan EIR 2030 Reduced Sphere of Influence Land Use Map” should be revised to reflect the 2009 land use plans for the Project Site. 	UUU
<ul style="list-style-type: none"> • Figure 4.2 depicting the “Merced Vision 2030 General Plan EIR 2030 Concentrated Growth Alternative Land Use Map” should be revised to reflect the 2009 land use plans for the Project Site. 	VVV

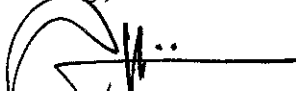
Kim Espinosa
10/22/10

CONCLUSION

Thank you for your consideration of our comments on the DPEIR. We look forward to working with the City to realize our mutual goals of incorporating the UC Merced campus and University Community into the City. To that end, we would like to arrange a meeting to discuss with you our comments on the DPEIR and to ascertain whether the City requires any additional information to accommodate our comments. We will contact you soon to arrange a mutually convenient time to meet.

WWW

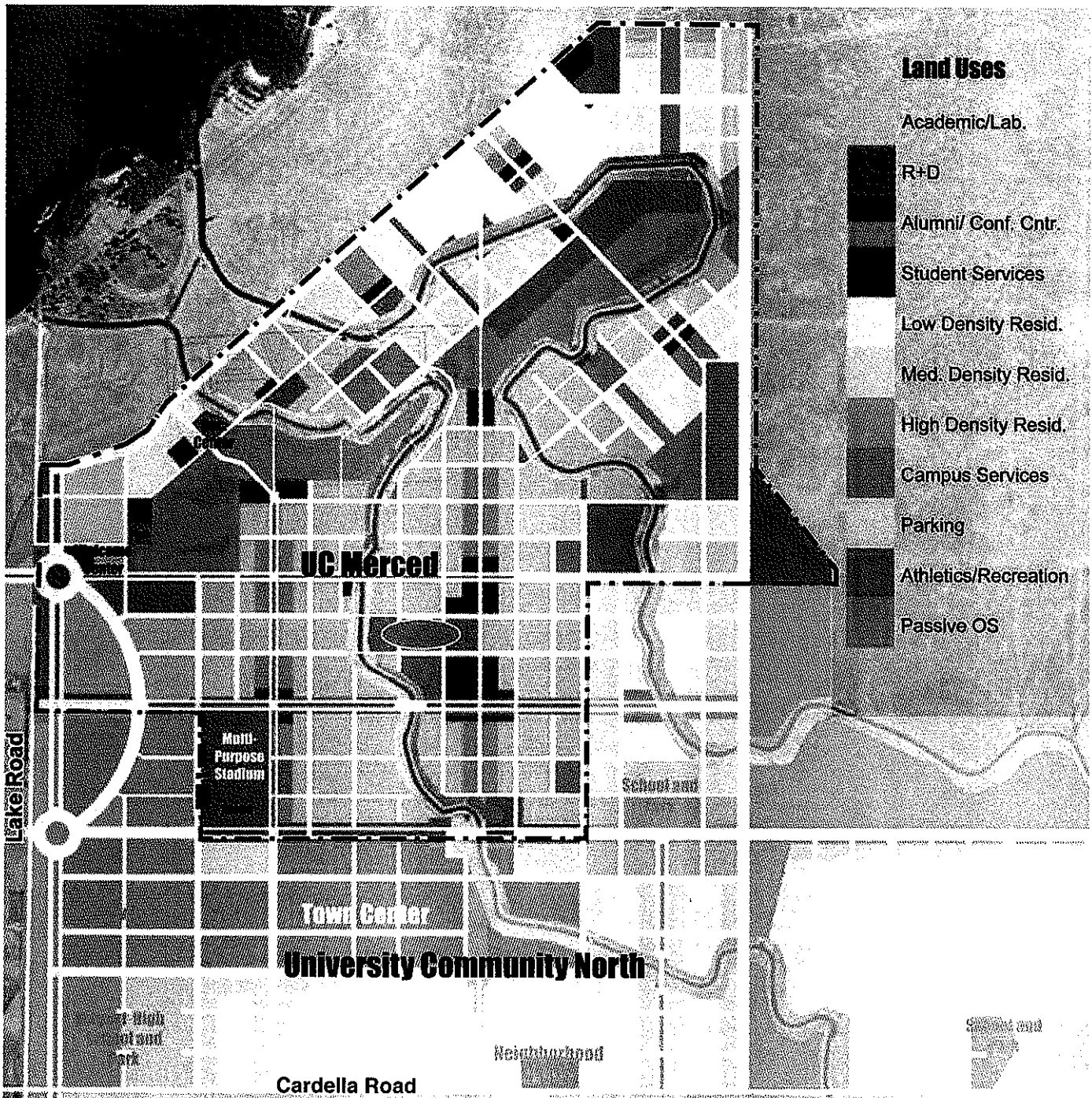
Sincerely,



Thomas E. Lollini, FAIA
Campus Architect and Associate Vice Chancellor
Physical Planning, Design and Construction

Enclosures: UCM EIR-EIS Figure 2.0-4
UCM City of Merced NOP Scoping Letter dated 8-18-08

cc: Mary Miller
Janet Young
Elisabeth Gunther
R. Clark Morrison



Land Uses

- Academic/Lab.
- R+D
- Alumni/ Conf. Cntr.
- Student Services
- Low Density Resid.
- Med. Density Resid.
- High Density Resid.
- Campus Services
- Parking
- Athletics/Recreation
- Passive OS


NOT TO SCALE
 SOURCE: UC Merced – May 2008

FIGURE 2.0-4

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

BRAD SAMUELSON
DIRECTOR OF ENVIRONMENTAL AFFAIRS

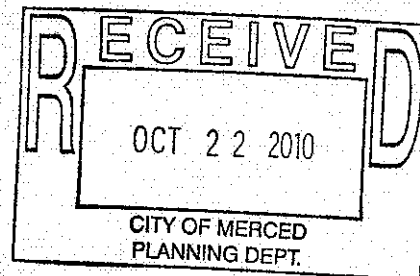
UNIVERSITY OF CALIFORNIA, MERCED
PHYSICAL PLANNING, DESIGN & CONSTRUCTION
P O BOX 2039
MERCED, CALIFORNIA 95344
(209) 228-4333

August 18, 2008

VIA FACSIMILE AND E-MAIL

Kim Espinosa, Planning Manager
Planning and Permitting Division
678 West 18th Street
Merced, CA 95340

Kim Hudson, Principal-in-Charge
Quad Knopf, Inc.
5110 West Cypress Avenue
Visalia, CA 93278



Re: **UC Merced's Comments on Notice of Preparation – Draft
Environmental Impact Report, City of Merced Vision 2030 General
Plan**

Dear Ms. Espinosa and Ms. Hudson:

On behalf of the University of California, Merced ("UC Merced" or the "University"), we appreciate the opportunity to provide comments on the Notice of Preparation (NOP) for the City of Merced Vision 2030 General Plan Environmental Impact Report ("General Plan EIR").

BACKGROUND

The lands upon which the UC Merced campus and community will be built presently are located in unincorporated Merced County. The County therefore is currently the local land use agency with planning authority over those portions of the project that are not subject to the University of California's constitutional exemption from local planning requirements (*i.e.*, the campus community proposed for development directly south of the campus). Consistent with its authority, the County has adopted a general plan-level document, known as the "University Community Plan," to govern the development of the campus community. Development of the campus is governed by a Long Range Development Plan (LRDP) adopted by the University of California Regents.

In late 2007, representatives of UC Merced consulted with representatives of the federal environmental permitting agencies and environmental groups on potential revisions to the footprint of the campus and community. Following these discussions, the campus submitted a revised Clean Water Act Section 404 permit application to the U.S. Army Corps of Engineers (the "Corps") for a reconfigured campus and community. Enclosed are materials depicting these revised footprints and proposed land uses. As the materials show, the revised footprint for the UC Merced campus is now approximately 810 acres, which is 100 acres less than the originally proposed UC Merced campus footprint. In addition, the revised footprint for the University Community is now approximately 1,957 acres, which is 176 acres less than the originally proposed University Community footprint.

The proposed land uses for the campus and those portions of the revised campus community owned by the University Community Land Company, LLC (commonly referred to as "Community North") consist of five conceptual land use districts. These districts include Academic Core (AC), Gateway District (G), Student Neighborhoods (SN), University Community Town Center (TC), and University Community Neighborhood (NHD). Each district is comprised of certain "block" types that establish more specific land use. These land use designations include, for example, "Academic/Laboratory," "Research + Development," "Student Services," "Campus Services," and a variety of residential-use densities.

The University is now undertaking an effort to revise the LRDP, and to request the County to modify the UCP, to reflect the revised footprint. This effort involves the preparation of an EIR/EIS by UC Merced and the Corps to satisfy the requirements of CEQA (relative to the revised LRDP) and NEPA (relative to the Corps' permitting process), respectively. It also involves preparation of a separate Merced County General Plan Amendment and EIR, to be certified by the County, to satisfy its regulatory obligations for the proposed UCP revisions. This effort is scheduled for completion in 2009.

Although the lands included in the revised footprint are currently located within the County, the City provides extra-territorial water and sewer service to 104 acres of already-developed property within the campus in accordance with a 2003 "Services Contract" between the City and UC Merced. Section 11 of the Services Contract requires UC Merced to enter into an "Agreement to Annex" this already-served property to the City upon specified terms and conditions. This arrangement is consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, which allows these kinds of extra-territorial service arrangements "in anticipation of a later change in organization" such as an annexation. Gov't Code § 56133(b). This property has not yet been annexed to the City.

The University believes that annexation of the campus (including the already-serviced portion) and Community North (collectively referred to as the "Project Site") is in UC Merced's best interests for a number of reasons - one of which is UC Merced's ability to access City services rather than having to develop its own stand-alone service facilities. As evidenced by the NOP, the City appears to acknowledge the sensibility of annexation and the extension of its services. For example, the NOP notes that the

inclusion of the Project Site within the City's Specific Urban Development Plan ("SUDP") boundary "will form a more logical urban boundary, which will ultimately facilitate the provision of City services to the university." NOP at p. 6

Moreover, the proposed General Plan revisions suggest the City believes annexation is desirable. As the proposed revisions to Policy UE-1.4 of the City's General Plan indicate, the City anticipates the "incorporation" of the Project Site into the City. As revised, Implementing Action 1.4.a states: "Incorporate the UC Merced campus area as part of the City's Sphere of Influence. This designation would facilitate the incorporation of the Campus into the City." City Staff Report, *Joint Planning Commission/City Council Study Session on General Plan Update and Sphere of Influence*, Attachment 7 at p. 6 (Feb. 19, 2008) ("Staff Report"). Further, revisions to Implementing Action 1.4.b require the City to implement Merced City Council Resolution #2006-89, which specifies that the "University community should be incorporated into the City of Merced, and should not be part of the unincorporated County, or a separate City." *Id.* at p. 6-7. Moreover, this stance is consistent with other City Council resolutions and planning directions, as well as with the current Sphere of Influence boundary which was drawn to include the University of California, Merced, campus and the University Community when the two entities were originally slated for location to the northeast of the current proposed sites.

COMMENTS ON THE NOP

In light of the above, the University's overarching comment on the NOP is that the General Plan EIR should anticipate the annexation of the Project Site to the City of Merced, and that the General Plan EIR should evaluate, as aspects of the City's updated General Plan, the land use plans proposed for the Project Site as described Exhibits A and B and in the February 2008 Section 404 permit application. Our more specific comments follow below.

1. The General Plan EIR Should Discuss the City's Revision to Its Sphere of Influence Boundary and Annexation of the Project Site.

Although the NOP indicates the Project Site will be brought within the City's revised Sphere of Influence ("SOI") boundary, it refers only indirectly to the City's possible annexation of the Project Site. The General Plan EIR should include discussion of the potential for annexation of the Project Site to the City and LAFCO's role in that annexation.

a. The General Plan EIR Should Cover the Requirements of the Cortese-Knox-Hertzberg Act.

The discussion of the City's revision of the SOI boundary and the possible annexation of the Project Site should include an analysis of this annexation in light of the legal requirements of the Cortese-Knox-Hertzberg Act. The Act contains several requirements, but for purposes of this comment letter, we wish to underscore two of those requirements in particular.

First, the General Plan EIR should reflect the fact that every boundary change determination made by LAFCO must be consistent with the SOI established for the local agency affected by such determination. Gov't Code § 56375.5. Annexation of the Project Site therefore must be consistent with the City's SOI boundary. Accordingly, the General Plan EIR should evaluate the annexation of the Project Site, in addition to the revision to the City's SOI boundary to include the Project Site. The EIR's discussion regarding revisions to the SOI boundary should also cover LAFCO's requirement to conduct a "service review of the municipal services provided in the county or other appropriate area designated by [LAFCO]." *Id.* § 56430(a).

Second, the General Plan EIR should reflect the fact that the Cortese-Knox-Hertzberg Act requires, as a condition to any annexation, that a city "prezone" the territory to be annexed. Gov't Code § 56375(a). The Act further specifies that "[t]he decision of a [LAFCO] with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city." *Id.* We believe this rezoning requirement would be satisfied if the City incorporated UC Merced's illustrative land uses for the Project Site, as shown in the enclosed materials, into the City's updated General Plan.

Both of these requirements, in addition to the other requirements of the Cortese-Knox-Hertzberg Act, should be fully discussed in the General Plan EIR

b. The General Plan EIR Should Cover the General Plan's Annexation Conditions.

The General Plan EIR's discussion of the Project Site's potential for annexation should also include a consideration of the Policies and Implementing Actions identified in Implementing Action 1.3.f of the City's existing General Plan and proposed General Plan update for future annexation requests.¹ See Staff Report, Attachment 7 at p. 5. In addition, this discussion should confirm that annexation of the campus and community areas satisfies the "conditions" identified in Implementing Action 1.3.f for annexation requests. These conditions include:

- (a) Is the area contiguous to the current City limits and within the City's SUDP/SOI?
- (b) Is the proposed development consistent with the land use classification on the General Plan Land Use Diagram (Figure 3.1)?
- (c) Can the proposed development be served by the City water, sewer, storm drainage, fire and police protection, parks, and street systems to meet acceptable standards and service levels without requiring improvements beyond which the developer will consent to provide?

¹ These Policies and Implementing Actions include but are not limited to the following: (a) Urban Expansion Policies UE-1.1, UE-1.2, UE-1.3, and UE-1.7; (b) Land Use Policies L-1.1, L-2.1, L-2.7, L-3.1, and L-3.2; (c) Transportation and Circulation Policies T-1.1, T-1.3, T-1.8, T-2.2, and T-2.4; (d) Public Facilities and Services Policies P-1.1, P-1.2, P-1.3, P-2.1, P-3.1, P-4.1, P-5.1, and P-7.1; and (e) Open Space and Conservation Policies OS-1.1, OS-1.2, OS-2.1, OS-2.2, OS-3.1, and OS-4.1. Staff Report, Attachment 7 at p.5.

- (d) Will this annexation result in the premature conversion of prime agricultural land as defined on the Important Farmland Map of the State Mapping and Monitoring Program? If so, are there alternative locations where this development could take place without converting prime soils?
- (e) Will a non-agricultural use create conflict with adjacent or nearby agricultural uses? If so, how can these conflicts be mitigated?

The General Plan should evaluate whether annexation of the Project Site satisfies each of these conditions. With respect to condition (a) in particular, we note the Cortese-Knox-Hertzberg Act also requires that an area to be annexed must be "contiguous to the city at the time the [annexation] proposal is initiated." Gov't Code § 56741. As you may know, the Project Site is separated from the City's existing boundaries by an approximately one-mile-wide strip of land running down and extending westerly of Lake Avenue from Yosemite Lake to Yosemite Avenue. The General Plan EIR's evaluation of the annexation of the Project Site therefore should consider what steps might be taken to create the necessary contiguity between the City and the Project Site.

c. The General Plan EIR Should Identify LAFCO as a Responsible Agency.

As a general rule, LAFCOs must comply with CEQA before approving an annexation. *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263. In our experience, a city, county, or special district involved in an annexation generally assumes the role of lead agency, while the LAFCO functions as a responsible agency, for the purposes of CEQA review. A "responsible agency" is defined as a "public agency which proposes to carry out or approve a project, for which [a] lead agency is preparing or has prepared an EIR." 14 Cal. Code Regs. § 15381. The term also includes "all public agencies other than the lead agency which have discretionary approval power over the project." *Id.* Because LAFCO will rely upon the General Plan EIR for its annexation determination, LAFCO should be identified in the General Plan EIR as a "responsible agency," and it should be given the opportunity to provide input to the City regarding potential environmental impacts resulting from annexation of the Project Site to the City.

2. The City's Updated General Plan and the General Plan EIR Should Include the University's Illustrative Land Uses for the Project Site.

Given its potential for annexation to the City, the City's updated General Plan should include the University's illustrative land uses as revised for the Project Site. As the Staff Report indicates, the "project boundaries will be modified when the information is made available by UC Merced staff to reflect recent proposed shifts in the Campus and Community boundaries." Staff Report at p. 6. The most recent set of proposed land uses are described in the University's Section 404 permit application and shown further in the Exhibits A and B. These materials are enclosed with this letter. Assuming the updated General Plan includes the land uses proposed for the Project Site, the General Plan EIR

should evaluate the environmental impacts associated with these illustrative land uses. Currently, these land plans are for illustrative purposes only, but they are a good approximation of what the University believes is necessary to accommodate its development program on the Project Site, and thus, they can still be evaluated from an environmental analysis perspective.

The NOP identifies key sections for inclusion in the General Plan EIR. Each of those sections should reflect the fact that the updated General Plan will include the Project Site's illustrative land uses. With respect to some of those sections as set forth in the NOP, we have the following specific comments:

Project Description. The General Plan EIR's Project Description should discuss the City's proposed annexation of the Project Site, as described above, and the fact that the updated General Plan will include the illustrative land uses proposed for the Project Site. The EIR should depict the Project Site's revised footprint and its illustrative land uses on all relevant maps and drawings. Notably, the Proposed SUDP Land Use Map attached to the NOP as Figure 3 depicts the earlier version of the Project Site's footprint. The land use plans in the attached materials show the revised boundaries of the Project Site.

Table 1 in the NOP titled "Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP (Acres)" sets forth land uses and their acreages within the city limits of Merced. NOP at pp. 4-5. According to Item #3 in the Section titled "Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)", the proposed SUDP/SOI includes a "third area" that "encompasses 6,748 acres and moves the SUDP/SOI boundary to take in the property between the current city limit/SUDP, and the U.C. Merced campus and Campus Community. These will be brought within the SOI as well." NOP at p. 6. The City should recalculate these acreages in light of the Project Site's revised boundaries, as shown in the attached materials. In addition, Table 1 should break out the Project Site's proposed land uses and their acreages. For example, as shown in Exhibits A and B the proposed Project Site includes a variety of land use designations, such as "Academic Core," "Campus Services," "Student Neighborhoods," and "Athletics and Recreation." Assuming the updated General Plan includes the Project Site, the General Plan EIR should evaluate these and all other UC Merced and UCLC land uses as part of the City's updated General Plan.

The NOP also sets forth several "Planning Principles," one of which mentions the UC Merced project: "Connectivity between existing and planned urban areas. Examples include the northeast area toward UCM, the University Community, and South Merced." NOP at pp. 5-6. This Planning Principle should be clarified for purposes of the General Plan EIR so that it refers to connectivity between existing urban areas and the proposed Project Site. In addition, the City should consider other Planning Principles that specifically bear on the potential annexation of the Project Site. For example:

- Commit to annexation of the UC Merced Project Site as revised to ensure logical development of eastern Merced.

- Continue planning efforts to integrate UC Merced Project Site into Merced.
- Evaluate feasibility of extending City services to UC Merced Project Site.

Purpose. The NOP states that “most of the changes” to the City’s General Plan are “due to the new location of the University of California Merced campus and its adjacent University Community.” NOP at p. 7. The NOP also states that “[m]odifications where [sic] made to the City’s Sphere of Influence to add the University Community area and to remove areas that have been identified as significant wetlands preservation areas.” As noted above, the updated General Plan should use the illustrative land use plans within the University’s Section 404 permit application and Exhibits A and B. These materials are enclosed with this letter. These land use plans should be evaluated in the General Plan EIR as included within the updated General Plan.

Issues to Be Addressed in the EIR. The NOP lists the topical areas to be discussed in the EIR. NOP at p. 8. Of course, each of these topical areas should evaluate the environmental impacts associated with included the Project Site and its illustrative land use plans within the City’s updated General Plan. The enclosed materials should assist the City and Quad Knopf with that analysis, and the University would be happy to provide the City or Quad Knopf with any additional materials, as needed.

Alternatives Analysis. As the NOP explains, the General Plan EIR’s alternative analysis “will contain a qualitative analysis of the land use alternatives considered” during the General Plan update process. NOP at p. 8. Under CEQA, an EIR must describe a reasonable range of alternatives to the project, or to the location of the project, that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of the significant effects of the project. 14 Cal. Code Regs. § 15126.6(a), (f). The City’s General Plan EIR should include project objectives that reflect the City’s desire to incorporate the Project Site into the City.

Cumulative Impacts. The NOP indicates that this section of the General Plan EIR will address the impacts of the General Plan’s development, “along with other known, approved or reasonably foreseeable development activity in the City and region.” NOP at p. 8. Assuming it evaluates the annexation and illustrative land uses of the Project Site, the General Plan EIR should consider the Project Site’s annexation and proposed land uses as within the baseline of the General Plan update for purposes of cumulative impacts analysis. As such, the cumulative impacts section of the EIR should evaluate whether the impacts of the updated General Plan, which will include the Project Site’s illustrative land use plans, in combination with other projects causing related impacts, result in cumulative impacts. See 14 Cal. Code Regs. § 15130(a)

We anticipate providing additional comments when we review the Draft General Plan EIR, and we look forward to having the opportunity to do so.

CONCLUSION

Thank you for your consideration of these comments. As noted in the City's proposed revisions to Policy UE-1.4, the City anticipates continued "joint planning efforts on the UC Merced campus and University Community plans." Staff Report, Attachment 7 at p.6. The University looks forward to these joint efforts and to working with the City during its General Plan update process. Please do not hesitate to call if you have any questions or would like to discuss our comments in more detail.

Sincerely,



Brad Samuelson

enclosures:

Exhibits A and B

UC Merced Section 404 Permit Application, February 2008

cc:

R. Clark Morrison

Mary Miller

Tom Lollini

Janet Young

Elisabeth Gunther

Letter 20 Thomas E. Lollini, FAIA, Campus Architect and Associate Vice Chancellor, Physical Planning, Design and Construction, University of California, Merced

Comment 20A: *On behalf of the University of California, Merced ("UC Merced" or the "University"), we appreciate the opportunity to provide comments on the Draft Program Environmental Impact Report for the City of Merced Vision 2030 General Plan (DPEIR). In general, the DPEIR does not reflect the land use map of the UC Merced campus and University Community approved by the University of California, Board of Regents (University) and the US Army Corps of Engineers ("Corps") in 2009. The DPEIR should be clarified to reflect the land use plans for the UC Merced campus and University Community that were analyzed in the 2009 UC Merced and University Community Environmental Impact Statement/Environmental Impact Report ("2009 UC Merced and University Community EIS/EIR").*

Response 20A: The City appreciates the opportunity to respond to UC Merced's comments. As noted by the commenter, the University of California, Merced (UC Merced) Board of Regents adopted a revised Long Range Development Plan in 2009, which modifies the boundaries of the University and the University Community. A full CEQA analysis was completed for the revised LRDP and the changes to the boundaries of University Community North. After that adoption, the University Board of Regents had indicated that it intended to submit an application for a University Community Plan Update to Merced County, which has land use jurisdiction over the University Community. As of June 2011, that amendment has not yet been applied for, and that is the reason that the City's General Plan and Draft EIR, used the adopted 2004 land use information and maps provided by the County for the University Community. However, since the City is free to apply different land use designations to unincorporated lands than what has been applied by the governing county (in this case, Merced County) per California Government Code Section 65300 et. seq, the City of Merced may choose to use the land use designations and boundaries as depicted in the 2009 LRDP for the University Campus and University Community. The revised boundaries are not new information that would require recirculation of the Draft EIR because UC Merced completed the CEQA review of the revised boundaries in March 2009 (Public Resources Code Section 20192.1; CEQA Guidelines Section 15088.5). Therefore, the City may incorporate the revised boundaries for the UC Merced Campus and the University Community North into its General Plan and it has chosen to do so as a proposed change to the Draft General Plan.

Land uses shown on the maps for the University Community are for illustrative purposes only and will require refinement prior to any annexation consideration by the City. As a practical matter, however, there are numerous figures, maps, and tables throughout the General Plan and Draft EIR which depict the proposed boundaries for the University and the University Community, mostly for illustrative purposes only. Modifying all of these figures, maps, and tables prior to adoption of the General Plan would be impractical and in most cases, those boundaries are simply background illustrations, not the purpose of the map, figure, or table. Therefore, these figures, maps, and tables will be updated after adoption of the General Plan and noted on an Errata sheet. The General Plan Update describes the history and current status of the UC Merced Long Range Development Plan on pages 3-71 and 3-72. Also see Response 20B for additional information.

Comment 20B: BACKGROUND

The University provided detailed comments in its August 18, 2008 letter regarding the Notice of Preparation for the City of Merced Vision 2030 General Plan Environmental Impact Report. That letter also included a background discussion that described the University's efforts to revise the campus and community footprint. For your convenience, we have updated that discussion and include it below.

In 1988, the University initiated planning for a new campus to accommodate projected growth in student enrollment. The University focused this effort in the San Joaquin Valley and in 1995 selected the Lake Yosemite Site in eastern Merced County. The Merced Vision 2015 General Plan, adopted in 1997, adjusted the City's Sphere of Influence (SOI) to accommodate this 7,000-acre site.

In late 2000, in response to input from the agencies and public concern regarding the potential impacts on vernal pools and biological resources from locating at the original site, the University shifted the campus to the southwestern portion of the VST property. This change also entailed a corresponding relocation of the adjacent community to the south of the VST property. This shift reduced the size of the campus from approximately 2,000 acres to 1,250 acres, and reduced the size of the supporting University Community from 5,000 acres to 2,133 acres.

The University adopted a Long Range Develop Plan (LRDP) and certified an EIR for the 1,250 acre campus in 2002. Following the certification of the 2002 LRDP EIR, UC Merced submitted an application to the Corps for a Clean Water Act Section 404 permit to fill a total of approximately 86 acres of wetlands present on the campus site. Concurrently, the County of Merced submitted an application for a CWA Section 404 permit to fill 4.5 acres of wetlands to build certain backbone infrastructure needed to serve the campus located within the boundaries of the University Community. In 2004, the County of Merced adopted a Specific Urban Develop Plan (SUDP) and certified an EIR for the University Community.

In late 2007, representatives of UC Merced and Merced County consulted with representatives of the federal environmental permitting agencies and environmental groups on potential revisions to the 2002 footprint of the campus and community. Following these discussions, the University submitted a revised Clean Water Act Section 404 permit application to the U.S. Army Corps of Engineers ("Corps") for a further reduced 815-acre campus and 1,950-acre community.

Since then, the University and Corps have revised the LRDP and certified an EIR/EIS to satisfy the requirements of CEQA (relative to the revised LRDP) and NEPA (relative to the Corps' permitting process), respectively. The University and Corps certified the EIR/EIS in March 2009 and the Corps issued a Section 404 permit to UC Merced on April 29, 2009.

Response 20B: While the area covered by the LRDP is under the jurisdiction of the University of California, the area covered by the University Community Plan (UCP) remains the jurisdiction of the County of Merced. Per the discussion in Response 20A above, the City may incorporate the revised boundaries for the UC Merced Campus and the University Community North into its

General Plan and it has chosen to do so as a proposed change to the Draft General Plan. The following text of the General Plan Update (pages 3-71 and 3-72) will be revised as follows:

Page 3-71, third paragraph:

Unlike the other Community Plans discussed in this Section, the University Community Plan (UCP) has already been adopted by Merced County. The City's 1997 Sphere of Influence ~~currently~~ includes the UC Merced Campus, although the Campus' footprint has been revised since 1997. ~~and the City of Merced assumes implementation of the a Revised University Community Plan UCP at some future date.~~

Page 3-71, second paragraph under "History" heading:

In ~~2004-2002~~, the Merced County Board of Supervisors adopted the ~~University Community Plan UCP~~ (also called a "Specific Urban Development Plan" or "SUDP") and associated environmental impact report for the development of an adjacent university community. In 2004, when the SUDP was adopted by the County of Merced, the ~~University Community Plan UCP~~ covered 2,133 acres and consisted of high-, medium-, and low-density housing; commercial buildings; buildings to house research and development; and parking, parks, schools, and open space.

The ~~2004 University Community Plan~~ (UCP) has been adopted as part of the Merced County General Plan and includes goals, objectives, policies, and implementation programs to address the development of the University Community. Although the 2004 UCP includes a land use diagram showing the approximate locations of all major land uses, it is noted that the diagram is illustrative and that it does not designate any areas within the UCP specifically for any particular use. Instead a designation of "Multiple Use Urban Development" is applied to the entire UCP. (See Section 3.10 *Appendix* for these illustrations.)

Page 3-71, first paragraph under "~~Current-2009 Revisions Under Consideration~~" heading:

After the 2002 adoption of the LRDP, UC Merced applied for a CWA Section 404 permit to fill approximately 86 acres of wetlands on the campus site. During discussions with various federal agencies, the University ~~is proposing~~ proposed an alternative to reduce the Campus' impacts on wetlands by reducing the size of the developed portion of the Campus from 910 acres to ~~840~~ 815 acres and shifting the Campus boundary south into an area that was to be occupied by the University Community and shifting the Community boundary east. This proposed change brought about the need to revise the UC Merced LRDP and the University Community Plan, for which UC Merced officials prepared applications and an associated EIR, adopted by the University of California Board of Regents in 2009. ~~Now Merced County will review the proposed change to the University~~

~~Community Plan based on principles and objectives of the University Community Plan adopted in 2004.~~ After that adoption, the University Board of Regents had indicated that it intended to submit an application for a University Community Plan Update to Merced County, which has land use jurisdiction over the University Community. Although this application has not yet been submitted to the County, the City of Merced has chosen to acknowledge the revised 2009 boundaries for the University and the University Community North within the Merced Vision 2030 General Plan since the environmental impacts of those boundaries have been fully analyzed in UC's EIR, which involved the participation of the University, the County of Merced, and the City of Merced.

Comment 20C: *Unfortunately, the City of Merced's revised SOI includes the 2002 footprints for the campus and community instead of 2009.*

Response 20C: Please see Responses 20A and 20B.

Comment 20D: *Although the lands included in the revised footprint are currently located within the County, the City provides extra-territorial water and sewer service to 104 acres of already-developed property within the campus in accordance with a 2003 "Services Contract" between the City and UC Merced. Section 11 of the Services Contract requires UC Merced to enter into an "Agreement to Annex" this already-served property to the City upon specified terms and conditions. This arrangement is consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, which allows these kinds of extra-territorial service arrangements "in anticipation of a later change in organization" such as an annexation. Gov't Code § 56133(b). This property has not yet been annexed to the City.*

The University believes that annexation of the UC Merced campus (including the already-serviced portion) and Community North, for which the University is joint owner (collectively referred to as the "Project Site") should remain a preferred option for a number of reasons -one of which is UC Merced's ability to access City services rather than having to develop its own stand-alone service facilities. Notably, the Draft Merced Vision 2030 General Plan ("Draft General Plan") indicates the City also believes annexation is desirable. For example, implementing Action 1.4.a states: "Incorporate the UC Merced campus area as part of the City's SUDP/Sphere of Influence and begin planning for the eventual annexation of the Campus." Similarly, implementing Action 1.4.b states that "the University Community should be incorporated into the City of Merced, and should not be part of the unincorporated County, or a separate City." This position is consistent with other City Council resolutions and planning directions, as well as with the current Sphere of Influence boundary that was drawn to including the UC Merced campus and the University Community when the two entities were originally slated for location to the northeast of the current proposed sites.

Response 20D: The City understands the Commenter's reasoning that the annexation of the UC Merced campus and Community North should remain a preferred option. The City will continue to work with the UC Merced and University Community to reach a mutual agreement. However, details of any specific arrangement are outside the scope of the DEIR.

Comment 20E: OVERALL COMMENTS ON THE DPEIR

Given the University's and the City's desire to establish an efficient process for the City's potential annexation of the Project Site, the University's overarching comment on the DPEIR is that the DPEIR should evaluate the land use plans analyzed in the UC Merced EIS/EIR and approved by the University and the Corps in 2009 as aspects of the Draft General Plan. In addition, the DPEIR should evaluate the potential annexation of the Project Site to the City of Merced.

Response 20E: Please see Responses 20A, 20B, and 20D.

Comment 20F: *1. The DPEIR Should Incorporate the 2009 Land Use Map of the Project Site. The University submitted comments by letter dated August 18, 2008 on the Notice of Preparation for the City of Merced Vision 2030 General Plan Draft Environmental Impact Report. Materials depicting a 2008 version of the University's land use plans were attached to that letter. (The letter and its attachments are included in Appendix A of the DPEIR.) The City did not incorporate those land use plans in the DPEIR, and as a result the figures depicting the Project Site reflect the 2002 footprint design that has been superseded. Since that comment letter, these plans have been slightly revised, and that set of revised land use plans was evaluated in the 2009 UC Merced EIS/EIR and approved by the University and the Corps in 2009. These 2009 land use plans should be included for analysis in the DPEIR as an aspect of the Draft General Plan. For your convenience, these plans are attached as Exhibit A.*

Response 20F: As explained in Responses 20A and 20B, the City will modify the boundaries for the University and University Community North as depicted in the 2009 LRDP.

Comment 20G: *Given that the 2009 footprint and land uses for the Project Site have now been approved, the DPEIR should also incorporate where appropriate project information in the 2009 UC Merced EIS/EIR relative to the Project Site.*

Response 20G: Although the 2009 footprint and land uses were approved by the University Board of Regents, they have yet to be submitted to the County for its consideration and adoption. However, the City has chosen to accept the 2009 boundaries for use in the General Plan. Please see Responses 20A and 20B for more detailed information.

Comment 20H: *The City should also revise the Draft General Plan to incorporate the 2009 land use plans. Accordingly, any figure in the Draft General Plan that includes an older version of the footprint or land use plans should be revised to reflect the 2009 footprint. (See, for example, Figure 2.3 showing the Merced 2030 Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI), and Figure 2.4a showing the General Plan Study Areas.)*

Response 20H: Please see Responses 20A and 20B.

Comment 20I: *The Draft General Plan should also be revised where appropriate to reflect the acreages associated with the 2009 land use plans for the Project Site. (See, for example, the discussion on page 2-16 of the Draft General Plan regarding the approximate acreage of the*

areas proposed for inclusion in the Draft SUDP/SOI.) We note that the Land Use Chapter in the Draft General Plan includes a set of "Conceptual Land Use Plans for Proposed Community Plans." Four of these plans depict various versions of the illustrative land use plans for the campus and University Community. These plans should be removed and replaced with the 2009 land use plans for the Project Site.

Response 20I: The General Plan does contain the 2009 land use plan for the University and University Community North as requested. The other versions shall be clearly marked as to their current status. Please see Responses 20A and 20B.

Comment 20J: 2. *The DPEIR Should Evaluate the City's Potential Annexation of the Project Site.*

In general, the DPEIR should evaluate the City's potential for annexation of the Project Site and LAFCO's role in that annexation.

Response 20J: It is the City's intention to review the LAFCo, as well as City, County, and State requirements and regulations regarding annexation of the UC Merced campus, and then to eventually annex the lands within the UCP in compliance with those regulations in the future. Annexation of the project site is NOT proposed at this time and is outside the scope of the General Plan EIR. As noted on page 2-15 of the General Plan Update, "With this General Plan, the City is planning to have a coterminous SUDP and SOI, whereas the 1997 SUDP and SOI were different boundaries. The 1997 SUDP has been expanded to include some of the areas within the 1997 SOI (i.e. the ...UC Merced Campus.) but also adding other areas outside the 1997 SOI (such as the University Community..."

Comment 20K: a. *The DPEIR Should Cover the Requirements of the Cortese-Knox-Hertzberg Act.*

The discussion of the City's possible annexation of the Project Site should include an analysis of this annexation in light of the legal requirements of the Cortese-Knox-Hertzberg Act. The Act contains several requirements, but for purposes of this comment letter, we wish to underscore two of those requirements in particular.

First, the DPEIR should reflect the fact that every boundary change determination made by LAFCO must be consistent with the SOI established for the local agency affected by such determination. Gov't Code § 56375.5. Annexation of the Project Site therefore must be consistent with the City's SOI boundary. Accordingly, the DPEIR should evaluate the annexation of the Project Site, in addition to the revision to the City's SOI boundary to include the Project Site as reflected in the 2009 land use plans. The EIR's discussion regarding revisions to the SOI boundary should also cover LAFCO's requirement to conduct a "service review of the municipal services provided in the county or other appropriate area designated by [LAFCO]." Id. § 56430(a).

Response 20K: The City understands that boundary change determinations considered by LAFCO must be consistent with the established SOI boundaries. As noted under Response 20A,

the City will revise the proposed SOI boundaries to include the revised UCP boundaries. The Cortese-Knox-Hertzberg Act is discussed on pages 3.9-2 and 3.9-3 of the DEIR, and includes a description of “service reviews.”

Page 2-9 of the DEIR states, under Section 2.4.1 Purpose: “The purpose of the *Merced Vision 2030 General Plan* is to address various issues that have arisen since the adoption of the *Merced Vision 2015 General Plan* in 1997. Most of the changes have arisen due to the new location of the UC Merced campus and its adjacent University Community. Rapid growth and increasing land costs in Merced have also led to the need to consider additional areas for expansion, thus, one major component of the General Plan Update was to expand the City's existing growth boundary known as the Specific Urban Development Plan boundary (SUDP boundary). Modifications were made to the City's SUDP/Sphere of Influence to add the University Community area and to remove areas north and east of Lake Yosemite that have been identified as significant wetlands preservation areas. The SUDP and the SOI were also combined into one boundary.”

Comment 20L: *Second, the DPEIR should reflect the fact that the Cortese-Knox-Hertzberg Act requires, as a condition to any annexation, that a city "prezone" the territory to be annexed. Gov't Code § 56375(a). The Act further specifies that "[t]he decision of a [LAFCO] with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city." fd. We believe this rezoning requirement would be satisfied if the City incorporated the approved land uses for the Project Site, as analyzed in the 2009 UC Merced EIS/EIR and shown in the enclosed materials, into the City's updated General Plan.*

Both of these requirements, in addition to the other requirements of the Cortese-Knox-Hertzberg Act, should be fully discussed in the General Plan EIR.

Response 20L: Please see Response 20K. The issues to be addressed before annexation can be considered by LAFCo are discussed throughout the DEIR, including consistency with zoning and other policy documents, public input, potential impacts to resources, and costs.

Comment 20M: *b. The DPEIR Should Cover the General Plan's Annexation Conditions.*

The DPEIR's discussion of the Project Site's potential for annexation should also include a consideration of the Policies and Implementing Actions identified in Implementing Action 1.3.f of the City's existing General Plan and Implementing Action 1.3.g of the City's Draft General Plan for future annexation requests. This discussion should confirm that the potential annexation of the Project Site satisfies the "conditions" identified in the Draft General Plan as Policy VE1.3, Implementing Action 1.3.g for annexation requests. These conditions include:

(a) Is the area contiguous to the current City limits and within the City's SUDP/SOI? Do the annexed lands form a logical and efficient City limit and include older areas where appropriate to minimize the formation of unincorporated peninsulas?

Response 20M: Policy UE-1.3 is intended to discern whether or not a proposed annexation will meet the City's goals to discourage “leap-frog development,” as well as associated disruptions in

public services and facilities. Areas within the SUDP/SOI will become available for proposed annexation at different times, as circumstances will vary from area to area. For example, one area may need to complete a Community Plan before being considered for annexation, while another area may not. Therefore, each area will be analyzed on an individual basis. At the time that the area is considered for annexation, the Implementing Actions of Policy UE 1.3 will be applied, and the results, along with other policies and considerations, will be discussed in the environmental document prepared for that area alone. Because circumstances vary widely between one area and another, all areas within the SUDP/SOI cannot be analyzed within the DEIR prepared for the General Plan Update.

Comment 20N:

(b) Is the proposed development consistent with the land use classifications on the General Plan Land Use Diagram (Figure 3.1)?

Response 20N: Please see Response 20M.

Comment 20O:

(c) Can the proposed development be served by the City water, sewer, storm drainage, fire and police protection, parks, and street systems to meet acceptable standards and service levels without requiring improvements and additional costs to the City beyond which the developer will consent to provide or mitigate?

Response 20O: Please see Response 20M.

Comment 20P:

(d) Will this annexation result in the premature conversion of prime agricultural land as defined on the Important Farmland Map of the State Mapping and Monitoring Program? If so, are there alternative locations where this development could take place without converting prime soils?

Response 20P: Please see Response 20M.

Comment 20Q:

(e) Will a non-agricultural use create conflict with adjacent or nearby agricultural uses? If so, how can these conflicts be mitigated?

Response 20Q: Please see Response 20M.

Comment 20R:

(f) Does annexation of the area help the City reach one of the following goals?

(1) Does annexation of the area bring the City closer to annexation of the UC Merced campus and University Community?

Response 20R: Please see Response 20M.

Comment 20S:

(2) Does the area contain significant amounts of job-generating land uses, such as industrial, commercial, office, and business/research & development parks?

Response 20S: Please see Response 20M.

Comment 20T:

(3) Does the project provide key infrastructure facilities or other desirable amenities, such as the extension of major roads, utility trunk lines, parks and recreational facilities, etc.?

Response 20T: Please see Response 20M.

Comment 20U: *The DPEIR should evaluate whether annexation of the Project Site satisfies each of these conditions and all other conditions and criteria identified in the Draft General Plan with respect to future annexation requests.*

Response 20U: Please see Response 20M.

Comment 20V: c. The DPEIR Should Identify LAFCO as a Responsible Agency.

As a general rule, LAFCOs must comply with CEQA before approving an annexation. Bozung v. Local Agency Formation Comm 'n (1975) 13 Cal.3d 263. In our experience, a city, county, or special district involved in an annexation generally assumes the role of lead agency, while the LAFCO functions as a responsible agency, for the purposes of CEQA review. A "responsible agency" is defined as a "public agency which proposes to carry out or approve a project, for which [a] lead agency is preparing or has prepared an EIR." 14 Cal. Code Regs. § 15381. The term also includes "all public agencies other than the lead agency which have discretionary approval power over the project." Id. Because LAFCO would rely upon the General Plan EIR for any future annexation determination relative to the Project Site, LAFCO should be identified in the General Plan EIR as a "responsible agency," and it should be given the opportunity to provide input to the City regarding potential environmental impacts resulting from the potential annexation of the Project Site to the City.

Response 20V: The importance of the DEIR for LAFCo use is explained on page 1-1 of the DEIR, "This document is also intended to serve CEQA compliance purposes for the Local

Agency Formation Commission (LAFCO) review of the revised Sphere of Influence boundary.” The role of LAFCo is described on pages 3.2-2 and 3.2-5 of the DEIR, and its policies regarding annexations are included in Appendix C of the DEIR.

Comment 20W: *SPECIFIC COMMENTS ON THE DPEIR*

We have the following specific comments on the DPEIR, arranged below by chapter in the DPEIR.

1. *Executive Summary*

- *Table ES-1 titled "Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)" should be updated to reflect the 2009 land use plans for the Project Site.*

Response 20W: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data and the City’s plans for incorporating the 2009 boundaries in the General Plan.

Comment 20X:

- *The section regarding the "Proposed Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)" on page ES-5 should be updated to reflect the 2009 land use plans for the Project Site.*

Response 20X: Please see Responses 20A, 20B, 20F, and 20G.

Comment 20Y: *Discussion item 3 on page ES-6 in particular should be modified to reflect the correct number of acres that will be included to take in the property between the current City limit/SUDP and the Project Site.*

Response 20Y: Please see Responses 20A, 20B, 20F, and 20G.

Comment 20Z: *2. Project Description (Chapter 2)*

- *In general, the DPEIR's Project Description should discuss the City’s potential annexation of the Project Site, as described above, and the fact that the updated General Plan will include the land uses proposed for the Project Site.*

Response 20Z: Please see Responses 20A, 20B, 20F, and 20G.

Comment 20AA: *The DPEIR should depict the Project Site's 2009 land use plans on all relevant maps and drawings. As discussed above, each of the figures in the DPEIR that show the Project Site depict the 2002 version of the Project Site's footprint. The land use plans analyzed in the 2009 UC Merced EIS/EIR show the revised boundaries of the Project Site and should be used instead.*

Response 20AA: Please see Responses 20A, 20B, 20F, and 20G. The City may incorporate the revised boundaries for the UC Merced Campus and the University Community North into its General Plan and it has chosen to do so as a proposed change to the Draft General Plan. As a practical matter, however, there are numerous figures, maps, and tables throughout the General Plan and Draft EIR which depict the proposed boundaries for the University and the University Community, mostly for illustrative purposes only. Modifying all of these figures, maps, and tables prior to adoption of the General Plan would be impractical and in most cases, those boundaries are simply background illustrations, not the purpose of the map, figure or table. Therefore, these figures, maps, and tables will be updated after adoption of the General Plan and noted on an Errata sheet.

Comment 20BB:

- *The DPEIR sets forth on page 2-1 several "Planning Principles," one of which mentions the UC Merced project: "Connectivity between existing and planned urban areas. Examples include the northeast area toward UCM, the University Community, and South Merced." This Planning Principle should be clarified so that it refers to connectivity between existing urban areas and the proposed Project Site.*

Response 20BB: The Planning Principle noted is intended to emphasize the importance to maintaining and improving connectivity "between existing and planned urban areas." The example referenced serves the purpose of providing a general description of the type of connectivity intended.

Comment 20CC: *In addition, the City should consider other Planning Principles that specifically bear on the potential annexation of the Project Site. For example:*

- *Commit to annexation of the Project Site as revised to ensure logical and previously approved development of eastern Merced.*
- *Continue planning efforts to integrate UC Merced Project Site into Merced.*
- *Evaluate feasibility of extending City services to the Project Site.*

Response 20CC: The Planning Principles included provide general guidelines, and are not intended to highlight specific areas, such as the UC Merced campus or University Community Plan area.

Comment 20DD:

- *Table 2-1 titled "Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)" should be updated to reflect the 2009 land use plans for the Project Site.*

Response 20DD: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data in the Draft EIR.

Comment 20EE:

- *Figure 2-4 depicting the "Merced Vision 2030 General Plan EIR 2030 Land Use Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20EE: Please see Response 20B.

Comment 20FF:

- *The section regarding the "Proposed Merced Specific Urban Development Plan Boundary (SUDP)/Sphere of Influence (SOI)" on page 2-7 should be updated to reflect the 2009 land use plans for the Project Site.*

Response 20FF: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data in the Draft EIR.

Comment 20GG: *Discussion item 3 on page 2-7 in particular should be modified to reflect the correct number of acres that will be included to take in the property between the current City limit/SUDP and the UC Merced campus and community.*

Response 20GG: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data in the Draft EIR.

Comment 20HH:

- *Table 2-1 in the DPEIR titled "Existing & Proposed General Plan Land Use Comparison Within the City Limits and SUDP/SOI (Acres)" sets forth land uses and their acreages within the city limits of Merced. If necessary, the City should recalculate these acreages in light of the Project Site's revised boundaries, as shown in the attached materials.*

Response 20HH: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data in the Draft EIR.

Comment 20II:

- *The DPEIR states that "most of the changes" to the City's General Plan are "due to the new location of the UC Merced campus and its adjacent University Community." DPEIR at 2-9. The DPEIR also states that "[m]odifications were made to the City's SUDP/Sphere of Influence to add the University Community area and to remove areas north and east of Lake Yosemite that have been identified as significant wetlands preservation areas." DPEIR at 2.9. As noted above, the updated General Plan should use the 2009 land use plans analyzed in the 2009 UC Merced EIS/EIR.*

Response 20II: It is the City's intent to exclude the areas north and east of Lake Yosemite that contains the wetlands area from the City's Sphere of Influence since it cannot be used for future urban development. See page 2-9 of the DEIR for a list of the changes made to the SUDP/SOI

since the 1997 development of the 2015 General Plan. Also please see Responses 20A, and 20B explaining the use of the 2002 UCP data in the Draft EIR and the City's choice to include the 2009 boundaries as a proposed change in the Draft General Plan prior to adoption. As a practical matter, however, there are numerous figures, maps, and tables throughout the General Plan and Draft EIR which depict the proposed boundaries for the University and the University Community, mostly for illustrative purposes only. Modifying all of these figures, maps, and tables prior to adoption of the General Plan would be impractical and in most cases, those boundaries are simply background illustrations, not the purpose of the map, figure or table. Therefore, these figures, maps, and tables will be updated after adoption of the General Plan and noted on an Errata sheet.

Comment 20JJ: 3. Aesthetics (Chapter 3.1)

- *Figure 3.1-8 depicting the "Merced Vision 2030 General Plan EIR Scenic Corridors" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20JJ: Please see Responses 20A, 20B, 20F and 20G explaining the use of the 2002 UCP data in the Draft EIR and the City's choice to include the 2009 boundaries as a proposed change in the Draft General Plan prior to adoption.

Comment 20KK: 4. Agricultural and Forest Resources (Chapter 3.2)

- *Figure 3.2-1 depicting the "Merced Vision 2030 General Plan EIR Important Farmland Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20KK: The FEIR will contain an updated Figure 3.2-1 to show the 2008 Important Farmlands, rather than the 2006 data used in the DEIR. The 2004 University Community Plan and the 2009 UC Merced Long Range Development Plan data will be used to designate the UC Merced land use.

Comment 20LL:

- *Figure 3.3-2 depicting the "Merced Vision 2030 General Plan EIR Williamson Act Lands" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20LL: Figure 3.2-2 (not Figure 3.3-2 as referenced by the Commenter) depicts lands under Williamson Act contract in 2006. This map will be updated to reflect lands with more recent 2008 contracts. Please see Response 20KK as well.

Comment 20MM:

- *Page 3.2-4 refers to an approximate acreage of undeveloped land that could result in conversion to developed land, and Page 3.2-6 refers to an approximate acreage of land currently designated for agricultural use that could be affected by the proposed SUDP/SOI. This acreages may need to be revised in light of the 2009 land use plans for the Project Site.*

Response 20MM: Please see Responses 20A and 20B.

Comment 20NN: 5. Biological Resources (Chapter 3.4)

- *Figure 3.4-1 depicting the "Merced Vision 2030 General Plan EIR National Wetlands Inventory" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20NN: Please see Response 20II.

Comment 20OO:

- *Figure 3.4-2 depicting the "Merced Vision 2030 General Plan EIR CNDDDB Occurrences -Plants" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20OO: Please see Response 20II.

Comment 20PP:

- *Figure 3.4-3 depicting the "Merced Vision 2030 General Plan EIR CNDDDB Occurrences -Wildlife" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20PP: Please see Response 20II.

Comment 20QQ:

- *Figure 3.4-4 depicting the "Merced Vision 2030 General Plan EIR San Joaquin Valley Orcutt Grass Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20QQ: Please see Response 20II.

Comment 20RR:

- *Figure 3.4-5 depicting the "Merced Vision 2030 General Plan EIR Hairy Orcutt Grass Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20RR: Please see Response 20II.

Comment 20SS:

- *Figure 3.4-6 depicting the "Merced Vision 2030 General Plan EIR Green Tuctoria Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20SS: Please see Response 20II.

Comment 20TT:

- *Figure 3.4-7 depicting the "Merced Vision 2030 General Plan EIR Conservancy Fairy Shrimp Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20TT: Please see Response 20II.

Comment 20UU:

- *Figure 3.4-8 depicting the "Merced Vision 2030 General Plan EIR Vernal Pool Fairy Shrimp Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20UU: Please see Response 20II.

Comment 20VV:

- *Figure 3.4-9 depicting the "Merced Vision 2030 General Plan EIR Vernal Pool Tadpole Shrimp Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20VV: Please see Response 20II.

Comment 20WW:

- *Figure 3.4-10 depicting the "Merced Vision 2030 General Plan EIR California Tiger Salamander Critical Habitat Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20WW: Please see Response 20II.

Comment 20XX: 6. Geology and Soils (Chapter 3.6)

- *Figure 3.6-1 depicting the "Merced Vision 2030 General Plan EIR Soils Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20XX: Please see Responses 20A and 20B.

Comment 20YY: 7. Hazards and Hazardous Materials (Chapter 3.7)

- *Figure 3.7-2 depicting the "Merced Vision 2030 General Plan EIR Airport Compatibility Zones" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20YY: Please see Responses 20A and 20B.

Comment 20ZZ: 8. Hydrology and Water Quality (Chapter 3.8)

- *Figure 3.8-1 depicting the "Merced Vision 2030 General Plan EIR FEMA Flood Zones" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20ZZ: Please see Responses 20A and 20B.

Comment 20AAA:

- *Figure 3.8-2 depicting the "Merced Vision 2030 General Plan EIR Inundation Zones" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20AAA: Please see Responses 20A and 20B.

Comment 20BBB: 9. Land Use and Planning (Chapter 3.9)

- *On page 3.0-12, the DPEIR states that the "intent of the 2030 General Plan update was not to replace the 2015 plan, but to update selected elements to reflect changes in state law, and new issues (such as the 2009 UC Merced campus) that arose since the 2015 plan was adopted." In addition to the UC Merced campus, this sentence should refer to the University Community.*

Response 20BBB: Although the "UC Merced campus" was provided only as an example of new issues, the text, page 3.9-12, will be revised to state:

The intent of the 2030 General Plan update was not to replace the 2015 plan, but to update selected elements to reflect changes in state law, and new issues (such as the UC Merced campus and University Community), that arose since the 2015 plan was adopted. A significant amount of the 2015 plan was retained, including land use designations and development standards.

Comment 20CCC:

- *Table 3.9-3 titled "Merced Planning Land Use Summary (2015 General Plan SUDP vs. 2030 General Plan SUDP/SOI)" sets forth land uses and their acreages within the 2030 General Plan SUDP/SOI. If necessary, the City should recalculate these acreages in light of the Project Site's revised boundaries.*

Response 20CCC: Please see Responses 20A and 20B.

Comment 20DDD: *Acreages specified on page 3.9-17 may also require revising to reflect the 2009 land use plans for the Project Site.*

Response 20DDD: Please see Responses 20A and 20B.

Comment 20EEE:

- *On page 3.9-21, the DPEIR states, "Development of the General Plan will ultimately involve expansion to the City's SUDP/SOI and annexations Policy UE-1.4 calls for the City to continue joint planning efforts on the UC Merced and University Community plans." This discussion on page 3.9-21 should also reflect the fact that Implementing Action 1.4.a in Policy UE-1.4 further states, "Incorporate the UC Merced campus area as part of the City's SUDP/Sphere of Influence and begin planning for the eventual annexation of the Campus." This discussion should also note that Implementing Action 1.4.b refers to the implementation of City Council Resolution #2006-89, which establishes the City Council's position that "[t]he University Community should be incorporated into the City of Merced, and should not be part of the unincorporated County, or a separate City." (Draft General Plan at p. 2-30.)*

Response 20EEE: The text quoted by the Commenter is part of a broader discussion under the heading "Impact #3.9-2: Conflict with any applicable land use plan, policy, or regulation." The text referenced describes the policies included in the 2030 General Plan Update to ensure that the City's plans remain in compliance "with LAFCo policies and procedures for final approval of the SOI." Policy UE-1.4 pertains to the City's continued "joint planning efforts on the UC Merced and University Community plans," as this is another example of how the 2030 General Plan Update will remain consistent with other current and future documents, including those of LAFCo. This discussion is not specific to changes to the UC Merced and University Community, it is unnecessary to include here any additional policies specific to this area.

Comment 20FFF: 10. Noise (Chapter 3.11)

- *Figure 3.11-1 depicting the "Merced Vision 2030 General Plan EIR Noise Measurement Site Locations" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20FFF: Please see Responses 20A and 20B.

Comment 20GGG:

- *Table 3.11-10 titled "Existing and Predicted General Plan Build Out Traffic Noise Levels Merced General Plan -City of Merced, California" identifies "Distance to Ldn Contours General Plan Build Out." If necessary, the City should recalculate these distances in light of the Project Site's revised boundaries.*

Response 20GGG: Please see Responses 20A and 20B. There is no need to recalculate this data based on the change in the University's and University Community's boundaries as it has no practical effect.

Comment 20HHH: 11. Population and Housing (Chapter 3.12)

- *The first paragraph on page 3.12-2 states that by 2030 the City's projected population is 116,800 persons. This statistic is also included in Table 3.12-2, "Population Estimates*

and Projections, 2000-2030, City of Merced and Merced County." However, the last sentence in the first paragraph states: "It is worth noting that the projected population within the City of Merced SUDP/SOI, as proposed by the General Plan, would be approximately 155,000 in 2030." Based on page 2-1, we assume that 155,000 reflects the population that would be generated by the UC Merced campus and University Community in 2030. (Page 2-1 further notes that "[b]y the year 2035, the UC Merced campus is expected to contribute approximately 37,135 people to the urban growth of the City's urban area; the urban population of Merced is expected to approach 200,000 people by 2035.") It is unclear from this discussion whether the analysis in this chapter is predicated on a population of 155,000 instead of 116,800. The DPEIR should clarify this point.

Response 20HHH: Page 3.12-2 provides population information for not only the incorporated area of the City, but for the larger SUDP/SOI area, which is estimated to be 155,000 persons by 2030. The population figure for 2030 of 155,000 persons is also used on page 2-15 under Section 2.4.3 "Assumptions and Considerations." This section describes the assumptions used throughout the document, and upon which policies, needed services, and potential impacts to resources are based. Projections for the City limits do not take into account any annexations of lands within the SUDP/SOI which might occur (and therefore, add to the population beyond normal growth rates) because the timing of such annexations are unknown.

Section 12 of Chapter 3 describes current population and housing statistics within only the City limits, and provides projections for the same area. As stated in the first sentence in this section, "This section of the Draft EIR describes the existing population, housing and employment characteristics of the City of Merced and Merced County." The City attempt to make this distinction clear by stating "City of Merced," "County of Merced," and "City of Merced SUDP/SOI" where appropriate.

Comment 20III:

- *The Age Characteristics discussion on pages 3.12-2 and 3.12-3 does not reflect the fact that the UC Merced campus and University Community likely will generate a younger population demographic. The DPEIR should clarify that the UC Merced campus and University Community may have this effect on the City's demographics, because it could result in, for example, an increase in renter rather than owner-occupied housing demand.*

Response 20III: Although the ratio of younger residents to older residents could change at the UC Merced campus, it is unlikely to impact the need for additional rental housing for two reasons. In general, the population demographics of the campus and the University Community, comprised of professors, staff, and students will likely have housing needs similar to that of the general Merced population. Also, the City's proposed land use plan incorporates land use designs at a higher density than currently exists as a whole within the City. Therefore, future housing development, which will include both higher density rental and owner-occupied housing, will accommodate the increased population associated with the UC Merced campus and the University Community in much the same way as it will accommodate Merced's general population.

Comment 20JJJ: 12. Recreation (Chapter 3.13)

- *Figure 3.13-1 depicting the "Merced Vision 2030 General Plan EIR Parks and Open Space" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20JJJ: Please see Responses 20A and 20B.

Comment 20KKK:

- *The discussion in Impact #3.13-1 states: "Based on the expected 2030 population of approximately 116,800 persons, there would be a need to provide a total of 180 acres of additional parkland to maintain this policy." This number is inconsistent with the 155,000 population projected for the City in 2030. (See DPEIR page 2-1.) Please revise this discussion to reflect the 155,000 population.*

Response 20KKK: This section consistently references the "City of Merced" (population estimate in 2030 of 116,000) and not the "City of Merced SUDP/SOI" (population estimate in 2030 of 155,000.) Until land within the Merced SUDP/SOI is incorporated into the City, it is under the jurisdiction of the County, and lands dedicated for parks in those areas are outside the responsibility of the City (although the Quimby Act does require that the County also set aside land for parks at a similar ratio.)

Comment 20LLL:

- *The discussion in Impact #3.13-2 states: "Future development assumed under the 2030 General Plan could result in a total population of 116,800." As discussed above, this number is inconsistent with the 155,000 population projected for the City in 2030. Please revise this discussion to reflect the 155,000 population.*

Response 20LLL: Please see Responses 20HHH and 20KKK.

Comment 20MMM: 13. Public Services (Chapter 3.14)

- *The discussion in Impact #3.14-1 states: "Growth allowed under the General Plan would result in a potential population increase of approximately 36,200 additional residents by 2030 (General Plan buildout)." This is inconsistent with the discussion in the Land Use and Planning Chapter, which states: "The 2030 General Plan includes planning for infrastructure elements (utilities and roadways) to improve the quality of life for City residents and to support an additional 74,000 residents by 2030." (See DPEIR p. 3.9-19.) Based on our calculations, 74,000 additional residents is more accurate than 36,200 additional residents; 74,000 is the difference between 155,000 (the City's projected population in 2030) and 80,985 (the City's current population in 2010). (See DPEIR p. 2-1.) The analysis in Impact #3.14-1 and to the extent necessary the remainder of this chapter should assume 74,000 additional residents, rather than 36,200.*

Response 20MMM: The City appreciates the commenter's pointing out this discrepancy. The land use discussion on DEIR page 3.9-19 outlines the anticipated need for increased utilities and roadways within the entire SUDP/SOI (as this infrastructure will be supplied by the City by 2030), and should therefore state:

The 2030 General Plan includes planning for infrastructure elements (Utilities and roadways) to improve the quality of life for ~~City~~ residents within the Merced SUDP/SOI and to support an additional 74,000 residents by 2030. These elements will widen some roadways, improve existing infrastructure, and improve flood control facilities. However, no major new roads or infrastructure corridors are proposed in the developed portions of the community that would create a physical barrier or division between existing neighborhoods.

In contrast, Impact #3.14-1 specifically addresses services only "in the City," where the figure of "approximately 36,200 additional residents" is correct.

Comment 20NNN:

- *The discussion in Impact #3.14-3 states: "Implementation of the proposed General Plan is projected to increase the population by approximately 36,200 new residents by the year 2030." This should be revised to reflect 74,000 additional residents. See comment above.*

Response 20NNN: As with Response 20MMM, which addresses Impact #3.14-1, the figure of approximately 36,200 additional residents is correct, as this impact addresses only those residents of the City of Merced.

Comment 20000: 14. Transportation/Traffic (Chapter 3.15)

- *Figure 3.15-1 depicting the "Merced Vision 2030 General Plan EIR Circulation Map" should be revised to reflect the 2009 land use plans for the Project Site. The legend of the revised figure should continue to note that "Specific Plan Area Circulation Patterns to be Determined".*

Response 20000: Please see Responses 20A and 20B. The City has chosen to revise the General Plan to reflect the 2009 UC/UCP boundaries. As a practical matter, however, there are numerous figures, maps, and tables throughout the General Plan and Draft EIR which depict the proposed boundaries for the University and the University Community, mostly for illustrative purposes only. Modifying all of these figures, maps, and tables prior to adoption of the General Plan would be impractical and in most cases, those boundaries are simply background illustrations, not the purpose of the map, figure or table. Therefore, these figures, maps, and tables will be updated after adoption of the General Plan and noted on an Errata sheet.

Comment 20PPP:

- *Figure 3.15-2 depicting the "Merced Vision 2030 General Plan EIR Regional Routes" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20PPP: Please see Responses 20A and 20B.

Comment 20QQQ:

- *Figure 3.15-6 depicting the "Merced Vision 2030 General Plan EIR Railroads" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20QQQ: Please see Responses 20A and 20B.

Comment 20RRR:

- *Figure 3.15-7 depicting the "Merced Vision 2030 General Plan EIR Bicycle Routes" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20RRR: Please see Responses 20A and 20B.

Comment 20SSS: 15. Utilities/Services (Chapter 3.16)

- *This chapter does not clearly indicate whether it reflects the 2009 land use plans for the Project Site in evaluating the potential environmental impacts related to utilities and other services required by the City as envisioned under the 2030 General Plan. Please confirm that this chapter assumed the 2009 land use plans for the Project Site.*

Response 20SSS: Page 3.16-11, Impact #16-4 references the UC Merced data “contained in the 1995 and 2001 Water Supply Plans,” which would not have used the 2009 UC Merced and University Community land use data.

Impact #16-4 later references water needs for the City of Merced SUDP/SOI, including water “for residential, commercial, industrial, the UC Merced campus, and unaccounted for water, “According to the City’s 2005 Urban Water Management Plan.” This document utilized the 2002 UC Merced data. Similar references to the UC Merced, the Campus Community, and the University Community utilize 2002 land use data.

Comment 20TTT: 16. Greenhouse Gas Emissions (Global Climate Change) (Chapter 3.17)

- *The acreages listed on page 3.17-1 regarding "[p]roposed additional General Plan areas outside Existing General Plan area, within the SUDP/SOI" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20TTT: Please see Responses 20A and 20B.

Comment 20UUU: 17. Project Alternatives (Chapter 4)

- *Figure 4.1 depicting the "Merced Vision 2030 General Plan EIR 2030 Reduced Sphere of Influence Land Use Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20UUU: Please see Responses 20A and 20B.

Comment 20VVV:

- *Figure 4.2 depicting the "Merced Vision 2030 General Plan EIR 2030 Concentrated Growth Alternative Land Use Map" should be revised to reflect the 2009 land use plans for the Project Site.*

Response 20VVV: Please see Responses 20A and 20B.

Comment 20WWW: CONCLUSION

Thank you for your consideration of our comments on the DPEIR. We look forward to working with the City to realize our mutual goals of incorporating the UC Merced campus and University Community into the City. To that end, we would like to arrange a meeting to discuss with you our comments on the DPEIR and to ascertain whether the City requires any additional information to accommodate our comments. We will contact you soon to arrange a mutually convenient time to meet.

Response 20WWW: The City appreciates the comments from the UC Merced, and also looks forward to working with the UC Merced and University Community in the future.



LETTER 21

2278 Shattuck Ave.
Berkeley, CA. 94704
Phone:(510) 549-1954
Fax: (510) 549-1973

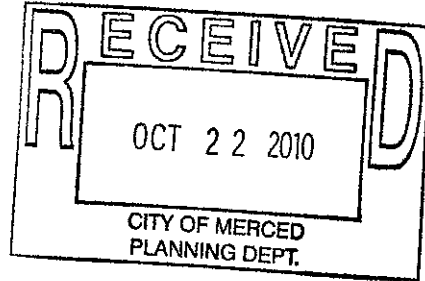
October 22, 2010

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, CA 95340

Via Facsimile

Via U.S. Mail

Via Electronic Mail



Subject: Merced Vision 2030 Draft General Plan EIR (SCH #2008071069)

Dear Ms. Espinosa:

Thank you for the opportunity to review the Merced Vision 2030 Draft General Plan Environmental Impact Report. Upon review, we offer the following comments:

1. The discussion under Impact #3.3-2 (Air Quality) does not adequately describe the air quality impacts associated with urbanization and the nexus for the mitigation that follows on pages 3.3-22 through 3.3-24. Furthermore, the impact discussion does not differentiate between new development and redevelopment and the difference that might potentially have on the need for mitigation as a stationary source (reduced versus additional vehicular trips). Additionally, the impact analysis and associated mitigation measures do not differentiate between types and intensities of projects (e.g. mixed-use mid-rise versus suburban retail), nor the fiscal impact implementation of the measures might have from both a more city-wide macro-economic perspective (no growth, costs to do business, jobs) to a more micro-economic individual project perspective (construction costs versus market based lease and sales thresholds). In order for Air Quality to be adequately addressed in the EIR, the analysis needs to be expanded to identify impact thresholds by land use type, size and location so that appropriate

A

B

C

● Page 2

October 22, 2010

C cont.

mitigation can be applied to reduce identified impacts. The fiscal impacts of requiring the mitigation as set forth on pages 3.3-22 through 3/3-24 also need to be identified in order for the analysis to be adequate.

For instance, a good example of mitigation without adequate impact threshold levels set, the types of projects that the mitigation might be applicable to and the fiscal impact of implementing the measure involves parking where the EIR states (page 3.3-22, third bullet under mitigation) that "Multi-story parking facilities shall be considered instead of parking lots to reduce exposed concrete surface and save green space". The impact analysis does not provide a nexus for this

measure nor does the measure adequately identify how implementation will reduce (quantitatively and qualitatively) air quality impacts. Furthermore the measure does not identify the types of projects this mitigation shall be applied to or the fiscal impact implementation might have on a given project. All of these factors need to be expanded upon in order for the discussion to adequately assess the impacts and appropriately apply mitigation for the reduction of air quality impacts.

2. Under Circulation, the EIR provides a listing of roadway improvements required to maintain a level of service of "D" or better (pages 3.15-26 through 3.15-29). Mitigation Measure 3.15-1b states that traffic studies will need to accompany all discretionary requests as determined by staff. The EIR does not adequately address the thresholds needed to trigger roadway improvements, how the thresholds would be determined and how the improvements would be paid for.

Thank you for the opportunity to review and comment on the Draft EIR. We look forward to reviewing the responses to comments as part of the Final EIR and participating in the public hearing process.

Sincerely,



Sidhardha Lakireddy

D

E

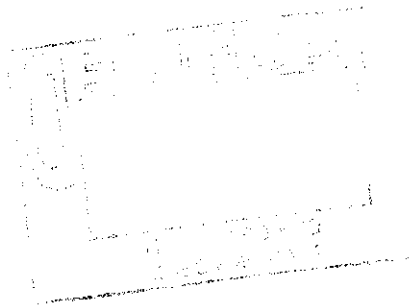
F

G

H

Please find our comments regarding the EIR in this fax.

Thank you,
Sid Lakireddy



Letter 21 Sid Lakireddy, Everest Properties

Comment 21A: *Thank you for the opportunity to review the Merced Vision 2030 Draft General Plan Environmental Impact Report. Upon review, we offer the following comments:*

1. The discussion under Impact #3.3-2 (Air Quality) does not adequately describe the air quality impacts associated with urbanization and the nexus for the mitigation that follows on pages 3.3-22 through 3.3-24.

Response 21A: The City appreciates the Commenter's concerns regarding air quality. As a policy document, the appropriate environmental document for the General Plan Update is a Program Level EIR. As such, the mitigation measures presented are general in nature and do not have the specificity required for an individual project. Individual projects for development, whether mixed use, suburban retail, or other types of projects, will require their own environmental documents, prepared to meet CEQA requirements. These project-specific environmental documents will discuss in detail any potential impacts and mitigation measures that might occur directly or indirectly as a result of the project.

Comment 21B: *Furthermore, the impact discussion does not differentiate between new development and redevelopment and the difference that might potentially have on the need for mitigation as a stationary source (reduced versus additional vehicular trips).*

Response 21B: Please see Response 21A.

Comment 21C: *Additionally, the impact analysis and associated mitigation measures do not differentiate between types and intensities of projects (e.g. mixed-use mid-rise versus suburban retail), nor the fiscal impact implementation of the measures might have from both a more city-wide macro-economic perspective (no growth, costs to do business, jobs) to a more micro-economic individual project perspective (construction costs versus market based lease and sales thresholds). In order for Air Quality to be adequately addressed in the EIR, the analysis needs to be expanded to identify impact thresholds by land use type, size and location so that appropriate mitigation can be applied to reduce identified impacts.*

Response 21C: As explained in 21A, potential impacts resulting from proposed projects will be addressed in project-specific environmental documents.

Comment 21D: *The fiscal impacts of requiring the mitigation as set forth on pages 3.3-22 through 3/3-24 also need to be identified in order for the analysis to be adequate.*

For instance, a good example of mitigation without adequate impact threshold levels set, the types of projects that the mitigation might be applicable to and the fiscal impact of implementing the measure involves parking where the EIR states (page 3.3-22, third bullet under mitigation) that "Multi-story parking facilities shall be considered instead of parking lots to reduce exposed concrete surface and save green space".

Response 21D: Mitigation measures described in the DEIR do not typically include a fiscal analysis. The circumstances of the implementation of the mitigation measure vary from project to project, so that while one mitigation measure may be appropriate for a particular location and project, it might not be suitable for another. Additionally, mitigation measures are most often paid for by the project proponent. As noted under Response 21A, individual environmental documents must be prepared for each proposed project, and appropriate mitigation measures, whether required by law or recommended by the City, will be included for each proposed project. As is noted under Mitigation #3.3-2, cited by the Commentor, “The following BACT (Best Available Control Technology) installations and mitigation *shall be considered for new discretionary permits*, to the extent feasible as determined by the City.”

Comment 21E and 21F: *The impact analysis does not provide a nexus for this measure nor does the measure adequately identify how implementation will reduce (quantitatively and qualitatively) air quality impacts.*

Furthermore the measure does not identify the types of projects this mitigation shall be applied to or the fiscal impact implementation might have on a given project. All of these factors need to be expanded upon in order for the discussion to adequately assess the impacts and appropriately apply mitigation for the reduction of air quality impacts.

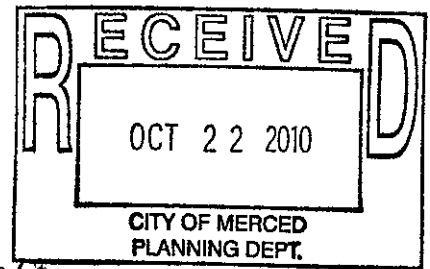
Response 21E and 21F: As explained in 21A and 21D, a nexus for each mitigation measure is dependent on the individual project on a case by case basis.

Comment 21G: *2. Under Circulation, the EIR provides a listing of roadway improvements required to maintain a level of service of "D" or better (pages 3.15-26 through 3.15-29). Mitigation Measure 3.15-1 b states that traffic studies will need to accompany all discretionary requests as determined by staff. The EIR does not adequately address the thresholds needed to trigger roadway improvements, how the thresholds would be determined and how the improvements would be paid for.*

Response 21G: Thresholds used to determine Levels of Service (LOS) are described in Tables 3.15-1, 3.15-2, and 3.15-3 on pages 3.15-7 through 3.15-9 of the DEIR. Table 3.15-4, on pages 3.15-9 through 3.15-14 compares the traffic volume and LOS under current, no project and 2030 circumstances. Thresholds of Significance, consistent with CEQA, are described on page 3.15-21 and include, “Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system,” and “exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated road or highways.” Funding for improvements comes from a variety of sources, such as MCAG. Additionally, one of the City’s Guiding Principles (page I-iii and I-iv of the 2030 General Plan) is that, “New development provides or pays its fair share of public services and facilities to avoid burdening existing City residents (in short, new growth pays for itself).” However, the City recognizes that funding for some future projects has not yet been determined. These projects must first be prioritized, based on factors including as-yet unknown development, increases in population, and associated impacts to traffic, noise, and roadways. Impacts to current roadways and circulation will be addressed in project level environmental documents on a case by case basis.

Comment 21H: *Thank you for the opportunity to review and comment on the Draft EIR. We look forward to reviewing the responses to comments as part of the Final EIR and participating in the public hearing process.*

Response 21H: The City appreciates the comments and the opportunity in the future to share the concerns and comments of all during the public hearing process.



3425 Sueno Ct.
Merced, CA 95348
October 22, 2010

Kim Espinosa, Planning Manager
City of Merced
678 W. 18th Street
Merced, CA 95340

RE: Draft Environmental Impact Report, Merced Vision 2030 General Plan

Dear Ms. Espinosa,

I offer the following comments regarding the DEIR for the City of Merced’s General Plan Update. Please give them consideration and response pursuant to the requirements of the California Environmental Quality Act (CEQA).

A

2.1 Statement of Project Intent and Objectives (p. 2-1)

Reference is made here, as well as in numerous other instances in the DEIR, to “premature conversion of agricultural land.” What does “premature” mean? Doesn’t it suggest that there is a “mature” date for conversion? We need to strive to preserve agricultural land throughout Merced County, including the City’s SUDP. Moreover, there should be at least a 2 for 1 mitigation whenever farmland is converted to urban uses, so that for each acre converted, two acres are preserved permanently in some type of easement.

B

Countries in Europe, Asia and Africa are purchasing land in the United States, including California, foreseeing their own need to feed future populations. And what are we doing? Watching farmland being paved over, as happened in the San Fernando and Santa Clara Valleys, all in the name of inevitable growth. This is not sustainable development.

C

2.4.2 General Plan Elements/ Chapters (p. 2-10)

Reference is made to the Merced Vision 2015 General Plan, which identified the establishment of a greenbelt between the City of Atwater and the City of Merced. However, the determination has been made that no greenbelt should be included in the General Plan currently under review. How was this decision made? Is it irrevocable? I believe that a greenbelt would help preserve the identities of the respective cities, and that it would provide an attractive transition from one city to the next. What do we now expect to happen? Perhaps non-stop commercial/ residential along Santa Fe Drive? It seems we can do better.

D

Mitigation Measure #3.3-1b (Air Quality)

Here is proposed an ordinance what would limit idling time of construction vehicles, involve the use of alternatively-fueled equipment, and so forth, but woven throughout is the use of the qualifiers “when practicable” and “when feasible”. What does this mean? How are the determinations of practicality and feasibility to be made, and by whom? Will financial considerations, rather than the quality of our air, be the determining factor? Why can we not require that these things be done? Without a requirement, it seems there is no accountability.

E

Mitigation Measure #3.3-2 (Air Quality)

Best Available Control Technology (BACT) installations and mitigations for new discretionary permits are set forth here. Again, however, we have implementation “to the extent feasible as determined by the city”, without any requirement. For example, we have solar water-heating systems, geothermal heat pump systems, and many other energy-conserving features listed, but none are required. How will we ever diminish air quality impacts that are “significant, cumulative, and unavoidable” if we fail to mandate that certain proven technologies be included in new projects? Is the determination to be made on financial grounds only?

F

We need to look at the long-range energy impacts of our community. In particular, we should give strong support to the solar industry, developed locally, in conjunction with the University of California, Merced. Concerning ordinances, we must require solar features in all new projects, whether commercial or residential.

G

Hydrology and Water Quality

According to the DEIR, Merced’s groundwater supply is subject to “critical conditions of overdraft” (California Department of Water Resources). The City’s own study, performed by Brown and Caldwell, states that “the rate of overdraft will continue to increase with future urban development”. The water situation here seems to have all the earmarks of a crisis. Indeed, the entire state, not to mention the other states of the arid west, is in a crisis when it comes to current and foreseeable water supply. Experts say that California has twenty years of water left. At that point, there will not be sufficient water to meet the collective agricultural, industrial and domestic needs of the population.

H

What is to be done? Locally, we need to do more than “consider the use of reclaimed water” and “promote water conservation” (p. 3.8-13). These possibilities must be turned into mandates. New homes should be equipped with at least the basic plumbing features for re-use of greywater. Drought-tolerant landscaping must be required and, eventually, our cultural preferences for expansive, water-wasting lawns must be altered.

Analyses of tree rings in California, dating back approximately 4000 years, have shown that the twentieth century was one of the wettest five or six centuries in that time period.

I

Indeed, during the middle ages, there were droughts lasting 100 and 120 years. It is folly for us to assume that we will always have water, and that there will be adequate supplies to support a burgeoning population up and down the Central Valley. Pay heed!

I cont.

Transportation and Circulation Policy (p. 3.9-15)

How can "M" Street be considered a "major transitway", given that it shrinks to just one lane each way north of Cardella Road? Is there a possibility that a light-rail system will follow the "M" Street corridor? Other parts of the City where there might be light rail, for example, linking the UC Merced campus with downtown areas and various transportation hubs (including high speed rail)?

J

I appreciate the opportunity to comment on the EIR for the Merced Vision 2030 General Plan. Please keep me informed of all meetings and hearings pertaining to this project.

K

Thank you.

Yours truly,



Thomas C. Grave

Letter 22 Thomas C. Grave

Comment 22A: *I offer the following comments regarding the DEIR for the City of Merced's General Plan Update. Please give them consideration and response pursuant to the requirements of the California Environmental Quality Act (CEQA).*

Response 22A: The comment is noted.

Comment 22B: *2.1 Statement of Project Intent and Objectives (P. 2-1)*

Reference is made here, as well as in numerous other instances in the DEIR, to "premature conversion of agricultural land." What does "premature" mean? Doesn't it suggest that there is a "mature" date for conversion? We need to strive to preserve agricultural land throughout Merced County, including the City's SUDP. Moreover, there should be at least a 2 for 1 mitigation whenever farmland is converted to urban uses, so that for each acre converted, two acres are preserved permanently in some type of easement.

Response 22B: The conversion of productive agricultural land to residential, commercial, or industrial use is a significant concern of the City. The reference to “premature conversion” in the General Plan Update and the DEIR reflects the City’s intention to defer the conversion of agricultural land until other available land is utilized. In order to ensure that this land is not converted from agricultural use until necessary, the City has included a number of policies and implementation actions based on guiding principles included in the 2030 General Plan, page I-iii and I-iv. These guiding principles include, “Expansion of the Sphere of Influence and City boundary *with phasing of development to avoid premature conversion of agricultural land* (italics added) and to plan for cost-effective extension of municipal services.” Another policy, “Policy UE-1.1, Designate Areas for New Urban Development That Recognize the Physical Characteristics and Environmental Constraints of the Planning Area” includes Implementing Actions to minimize development in agricultural areas. See also Response to Comment 16B.

Comment 22C: *Countries in Europe, Asia and Africa are purchasing land in the United States, including California, foreseeing their own need to feed future populations. And what are we doing? Watching farmland being paved over, as happened in the San Fernando and Santa Clara Valleys, all in the name of inevitable growth. This is not sustainable development.*

Response 22C: The commenter raises a number of issues that reflect the commenter’s interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Also see Response 22B.

Comment 22D: *2.4.2 General Plan Elements! Chapters (P. 2-10)*

Reference is made to the Merced Vision 2015 General Plan, which identified the establishment of a greenbelt between the City of Atwater and the City of Merced. However, the determination has been made that no greenbelt should be included in the General Plan currently under review. How was this decision made? Is it irrevocable? I believe that a greenbelt would help preserve the identities of the respective cities, and that it would provide an attractive transition from one

city to the next. What do we now expect to happen? Perhaps non-stop commercial/residential along Santa Fe Drive? It seems we can do better.

Response 22D: The use of the term “greenbelt” has not continued from the 2015 Vision General Plan to the 2030 General Plan. Instead, the City uses the term “buffer” to denote a physical separation of land uses or jurisdictions, and “greenway” to indicate an undeveloped strip that sometimes includes a path or trail and serves as a connector between schools, parks, and other community services.

The commenter appears to have a concern with the lack of a buffer between the two cities. The City of Atwater is located approximately four miles from the western boundary of the City of Merced. Between the two cities are agricultural lands and the unincorporated community of Frankwood-Beechwood SUDP. The community is approximately one-mile square and supplies its own utilities. A Community Plan for the community has been accepted by the County, and there are no plans to annex it into the City. The agricultural lands will also remain within the County jurisdiction. These areas will continue to serve as a buffer between Atwater and Merced. Also see Response 22B, as Implementing Actions under Policy UE-1.1 also include the continuing use of buffers. Also, the City will continue to explore the use of greenbelts and urban limits, as described in Section 7.6 of the General Plan Update (see Pages 2-13 and 2-14 of the DEIR).

Comment 22E: Mitigation Measure #3.3-1 b (Air Quality)

Here is proposed an ordinance what would limit idling time of construction vehicles, involve the use of alternatively-fueled equipment, and so forth, but woven throughout is the use of the qualifiers "when practicable" and "when feasible". What does this mean? How are the determinations of practicality and feasibility to be made, and by whom? Will financial considerations, rather than the quality of our air, be the determining factor? Why can we not require that these things be done? Without a requirement, it seems there is no accountability.

Response 22E: The San Joaquin Air Pollution Control District (SJAPCD) is responsible for developing standards and rules to minimize pollution emissions during construction and other activities. For example, an Air Pollution Control Officer must approve a Dust Control Plan before construction activities take place. The City must also determine that companies hired to perform construction activities adhere to federal, state and SJAPCD requirements. The standards recommended in Mitigation Measure 3.3-1.a are those used by the SJAPCD. The inclusion of terms such as “when practical” are intended to encourage compliance whenever possible without an unreasonable demand in those few circumstances when it is not possible. If standards in the ordinance were written too strictly, it could affect construction operations in unintended ways that could result in higher, not lower, vehicular emissions. Financial considerations will not be the only criterion used to determine when an activity need not meet the requirements.

Comment 22F: Mitigation Measure #3.3-2 (Air Quality)

Best Available Control Technology (BACT) installations and mitigations for new discretionary permits are set forth here. Again, however, we have implementation "to the extent feasible as

determined by the city", without any requirement. For example, we have solar water-heating systems, geothermal heat pump systems, and many other energy-conserving features listed, but none are required. How will we ever diminish air quality impacts that are "significant, cumulative, and unavoidable" if we fail to mandate that certain proven technologies be included in new projects? Is the determination to be made on financial grounds only?

Response 22F: The City's objective is to improve air quality whenever possible by utilizing project design measures that will decrease consumption of electrical power and other use of fossil fuels that create carbon emissions. By setting a high standard that most discretionary projects are able to meet, the City can improve air quality. However, to meet other objectives, such as infill or mixed use to avoid premature conversion of agricultural lands, or development of low-income housing, compromises may be required. Also, as with Mitigation Measure 3.3-1, discussed in Response 22F, many of the recommendations included in Mitigation Measure 3.3-2 are derived from state and federal requirements, so that the City must be consistent in its decisions regarding compliance with these regulations.

Many of the commenter's concerns are addressed by state and federal laws intended to reduce human consumption of water and other resources. Because development of City lands must comply with these laws, a number of them are not included as City policies. Only when the City has the discretion to interpret how the objectives of the laws will be carried out are they required to develop ordinances to ensure compliance.

Comment 22G: *We need to look at the long-range energy impacts of our community. In particular, we should give strong support to the solar industry, developed locally, in conjunction with the University of California, Merced. Concerning ordinances, we must require solar features in all new projects, whether commercial or residential.*

Response 22G: UC Merced has provided an excellent example of ways in which solar power can be incorporated for large scale use. However, by requiring, rather than encouraging, solar features in every residential and commercial project, the City would create unfair advantages that could be considered discriminatory to those projects with financial constraints, including non-profit, low-income housing proponents.

Comment 22H: *Hydrology and Water Quality*

According to the DEIR, Merced's groundwater supply is subject to "critical conditions of overdraft" (California Department of Water Resources). The City's own study, performed by Brown and Caldwell, states that "the rate of overdraft will continue to increase with future urban development". The water situation here seems to have all the earmarks of a crisis. Indeed, the entire state, not to mention the other states of the arid west, is in a crisis when it comes to current and foreseeable water supply. Experts say that California has twenty years of water left. At that point, there will not be sufficient water to meet the collective agricultural, industrial and domestic needs of the population.

What is to be done? Locally, we need to do more than "consider the use of reclaimed water" and "promote water conservation" (p. 3.8-13). These possibilities must be turned into mandates. New

homes should be equipped with at least the basic plumbing features for re-use of greywater. Drought-tolerant landscaping must be required and, eventually, our cultural preferences for expansive, water-wasting lawns must be altered.

Response 22H: In regard to water use, again state law requires that most (based on property size) new developments include City-approved low-water landscaping and watering methods (such as drip irrigation) that discourage large lawns and thirsty plantings. In more general terms, Senate Bill 221 (SB 221) amended the California Water Code, to require a written affirmative verification of sufficient water supply by a city or county for certain residential subdivisions. The Commenter is correct in stating that the City, as well as the region is currently in overdraft of groundwater. As noted in the responses above, the City has developed policies intended to reduce water use. And, although specific mitigation measures are not included in the DEIR, the City will continue to develop ordinances and work with the County, MID, and state agencies to encourage water conservation and ensure that the City can provide adequate water quantities to its residents.

Comment 22I: *Analyses of tree rings in California, dating back approximately 4000 years, have shown that the twentieth century was one of the wettest five or six centuries in that time period.*

Indeed, during the middle ages, there were droughts lasting 100 and 120 years. It is folly for us to assume that we will always have water, and that there will be adequate supplies to support a burgeoning population up and down the Central Valley. Pay heed!

Response 22I: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements.

Comment 22J: *Transportation and Circulation Policy (p. 3.9-15)*

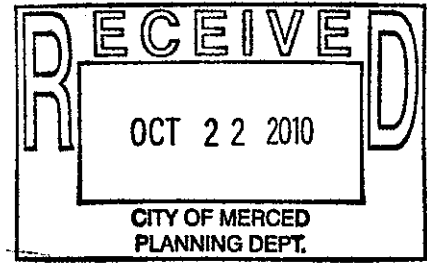
How can "M" Street be considered a "major transitway", given that it shrinks to just one lane each way north of Cardella Road? Is there a possibility that a light-rail system will follow the "M" Street corridor? Other parts of the City where there might be light rail, for example, linking the UC Merced campus with downtown areas and various transportation hubs (including high speed rail)?

Response 22J: Please see pages 4-20 and 4-21 of the 2030 General Plan for a description and map of the M Street corridor and proposed transitway. As proposed, this transitway would include mass transit via bus, rather than a light rail system. The M Street transitway would also provide access to east-west transitways and transit to adjacent neighborhoods. As noted on page 4-15, "A public bus system is expected to remain the most cost-effective method of public transportation for the community in the foreseeable future. A key factor is the amount of assistance contributed by other levels of government to help operate and maintain the system." However, as noted on page 4-40, "Transit corridors that are effectively preserved could become the location of a light rail system. Related future transit options, such as a light-rail or even alternatives not currently visualized, if they become economically viable, might utilize established corridors."

Comment 22K: *I appreciate the opportunity to comment on the EIR for the Merced Vision 2030 General Plan. Please keep me informed of all meetings and hearings pertaining to this project.*

Response 22K: The list of interested parties includes your name and information, and you will be advised when the FEIR is completed and available for public review.

Kim Espinosa
 City of Merced Planning Division
 678 W 18th Street
 Merced, Ca 95340
 Re Draft EIR #10-01 Merced Vision 2030 General Plan
 Email espinosak@cityofmerced.org



Dear Ms. Espinosa,

The following notes are comments with references to parts of the Draft EIR made by Valley Land Alliance.

First of all, where is the need for a plan of expansion when this is only to 2030 and we have enough room in the present general plan for 298,614 people. We will be lucky if we fill up what we have by 2060.

A

Where is the design for a community? This SOI appears to be for special developments. The developments in south Merced and northwest Merced proposed to be in the SOI are possibly considerations for the next 20 year general plan update, but not for this one. It appears this inclusion is not for the interest of the people who live here but for developers.

B

The seven required elements which need to be consistent with each other are: land use, transportation, open space, conservation, housing, noise and safety. This Draft EIR is based on unneeded housing development which will jeopardize all seven elements.

C

D Ag land must be preserved to protect our food security. Sprawl requires more miles be driven which pollutes our air, open space will be lost, conservation is lost, housing needs don't exist, and safety will be more difficult to achieve with expansion. We must clean up the mess we have created before making more commitments. The people in Merced City, Merced County and beyond must pay for what approvals the Merced City makes. The assumptions I.IV state

E

(1) that the population in Merced will approach 155,000 by 2030. The present general plan states there is room for double that amount.

F

(6) Projected growth estimates will occur within the planning time-frames (20 years) This is a conflict to what is stated in the present GP.

G

There is a discrepancy between the goals and the draft update plans.

H

Below are notes made while perusing the draft EIR:

5.1 Unavoidable sign environmental effect

- . large commitment of nonrenewable resources
- . conversion of ag land to "employment" and residential uses

I

5.2

12,865 addl ag land designated for urban use beyond existing Merced SUDP area

Where is the need? This is to be a 30 year plan. Is Merced City leading us or are the developers in these areas leading us? (Hostetler and Brookfield) Isn't the UCM enough with a planned development to house 30,000 more people?

J

5.5 Ag/Forest Resources

K

Valley population expected to be 10 million by 2040. will lose 882,000 a farmland to urbanization and ranchettes which equals 111% increase (1.68 million acres developed land

K cont.

We have only 6.3 million acres high quality farmland now!!

5.6 Aesthetics: "cumulative conversion" could result in cum significant and unavoidable aesthetic impact

L

5.7 Pg 5.5 by 2040 cumulative loss of farm gate sales will be around \$17.7 billion (2000 year value)

M

Air quality: proposed GP would contribute considerably to a significant and unavoidable cum. Impact

BN

P 5.7 Water: hydrology and water quality: overdraft exists now and will continue with future urban develop. Must be addressed and mitigated

O

5.8 Pop/Housing: control and direct growth "where is jobs/housing balance?"

P

4.4.1 Existing GP is good for 298,614 people....we have enough room for almost 2 times the anticipated growth by 2030.

Q

4.4.3 Concentrated Growth Altern...includes Hostetler and Brookfield expansion of SOI there is no need to expand SOI

R

P2.1 and 2.2 Intent is "social and econ impacts are typically beyond scope of CEQA" "sustainable development" how is this possible when an EIR is all about providing a healthy community? Social and econ impacts will result from decisions made on GP.

S

3.2-5 Wrong...is significant mitigation 4-1

T

3.2-6 significant...not necessary as plenty of land for anticipated growth

U

3.8-2 water: depletes aquifers....need mitigation

V

page ES2 "Policies...limit leapfrog development and provide for orderly transition from rural to urban land use. (the Brookfield project on Bellevue would be leap frog...enough land and houses in city now will not be filled in next 30 years or more) This is premature to include

W

ES3 "Guiding principles:avoid premature conversion of ag land and provide cost effective extension of municipal services: south Merced (Hostetler) and north west Merced (Brookfield) for sure

X

"Need to foster compact and efficient development patterns" these do NOT

Y

"expand SUDP to incl in SOI = 52.4 sq miles....1. ..provide a better jobs-housing balance" does NOT do this

Z

ES6 Ag/Forest, Air Noise green house effects, etc must mitigate

AA

ES7,8 Alternatives best is to accept present GP as enough room for 298,614 people. See 4.4.1

BB

ES41 3.15-1b "shall" should be

CC

ES43 3.16-3 says conflicting things!!!!!!

DD

3.17-1 GHG needs mitigation

EE

3.17-3 significant effect

FF

P1-5 addl EIR must be prepared if alternative not taken

GG

1-8 Utilities...addressed to "greatest extent possible"

HH

2.1 "to 2030 guide for growth" we have plenty of room now

II

2.1-2 objectives don't match GPU

2-6 last pp "expand to accommodate future growth to 2030 not needed

18 SUDPs and 6 Incorp cities = SUDPs

3.2-5 No Impact to ag mitigation needed

Ag land must be preserved. Prediction if we continue on same course, 55,000 more acres of farmland in Merced County will be lost by 2040. (need to check 2040, but I'm quite sure I am right)

This Guiding Principles and Policies are in direct conflict with GPU plans.

Let's clean up the mess we have, balance jobs, then think about adding more ag land.

This is similar to what we had in Livingston....cater to the developers and get control to pave over farmland.

Please consider accepting the present general plan alternative.

Sincerely,

Jean Okuye
Valley Land Alliance
PO Box 102
Cressey, Ca 95312
209-394-2421

JJ

KK

LL

MM

NN

OO

PP

Letter 23 Jean Okuye, Valley Land Alliance

Comment 23A: *The following notes are comments with references to parts of the Draft EIR made by Valley Land Alliance.*

First of all, where is the need for a plan of expansion when this is only to 2030 and we have enough room in the present general plan for 298,614 people. We will be lucky if we fill up what we have by 2060.

Response 23A: Please see Comment Letter 2, Response 2H regarding population projections.

The City respectfully disagrees with the idea that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 23B: *Where is the design for a community? This SOI appears to be for special developments. The developments in south Merced and northwest Merced proposed to be in the SOI are possibly considerations for the next 20 year general plan update, but not for this one. It appears this inclusion is not for the interest of the people who live here but for developers.*

Response 23B: Please see Comment Letter 2, Response 2G regarding zoning to accommodate the housing need. The areas adjacent to the current City limits are under the jurisdiction of the County of Merced. If the City were to wait to address annexing them into the City, they would continue to be developed primarily as low density residential units. This could result in small, unconnected utilities (i.e., single or joint-use wells, numerous service areas with separate providers) and roadways. By planning to annex these areas, the City can begin to incorporate them into its water, wastewater, and other systems. Additionally, these areas will comply with City zoning codes, which will reduce inappropriate development, such as industrial use between two residential areas. Also, the premature conversion of agriculture can be avoided by planning for development in these areas before it becomes necessary because of population growth pressures.

Comment 23C: *The seven required elements which need to be consistent with each other are: land use, transportation, open space, conservation, housing, noise and safety. This Draft EIR is based on unneeded housing development which will jeopardize all seven elements.*

Response 23C: The DEIR addresses the potential for the General Plan Update (GPU) to impact resources, as required by the California Environmental Quality Act. The DEIR is based on information presented in the Draft *Merced Vision 2030 General Plan*, and evaluates potential impacts to the natural and human environment based on population growth as projected by MCAG. MCAG's projections were used to calculate the need for various types of housing, which was described in detail in the Housing Element update adopted in May 2011.

Comment 23D: *Ag land must be preserved to protect our food security.*

Response 23D: Please see Comment Letter 16, Response 16B.

Comment 23E: *Sprawl requires more miles be driven which pollutes our air, open space will be lost, conservation is lost, housing needs don't exist, and safety will be more difficult to achieve with expansion. We must clean up the mess we have created before making more commitments. The people in Merced City, Merced County and beyond must pay for what approvals the Merced City makes.*

Response 23E: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements.

Comment 23F: *The assumptions I.IV state*

(1) that the population in Merced will approach 155,000 by 2030. The present general plan states there is room for double that amount.

Response 23F: Please refer to Response 23A. The Commenter states correctly that the DEIR and the GPU expect the population to increase from 80,985 to 155,000 within the SUDP/SOI.

Comment 23G: *(6) Projected growth estimates will occur withing the planning tim-frames (20 years) This is a conflict to what is stated in the present GP.*

Response 23G: Please see Response to Comment 2H.

Comment 23H: *There is a discrepancy between the goals and the draft update plans.*

Response 23H: The Commenter's observation cannot be addressed without further description of discrepancies.

Comment 23I: *Below are notes made while perusing the draft EIR:*

5.1 Unavoidable sign environmental effect

- *large commitment of nonrenewable resources*
- *conversion of ag land to "employment" and residential uses*

Response 23I: The Commenter's reference is to Page 5-1 of the DEIR, under the Heading, "5.2 Significant Irreversible Environmental Changes." The text states that CEQA Guidelines require an EIR to address significant irreversible environmental changes that would be involved in the proposed project should it be implemented. Significant irreversible impacts include, "a large commitment of nonrenewable resources." Page 5-2 describes in detail a "commitment of resources." Conversion of agricultural land to "employment" and residential uses is not addressed here. However, this issue is discussed in Response to Comment 16B.

Comment 23J: 5.2

*12,865 addl ag land designated for urban use beyond existing Merced SUDP area
Where is the need? This is to be a 30 year plan. Is Merced City leading us or are the developers in these areas leading us? (Hostetler and Brookfield) Isn't the UCM enough with a planned development to house 30,000 more people?*

Response 23J: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. Please see Response to Comment 16B.

Comment 23K: 5.5 Ag/Forest Resources

*Valley population expected to be 10 million by 2040. will lose 882,000 a farmland to urbanization and ranchettes which equals 111 % increase (1.68 million acres developed land
We have only 6.3 million acres high quality farmland now!!*

Response 23K: As the Commenter noted, the conversion of agricultural lands is significant, and a concern for the City. Although the City has included policies and standards to reduce impacts to agricultural lands and delay premature conversion of agricultural lands, "New development in conformance with the proposed General Plan would contribute to these cumulative impacts. The proposed General Plan's policies and standards described in Section 3.2 would delay, reduce and partially offset Merced's contribution to these cumulative impacts. However, even after mitigation, Merced's contribution to cumulative impacts on agricultural resources in the region would remain *cumulatively significant*." (Page 5-5).

Comment 23L: 5.6 Aesthetics: "cumulative conversion" could result in cum significant and unavoidable aesthetic impact

Response 23L: The comment is noted.

Comment 23M: 5.7 Pg 5.5 by 2040 cumulative loss of farm gate sales will be around \$17.7 billion (2000 year value)

Response 23M: The comment is noted.

Comment 23N: Air quality: proposed GP would contribute considerably to a significant and unavoidable cum. Impact

Response 23N: The comment is noted. Section 3.3 of the DEIR addresses air quality issues, including the City's efforts to improve air quality.

Comment 23O: *P 5.7 Water: hydrology and water quality: overdraft exists now and will continue with future urban develop. Must be addressed and mitigated*

Response 23O: Please see Letter 15, Response 15G and Letter 18, Response 18C (groundwater overdraft).

Comment 23P: *5.8 Pop/Housing: control and direct growth "where is jobs/housing balance?"*

Response 23P: Please see Response to Comment 17A, regarding a separate effort by the City to update its Housing Element, which will address the jobs/housing balance.

Comment 23Q: *4.4.1 Existing GP is good for 298,614 people...we have enough room for almost 2 times the anticipated growth by 2030.*

Response 23Q: Please see Comment Letter 2, Responses 2B and 2H.

Comment 23R: *4.4.3 Concentrated Growth Altern...includes Hostetler and Brookfield expansion of SOI there is no need to expand SOI*

Response 23R: This refers to the Mission Lakes and Castle Farms Community Plan areas, owned by Greg Hostetler and Brookfield Natomas respectively. Please see Response to Comment 2G regarding zoning to accommodate the housing need.

Comment 23S: *P2.1 and 2.2 Intent is "social and econ impacts are typically beyond scope of CEQA" "sustainable development" how is this possible when an EIR is all about providing a healthy community? Social and econ impacts will result from decisions made on GP.*

Response 23S: The intent of CEQA Guidelines is to determine the potential impacts of a project on physical resources. The City acknowledges that the General Plan Update will result in economic and social changes: these are explored and analyzed by the City separately from the environmental document.

Comment 23T: *3.2-5 Wrong....is significant mitigation 4-1*

Response 23T: The Commenter is apparently stating that Mitigation Measure #3.2-1 is not the correct one to address reducing the impact to farmland conversion, or perhaps intends that, instead of impacts being "significant and unavoidable" the impacts should be noted as "significant"? As Section 4 deals with alternatives to the proposed action, no correlation with the Comment on page 3.2-5 could be found.

Comment 23U: *3.2-6 significant....not necessary as plenty of land for anticipated growth*

Response 23U: Again, the intent of the Commenter is unknown. Perhaps the intent is to state that impacts resulting from a conflict with existing zoning for agricultural use, or a Williamson Act contract should not be “*significant and unavoidable*,” as the City already has in its SOI enough land for predicted growth? The determination of *significant and unavoidable* is based on the fact that, despite goals, policies, and actions to reduce, delay, or avoid the conversion of agricultural lands to non-agricultural uses, conversion cannot be entirely prevented.

Comment 23V: *3.8-2 water: depletes aquifers....need mitigation*

Response 23V: The City realizes that impacts to groundwater are significant; however, no mitigation is available to reduce these impacts. The City does include policies, regulations, and zoning to “ensure that hydrology and water quality impacts are minimized as development occurs.” Section 3.8 of the DEIR includes federal, state, and local regulations regarding hydrology.

Comment 23W: *page ES2 "Policies...limit leapfrog development and provide for orderly transition from rural to urban land use. (the Brookfield project on Bellevue would be leap frog ... enough land and houses in city now will not be filled in next 30 years or more) This is premature to include*

Response 23W: As is noted on Page ES-5 and 2-7 of the DEIR, “Approximately 3,995 acres will be added in Northwest Merced. The new SUDP/SOI boundary would generally move to Franklin Road on the west, north of Old Lake Road, and south to Santa Fe Drive. This area is proposed for industrial and business park uses along Highway 59 and a large mixed-use community north of Bellevue Road. This area will be able to accommodate a significant amount of the residential growth in the City for the next 20 years.” The City recognizes the importance of in meeting its goal to limit leap-frog development. However, The City respectfully disagrees with the idea that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years’ worth of growth.

Comment 23X: *ES3 "Guiding principles:avoid premature conversion of ag land and provide cost effective extension of municipal services: south Merced (Hostetler) and north west Merced (Brookfield) for sure*

Response 23X: This refers to the Mission Lakes and Castle Farms Community Plan areas, owned by Greg Hostetler and Brookfield Natomas respectively. Please see Comment Letter 2, Response 2G regarding zoning to accommodate the housing need.

Comment 23Y: *"Need to foster compact and efficient development patterns" these do NOT*

Response 23Y: Please see Responses 23W and 23X.

Comment 23Z: *"expand SUDP to incl in SOI = 52.4 sq miles 1 ... provide a better jobs-housing balance" does NOT do this*

Response 23Z: Please see Response to Comment 2G.

Comment 23AA: *ES6 Ag/Forest, Air Noise green house effects, etc must mitigate*

Response 23AA: Please see Responses to Comments 17S and 18M in regard to a Climate Action Plan, which will provide greater detail regarding current air quality and measures to improve it.

Comment 23BB: *ES 7, 8 Alternatives best is to accept present GP as enough room for 298,614 people. See 4.4.1*

Response 23BB: Although the “No Project Alternative” has the advantage of reducing impacts to 10 resources discussed in the DEIR, it also increases impacts to three resources, whereas the other Alternatives do not. See Page 4-18 and 4-19 for Table 4-1, which compares potential impacts of all Alternatives, as well as the “Project with Mitigation.”

Comment 23 CC: *ES 41 3.15-1b "shall" should be*

Response 23CC: Mitigation Measure #3.15-1b (DEIR pages ES-41 and 3.15-29) will be revised to state:

Mitigation Measure #3.15-1b:

Traffic studies ~~should~~ shall be performed to satisfy the requirements of the California Environmental Quality Act (CEQA) for all proposed General Plan Amendments which intensify development, proposed specific plans, annexations, and other projects at the discretion of the Development Services Department. Future traffic studies ~~should~~ shall generally conform to any guidelines established by the City. The studies ~~should~~ shall be performed to determine, at a minimum, opening-day impacts of proposed projects and as confirmation or revision of the General Plan. The studies ~~should~~ shall address queue lengths and (at a minimum) peak-hour traffic signals warrants in addition to LOS and provide appropriate mitigations. At the discretion of the City, a complete warrant study in accordance with the most recent edition of the California Manual on Uniform Traffic Control Devices may be required to evaluate the need for traffic signals.

Comment 23DD: *ES43 3.16-3 says conflicting things!!!!!!*

Response 23DD: The Commenter apparently misread the text, which is discussed in greater detail on Page 3-16.8 and 3-16.9. Impact #3.16-3 on Page ES 43 is a summary of the CEQA Guidelines criteria for evaluating whether or not the construction of new or expanded storm water drainage facilities might cause significant environmental effects. For the proposed project, this action was deemed to have a less than significant effect, and therefore no mitigation measures are required.

Comment 23EE: *3.17-1 GHG needs mitigation*

Response 23EE: As is noted on Page 3.17-15, “Even with the proposed policies and implementation actions in the proposed General Plan, the impact will remain *significant, cumulatively considerable and unavoidable*. No mitigation measures are available.” However, mitigation measures described in the Air Quality section also apply to the section on Green House Gases. Please also refer to Response to Comments 18K and 18L.

Comment 23FF: *3.17-3 significant effect*

Response 23FF: The Commenter references Impact #3.17-3, “Climate Change could potentially result in an impact on the City of Merced water resources.” This potential impact is discussed on Pages 3.17-17 through 3.17-22. It concludes, “Because considerable uncertainty remains with respect to the overall impact of global climate change on future water supply in California, it is unknown to what degree global climate change will impact the City of Merced water supply and availability in the future. However, based on consideration of the recent regional and local climate change studies described in the literature review above, it is reasonably expected that the impacts of global climate change on the City’s water supply would be *less than significant*.”

Comment 23GG: *PI-5 addl EIR must be prepared if alternative not taken*

Response 23GG: Page 1-5 of the DEIR describes the conditions under which a program level EIR is prepared. A program EIR is the appropriate document for a policy document such as a General Plan update. However, as noted, § 15168(c) requires that the program EIR must be examined to determine when another EIR is required for subsequent activities within the City.

Comment 23HH: *1-8 Utilities ... addressed to "greatest extent possible"*

Response 23HH: Utilities are discussed in detail in Section 3.16 of the DEIR.

Comment 23II: *2.1 "to 2030 guide for growth" we have plenty of room now*

Response 23II: Please see Response 23Q.

Comment 23JJ: *2.1-2 objectives don't match GPU*

Response 23JJ: A one-by-one comparison of objectives to the intent of “sustainable development” is not realistic in this FEIR. However, Table 4-1 does provide a summary comparing the proposed project to the three alternatives. This summary indicates that the proposed project (e.g., the proposed General Plan Update) adheres to the intent of sustainable development” has defined on Page 2-2 of the DEIR.

Comment 23KK: *2-6 last pp "expand to accommodate future growth to 2030 not needed 18 SUDPs and 6 Incorp cities = SUDPs*

Response 23KK: Please see Response 23Q.

Comment 23LL: *3.2-5 No Impact to ag mitigation needed*

Response 23LL: Anticipated changes in the environment that would result in the conversion of Farmland are discussed in Impacts 3.2-1, 3.2-3, and 3.2-4. There are no *other* changes not discussed under these Impacts.

Comment 23MM: *Ag land must be preserved. Prediction if we continue on same course, 55,000 more acres of farmland in Merced County will be lost by 2040. (need to check 2040, but I'm quite sure I am right)*

Response 23MM: According to the DEIR, Page 3.2-4, the FMMP (Farmland Mapping and Monitoring Program) of 2008 indicates that the General Plan Update could result in the conversion of approximately 9,286 acres of undeveloped land, of which 2,313 acres are Prime Farmland. The Commenter’s estimate of 55,000 acres was not found in the DEIR. Although considerably less than the acreage quoted by the Commenter, the City recognizes that the loss of any Prime Farmland is significant. However, no available mitigation will reduce impacts of conversion to less than significant and unavoidable.

Comment 23NN: *This Guiding Principles and Policies are in direct conflict with GPU plans.*

Response 23NN: As stated under Response 23JJ, a one-by-one comparison is not realistic in this FEIR. However, a “spot check” of several of the Guiding Principles indicates that the City has incorporated the Guiding Principles into the General Plan Update. For example, Pages 5-21 and 5-24 of the General Plan Update describe Implementing Actions that indicate that the City intends to be the single service provider throughout the City, except in areas currently outside the City jurisdiction that already have services through other providers. In these cases, the City will convert services when feasible. In undeveloped areas that will be within the City, it will be the responsibility of the developer and future residents to pay costs associated with having City services provided.

Comment 23OO: *Let's clean up the mess we have, balance jobs, then think about adding more ag land. This is similar to what we had in Livingston cater to the developers and get control to pave over farmland.*

Response 2300: The City appreciates the Commenter's time and consideration in preparing a letter in response to the DEIR. The commenter's opinions are noted.

Comment 23PP: *Please consider accepting the present general plan alternative.*

Response 23PP: The City has considered the present General Plan alternative, as described and summarized in Section 4.

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October 25, 2010

VIA EMAIL AND FAX TRANSMISSION
[espinosak@cityofmerced and (209) 725-8775]

Kim Espinosa, Planning Manager
City of Merced Planning Division
678 West 18th Street
Merced, CA 95340

Re: *Merced Vision 2030 General Plan Update*
Comments re Draft Environmental Impact Report
Merced Citizens for Responsible Planning and
Valley Advocates/City of Merced

Dear Ms. Espinosa and Quad Knopf:

This letter is submitted on behalf of Merced Citizens for Responsible Planning (MCFRP), a California non-profit unincorporated association, having its principal place of business located in Merced, and Valley Advocates (VA), a California non-profit corporation, to provide written comments regarding the Draft Environmental Impact Report (DEIR) for the *Merced Vision 2030 General Plan Update* (hereinafter referred to as "GPU," released to the public on August 24, 2010.

A

Failure to provide location of source documents cited in the Draft EIR

Comment: Throughout the DEIR, there are numerous source documents that are cited without providing the location of the source document for review by the public. Similarly, of the source documents cited in Appendix L do not include the location of the source document. [CEQA Guidelines, section 15150, subd. (c): "...The EIR or Negative Declaration *shall* state where the incorporated documents will be available for inspection..." (emphasis added)]

B

In addition, the colors used in the Legends for the Land Use Maps in the Draft General Plan (Figure 3-1) and in the DEIR (Figure 2-4) are extremely difficult to distinguish, especially the four (4) shades of green used for various designations. Perhaps, other features, such as cross-hatching or dots could be used to distinguish the different land uses utilizing the same color.

C

The omissions make it extremely difficult, if not impossible, for the public to read and review the document, including finding and reviewing the other documents referred to in the DEIR. [CEQA Guidelines, section 15140] This defect in the DEIR interferes with and prejudices the public’s right to meaningful participation in the environmental review process under CEQA. [CEQA Guidelines, section 15201]

D

Proposed Correction: Include the location of all source documents in a Revised Draft EIR and re-circulate the Revised DEIR for a new comment period of at least thirty (30) days. Modify the color codes in some manner to provide for clearer definition of land uses. [For other reasons set forth in other comments, the DEIR will need to be revised and re-circulated, in any event.]

E

Safety Element Evacuation Routes Diagram is Inadequate

Comment: The Safety Element (Chapter 11) in the Draft General Plan includes a section in the text concerning “Evacuation Routes,” at p. 11-22, and Figure 11.8, at p. 11-23. The DEIR addresses this issue at Impacts #3.7-6 and #3.7-7. However, neither the General Plan nor the DEIR sections include disclosure, analysis, consideration, or discussion of a unique and significant land use issue in the City and County of Merced. Specifically, the University of California, Merced (UCM), whether it is in the County of Merced or is annexed into the City of Merced has some significant safety issues which are not addressed in either the Draft General Plan nor the DEIR.

F

The Mitigation Monitoring Program found in the DEIR, at page ES-28, at Impacts #3.7-6 and #3.7-7, indicates, “No mitigation measures are required.” This analysis is inadequate to address the potentially significant amount of traffic that may be directed through the City of Merced on its streets and roadways from the UCM campus, UC Community, and Lake Yosemite.

G

Proposed Correction: The DEIR should be revised to include a more complete analysis of the foregoing potential impacts, including a traffic analysis of the build-out of the UCM campus and a more thorough analysis of what the evacuation routes will be through the City of Merced and a draft Emergency Management Plan, rather than deferring these mitigation

H

measures to an uncertain time in the future. The DEIR should be revised to include an adequate analysis and effective mitigation measures to address the potentially significant effects. In fact, the Revised DEIR should include a revised and amended traffic study to address the “worst case” scenario for such an emergency evacuation, and should refer to the Final EIRs for both the Long-Range Development Plan (LRDP) for the University Campus and for the University of California Community Project which have been prepared and certified, so that the information from these documents may be disclosed and integrated into the Revised DEIR for the GPU, including in the environmental setting section of the revised document. Since the information will be new and significant, the Revised DEIR for the GPU must be re-circulated, pursuant to PRC section 21166 and CEQA Guidelines, sections 15088.5 and 15162.

I

Inadequate Disclosure, Analysis, of Consideration of State Policies and Mandates regarding Re-Use of Recycled Water and Mitigation Measures

Comment: Section 3.8 3 “Hydrology and Water Quality” [pages 3.8-1 through 3.8-21] and Section 16 “Utilities/Services” [pp. 3.16-1 through 3.16-17] purport to disclose, analyze, consider, and discuss the potentially significant impacts of the General Plan Program on the City’s water supply and infrastructure necessary to provide an adequate and sustainable water supply to the City during the build-out of the community through 2030. However, the disclosure, analysis, consideration, and discussion of the legal duty of the City to implement the use of recycled water within the City’s jurisdiction is inadequate for the following reasons.

J

First, many State legislative policies, findings, mandates, and statutes make it abundantly clear that the City has a duty to follow and implement the directives of the State Legislature which require the City’s residents to use recycled water within the City’s jurisdiction for as many uses as possible. In fact, there are specific statutes providing for penalties to local governmental agencies for failing to comply with and implement the State’s legislative intent and directives that cities are mandated to conserve and re-use treated effluent for all uses other than potable water.

The reasons are obvious. The less ground water or surface water used for municipal and industrial potable water, the less the demand for additional “new” water supplies, *and* the less amount of discharge into natural waterways is required, in order to serve the City’s residents. Equally important, the cost of providing enough water for all domestic and municipal is reduced by re-using treated effluent, rather than potable water from the City’s ground water supply. In addition, the cost of power to pump water from the Merced Groundwater B (MGB) or to the City’s remote Waste Water Treatment Facility (“WWTF”) many miles down gradient to the plant on Gove Road will be substantially reduced, if the treated effluent remains available for use in the City limits. Finally, the more recycled water used in within the City limits and the less ground water or surface water taken out of the eco-system, the less significant adverse environmental impacts will occur requiring mitigation.

K

Similarly, the Water Code statutes cited in the DEIR, and others not mentioned in the document, provide ample support for the proposition that the City needs to undertake a more intentional and aggressive implementation program to increase dramatically the use of recycled or reclaimed water supplies. In addition, the failure to analyze the alternative program of using a de-centralized system of conservation-focused re-use water treatment facilities needs to be analyzed in the EIR for other reasons, as well. First, by using de-centralized water treatment facilities, the City can ensure that “new growth pays its own way.” Second, by requiring the construction and use of de-centralized on-site treatment systems, the City better control growth on a project-by-project or specific area financing system. Third, by requiring the payment for project-by-project or specific area development, the City will not be locked into over-sizing centralized waste water treatment facilities, which require City taxpayers and residents to service debt incurred for the construction of unused capacity or for conveyance facilities 5-10 miles away

L

from the “compact urban form” which is one of the fundamental principles incorporated in the GPU and by SB 375.

L cont.

The failure of the City to disclose, analyze, consider, or discuss the City’s duties under the California Water Code (“WC”) is significant, because the State Legislature has enacted a number of statutes promulgating the policy of the state that recycled water be used for urban uses and emphasizing the need for local governments to conserve potable water and to re-use recycled water within their jurisdictions. [See, WC sections 13500, 13510-13512, 13550 et seq., and 13385]

In fact, WC section 13552.2 provides:

- “13552.2. (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.
- (b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a).”

Likewise, the Clean Water and Water Reclamation Bond Law of 1988 provides strong legislative policy and intent in favor of recycling and reusing water. [WC section 14050 et seq.] Section 14051 provides:

M

- “14051. The Legislature finds and declares as follows:
- (a) Clean water is essential to the public health, safety, and welfare.
- (b) Clean water fosters the beauty of California's environment, the expansion of industry and agriculture, maintains fish and wildlife, and supports recreation.
- (c) California's abundant lakes and ponds, streams and rivers, coastline, and groundwater are threatened with pollution, which could threaten public health and impede economic and social growth if left unchecked.
- (d) The state's growing population has increasing needs for clean water supplies and adequate treatment facilities.
- (e) It is of paramount importance that the limited water resources of the state be protected from pollution, conserved, and reclaimed whenever possible to ensure continued economic, community, and social growth.
- (f) The chief cause of water pollution is the discharge of

inadequately treated waste into the waters of the state.

(g) Local agencies have the primary responsibility for construction, operation, and maintenance of facilities to cleanse our waters.

(h) Rising costs of construction and technological changes have pushed the cost of constructing treatment facilities beyond the reach of many small communities.

(i) Because water knows no political boundaries, it is desirable for the state to contribute to construction of needed facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and environment.

(j) The people of California have a primary interest in the development of facilities to reclaim water to supplement existing water supplies and to assist in meeting the future water needs of the state.

(k) A significant portion of the future water needs of California may be met by the use of reclaimed water.

(l) Local public agencies have the primary responsibility for the construction, operation, and maintenance of water reclamation facilities.

(m) Local public agencies need financial assistance to make cost-effective reclamation projects financially feasible.

(n) (1) It is also the intent of this chapter to provide special assistance to small communities to construct facilities necessary to eliminate water pollution and public health hazards.

(2) It is also the intent of this chapter to provide funds for the design and construction of eligible water reclamation projects and for the development and implementation of programs and activities that lead to increased use of reclaimed water in California.”

The above-referenced sections of the Water Code set forth the State’s strong legislative policy and findings which should have been reviewed, evaluated, and discussed in the EIR, Addendum, and Response to Comments.

As result, the DEIR does not adequately address the issues of the cost of construction of the wastewater infrastructure, the reduction in the use of potable water within the City, the required use of recycled water for landscape and irrigation (WC section 13552.2) and potential penalties which may be imposed on the City, and the reduction of regulated and unregulated pollutants discharged into the waters of the State of California and the U.S.

Since the DEIR preparer did not perform a systematic and quantified analysis of the legislative mandates of the Water Code, the City has failed to proceed in the manner required by law, in violation of PRC section 21168.5. Therefore, this omission constitutes an abuse of discretion not only based on lack of substantial evidence, due to the unquantified and conclusory

M cont.

N

O

statements of the EIR and Addendum preparer, but, also, a failure to proceed in the manner required by the Water Code provisions referred to hereinabove.

O cont.

Therefore, the significant new information provided in these comments should result in the preparation and re-circulation of a revised Draft EIR which adequately discloses, analyzes, and considers the conservation-focused, urban re-use project alternative as the environmentally superior alternative. The reason for the re-circulation is so that other responsible and trustee agencies and the public decision makers could consider the City's analysis of a project alternative that saves potable water, implements recycling and urban re-use in the urban area, saves the expenditure of public funds in construction costs for extensive new infrastructure and future expansions of the WWTP, reduces the discharge of heavy metals, ammonia, and unregulated pollutants into the tributaries of the Sacramento-San Joaquin Delta, reduces the amount of energy expended in pumping the untreated effluent to the WWTP, and avoids the increased use of energy to pump treated effluent back to the City for use by its residents for future generations.

P

Given the City's policy of having development pay its own way and the use of Community Financing Districts (CFDs) to finance operating expenses for public safety and fire protection services, the DEIR should be revised and amended to include a more detailed and quantified analysis of the use of de-centralized, conservation-focused on-site wastewater treatment facilities constructed and paid for by the residents of the new developments. This will significantly reduce potentially significant adverse environmental impacts and reduce the costs to City residents by avoiding the premature construction and financing of large-scale, de-centralize wastewater treatment facilities, and will result in better coordination with market forces that respond in a cyclical fashion.

Q

Proposed Mitigation:

Prepare and re-circulate a revised DEIR which includes the foregoing analysis and includes new and reasonably feasible mitigation measures to reduce the amount of groundwater used for landscaping and other non-potable uses and reduces costs of new infrastructure and user fees for existing residents. The proposed mitigation measures found at Section 3.16, Impact Nos. 3.16-1 through 3.16-7 should be revised and modified to reflect the revised and amended analysis required for this section.

R

Inadequate Disclosure and Analysis of Noise Impacts

Comment: The data contained in the Environmental Noise Assessment in Appendix I, Appendices B1 through B5 were obtained on July 11-12, 2007, over three (3) years ago. The noise monitoring was conducted in the middle of the summer, when many schools are closed and when most students at Merced Community College (MCC) and University of California, Merced (UCM) are on summer vacation, as are many of their faculty and staff members. In addition, the data was collected during one of the first years of operation at the University, and the number of students at UCM was in the approximate range of 1,000-1,500. Therefore, the data is outdated and does not represent the current actual noise impacts during the school year, when all schools are in session. [Reference: GPU, p. 10-28, 29, Table 10.6 and 10.7]

S

Proposed Mitigation: Since the DEIR should be revised and amended to include an updated noise study conducted at a time during the fall semester when there is not a holiday and all schools are in session, the Revised DEIR should be re-circulated in order to provide the responsible and trustee agencies, the public decision makers, and the public an opportunity to review the Revised DEIR for at least thirty (30) days, in order to re-evaluate the adequacy of the document to make comments on the Revised DEIR. [CEQA Guidelines, section 15088.5; see, *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 50 Cal.Rptr.50]

T

The mitigation measures for noise impacts found at Section 3.11, at Impact Nos. 3.11-1 through 3.11-7 should be revised and amended to provide specific siting requirements, such as mandatory set-backs from noise contours, for residential and other sensitive receptors, rather than using expensive and unsightly “sound barriers” along major arterials and expressways, in order to achieve mitigation of noise impacts through avoidance of land use conflicts and the avoidance of adverse aesthetic impacts from the construction of “sound barriers” along major arterials and expressways, which result in a “canyon-like” effect in community corridors, such as the Bellevue Community Corridor Plan area, identified in Section 3.7.4, at pp. 3-72 through 3-74.

U

Inadequate Alternatives Analysis for Mitigation of Energy Use

Comment: The comments of this commentator included the request for mandatory use of solar energy [photo-voltaic and photo-thermal] for all development in the City of Merced. The DEIR’s disclosure and analysis of the mitigation measures for avoidance or reduction of the use of fossil fuel energy, which causes increased Greenhouse Gas emissions, does not adequately analyze the City’s duty to comply with AB 32 [Health & Safety Code, section 38500 et seq. (“Global Warming Solutions Act of 2006”)] Health and Safety Code, section 38501 sets forth the legislative findings and intent which supports the need for a more explicit disclosure and analysis of the City’s duty under CEQA to utilize renewable energy technology to avoid and reduce GHG emissions and criteria emissions from power plants in the San Joaquin Valley and the State of California.

V

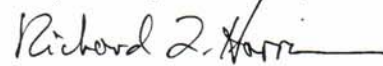
Proposed Mitigation: The DEIR Sections on Energy and reduction of GHGs and Air Quality should be revised and amended to disclose, analyze, and consider the City’s duty to require mandatory solar energy and other feasible and available renewable energy sources for all new development within the City, in order to avoid and reduce the GHG emissions and criteria emissions from power plants and internal combustion engines, through the use of on-site solar energy technology, which would allow and promote the use of renewable energy to charge electric powered vehicles in the City and for use by students, faculty, and administrators of UCM and other large employment centers and developments.

W

Thank you for the opportunity to submit these comments to the Draft EIR for the General Plan Update. Pursuant to PRC section 21166 and CEQA Guidelines, sections 15088.5 and 15162, this commentator requests the preparation and re-circulation of a Revised DEIR and a new comment period for the Revised DEIR.

X

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard L. Harriman". The signature is written in a cursive style with a long horizontal stroke at the end.

RICHARD L. HARRIMAN

cc: Clients

Letter 24 Richard L. Harriman, Law Offices of Richard L. Harriman

Comment 24A: *This letter is submitted on behalf of Merced Citizens for Responsible Planning (MCFRP), a California non-profit unincorporated association, having its principal place of business located in Merced, and Valley Advocates (VA), a California non-profit corporation, to provide written comments regarding the Draft Environmental Impact Report (DEIR) for the Merced Vision 2030 General Plan Update (hereinafter referred to as "GPU," released to the public on August 24, 2010.*

Response 24A: The City appreciates the opportunity to address the comments of the Merced Citizens for Responsible Planning.

Comment 24B: Failure to provide location of source documents cited in the Draft EIR

Comment: Throughout the DEIR, there are numerous source documents that are cited without providing the location of the source document for review by the public. Similarly, of the source documents cited in Appendix L do not include the location of the source document. [CEQA Guidelines, section 15150, subd. (c): "... The EIR or Negative Declaration shall state where the incorporated documents will be available for inspection..."(emphasis added)]

Response 24B: Appendix L provides information reasonably sufficient for individuals to obtain access to the documents via the internet. Also the public notice for the DEIR states in part: "The DEIR and reference documents may be reviewed at the City Clerk's office and the Planning Division office at 678 West 18th Street, Merced during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m." The commenter's reference to CEQA Guidelines Section 15150, subd. (c) does not match the quoted language, which is found in subd. (b).

It should be noted that a majority of the references cited are citations from biological reference documents and are simply "standard" biological reference documents. See also Response 24D.

Comment 24C: *In addition, the colors used in the Legends for the Land Use Maps in the Draft General Plan (Figure 3-1) and in the DEIR (Figure 2-4) are extremely difficult to distinguish, especially the four (4) shades of green used for various designations. Perhaps, other features, such as crosshatching or dots could be used to distinguish the different land uses utilizing the same color.*

Response 24C: The City appreciates the difficulty experienced in interpreting the various land uses. It was the City's intent to use the broadest spectrum of colors available, as well as some stripped colors to minimize confusion. Other patterns, such as dots were also considered, but determined to be indistinguishable at the scale used in the documents. This map, printed at a larger size, is available for viewing at the City's Planning Division offices.

Comment 24D: *The omissions make it extremely difficult, if not impossible, for the public to read and review the document, including finding and reviewing the other documents referred to in the DEIR. [CEQA Guidelines, section 15140] This defect in the DEIR interferes with and*

prejudices the public's right to meaningful participation in the environmental review process under CEQA. [CEQA Guidelines, section 15201]

Response 24D: Please refer to Response 24B. References were derived from three sources. First, it was determined that a number of references were cited in the Biology Report, and in retrospect did not need to be included in the DEIR List of Person and Sources Consulted. These include:

- The A.O.U. Checklist of North American Birds
- Revised Checklist of North American Mammals North of Mexico
- Ferruginous Hawk, in *The Birds of North America*, No 172.
- Two new *Branchinecta* (*Crustacea: Anostraca*) from the southwestern United States
- California Natural Diversity Database (CNDDDB) RareFind 3, Version 3.0.5, Special Animals List and Special Vascular Plants, Bryophytes, and Lichens List.
- California Native Plant Society, Online Inventory of Rare and Endangered Vascular Plants of California.
- Hawks of North America, Second Edition.
- Scientific and Standard English Names of Amphibians and Reptiles of North America North of Mexico, with Comments Regarding Confidence in Our Understanding
- White-tailed Kite, in *The Birds of North America*, No. 178
- Swainson's Hawk, in *The Birds of North America*, No. 265
- Fairy shrimps of California's puddles, pools, and playas
- The Mammals of North America. 2nd Edition
- Burrowing Owl, in *The Birds of North America*, No. 61
- The Jepson Manual: Higher Plants of California
- Amphibian and Reptile Species of Special Concern in California
- Lives of North American Birds
- Mountain Plover, in *The Birds of North America*, No. 211
- Northern Harrier, in *The Birds of North America*, No. 210
- Common and Scientific Names of Fishes from the United States, Canada, and Mexico
- Ecoregions of the conterminous United States. Map. *Annals of the Association of American Geographers*
- Species account for *Eumops perotis californicus*, Western Mastiff Bat.
- Osprey, in *The Birds of North America*, No 683
- A Field Guide to the Mammals of North America
- California Bird Species of Special Concern
- A Field Guide to Western Reptiles and Amphibians, 3rd Edition
- Pacific Bald Eagle Recovery Plan
- Endangered and threatened wildlife and plants; determination of endangered status for the Conservancy fairy shrimp, longhorn fairy shrimp, and the vernal pool tadpole shrimp; and threatened status for the vernal pool fairy shrimp
- Recovery plan for Upland Species of the San Joaquin Valley, California
- Conservation Guidelines for the Valley Elderberry Longhorn Beetle
- Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon

- Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife; Final Rule; Endangered and Threatened Wildlife and Plants; Draft Post-Delisting and Monitoring Plan for the Bald Eagle (*Haliaeetus leucocephalus*) and Proposed Information Collection; Notice
- A review of the population status of the Tipton kangaroo rat, *Dipodomyms nitratoides nitratoides*
- Mammalian species of special concern in California
- Loggerhead Shrike, in The Birds of North America, No. 231
- California's Wildlife, Volume I, Amphibians and Reptiles
- California's Wildlife, Volume II, Birds
- California's Wildlife, Volume III, Mammals

A second group of references is available on websites that were not referenced in the List of Persons and Sources Consulted, as follows:

- California Farmland Conversion Report 2002 – 2004
- Global Warming Reaches California Regulatory Agencies and Courts – And You. California Land Use and Policy Reporter
- San Joaquin Valley Air District, Guide for Assessing and Mitigating Air Quality Impacts

The third group of references is the technical documents prepared for either the City of Merced or the County of Merced. These documents are available for public review at the City and County offices, although neither the City nor the County had a record of any requests to review these documents:

- Merced Water Supply Plan Update. Prepared for the City of Merced, Merced Irrigation District, University of California, Merced
- Merced Water Supply Plan. Prepared by City of Merced and Merced Irrigation District
- Merced Vision 2015 General Plan, Prepared by City of Merced
- City of Merced Sewer Master Plan
- Merced County Airport Land Use Compatibility Plan. Prepared by Merced County Airport Land Use Commission
- Hazardous Waste Management Plan. Prepared for County of Merced
- Merced County Year 2000 General Plan. Prepared by Merced County Planning Department

Comment 24E: *Proposed Correction:* *Include the location of all source documents in a Revised Draft EIR and re-circulate the Revised DEIR for a new comment period of at least thirty (30) days. Modify the color codes in some manner to provide for clearer definition of land uses. [For other reasons set forth in other comments, the DEIR will need to be revised and recirculated, in any event.]*

Response 24E: See Responses 24B, 24C and 24D.

Comment 24F: *Safety Element Evacuation Routes Diagram is Inadequate*

Comment: The Safety Element (Chapter 11) in the Draft General Plan includes a section in the text concerning "Evacuation Routes," at p. 11-22, and Figure 11.8, at p. 11-23. The DEIR addresses this issue at Impacts #3.7-6 and #3.7-7. However, neither the General Plan nor the DEIR sections include disclosure, analysis, consideration, or discussion of a unique and significant land use issue in the City and County of Merced. Specifically, the University of California, Merced (UCM), whether it is in the County of Merced or is annexed into the City of Merced has some significant safety issues which are not addressed in either the Draft General Plan or the DEIR.

Response 24F: The DEIR explains that evacuation routes, as well as procedures for evacuation, vary depending on the location and severity of the event. Because events that may require evacuation cannot be predicted, the City has an Emergency Plan (page 3.7-6) and coordinates with the Merced County Office of Emergency Services. The University's Long Range Development Plan also includes policies reinforcing collaboration with the City and County to best coordinate evacuation measures when necessary. Impact #3.7-6 (page 3.7-13 of the DEIR) describes the policies included in the General Plan Update that will ensure that emergency plans are not impaired. These include the preparation of route capacity studies and determining evacuation procedures and routes for different types of disasters under Implementation Actions under Policy S-1.1. As an important land use in the area, the University of California, Merced will be included in these plans and Implementation Actions.

Comment 24G: *The Mitigation Monitoring Program found in the DEIR, at page ES-28, at Impacts #3.7-6 and #3.7-7, indicates, "No mitigation measures are required." This analysis is inadequate to address the potentially significant amount of traffic that may be directed through the City of Merced on its streets and roadways from the UCM campus, UC Community, and Lake Yosemite.*

Response 24G: The table in which Impacts #3.7-6 and #3.7-7 occur is a summary contained in the Executive Summary of the DEIR, and does not include the analysis of the impacts. That information can be found in Chapter 3 of the DEIR, on pages 3.7-13 and 3.7-14. Additionally, detailed information on traffic issues, including regulations, General Plan Policies, and circulation plans is included in Section 3.15 – Transportation/Traffic of the DEIR. Because the UCM campus, UC Community, and Lake Yosemite are outside the current City limits, specific circulation patterns within these areas are not included in the City's plans, but roadways are shown connecting these areas with the City's overall circulation system. However, circulation/traffic/transportation and emergency access and exit routes from these areas must be included in the environmental documents prepared for the Community Plans or Master Plans before they can be adopted by the City for annexation.

Comment 24H: *Proposed Correction:* *The DEIR should be revised to include a more complete analysis of the foregoing potential impacts, including a traffic analysis of the build-out of the UCM campus and a more thorough analysis of what the evacuation routes will be through the City of Merced and a draft Emergency Management Plan, rather than deferring these mitigation measures to an uncertain time in the future.*

Response 24H: Please see Responses 24F and 24G.

Comment 24I: *The DEIR should be revised to include an adequate analysis and effective mitigation measures to address the potentially significant effects. In fact, the Revised DEIR should include a revised and amended traffic study to address the "worst case" scenario for such an emergency evacuation, and should refer to the Final EIRs for both the Long Range Development Plan (LRDP) for the University Campus and for the University of California Community Project which have been prepared and certified, so that the information from these documents may be disclosed and integrated into the Revised DEIR for the GPU, including in the environmental setting section of the revised document. Since the information will be new and significant, the Revised DEIR for the GPU must be re-circulated, pursuant to PRC section 21166 and CEQA Guidelines, sections 15088.5 and 15162.*

Response 24I: As noted in Response to Comment 20A and 24F, the City has chosen to use the land use designations and boundaries as depicted in the 2009 LRDP for the University Campus and University Community. The revised boundaries are not new information that would require recirculation of the Draft EIR because UC Merced completed the CEQA review of the revised boundaries in March 2009 (Public Resources Code Section 20192.1; CEQA Guidelines Section 15088.5).

Comment 24J: *Inadequate Disclosure, Analysis, of Consideration of State Policies and Mandates regarding Re-Use of Recycled Water and Mitigation Measures*

Comment: Section 3.83 "Hydrology and Water Quality" [pages 3.8-1 through 3.8-21] and Section 16 "Utilities/Services" [pp. 3.16-1 through 3.16-17] purport to disclose, analyze, consider, and discuss the potentially significant impacts of the General Plan Program on the City's water supply and infrastructure necessary to provide an adequate and sustainable water supply to the City during the build-out of the community through 2030.

Response 24J: The comment is noted.

Comment 24K: *However, the disclosure, analysis, consideration, and discussion of the legal duty of the City to implement the use of recycled water within the City's jurisdiction is inadequate for the following reasons.*

First, many State legislative policies, findings, mandates, and statutes make it abundantly clear that the City has a duty to follow and implement the directives of the State Legislature which require the City's residents to use recycled water within the City's jurisdiction for as many uses as possible. In fact, there are specific statutes providing for penalties to local governmental agencies for failing to comply with and implement the State's legislative intent and directives that cities are mandated to conserve and re-use treated effluent for all uses other than potable water.

The reasons are obvious. The less ground water or surface water used for municipal and industrial potable water, the less the demand for additional "new" water supplies, and the less amount of discharge into natural waterways is required, in order to serve the City's residents.

Equally important, the cost of providing enough water for all domestic and municipal is reduced by re-using treated effluent, rather than potable water from the City's ground water supply. In addition, the cost of power to pump water from the Merced Groundwater B (MGB) or to the City's remote Waste Water Treatment Facility ("WWTF") many miles down gradient to the plant on Gove Road will be substantially reduced, if the treated effluent remains available for use in the City limits. Finally, the more recycled water used in within the City limits and the less ground water or surface water taken out of the eco-system, the less significant adverse environmental impacts will occur requiring mitigation.

Similarly, the Water Code statutes cited in the DEIR, and others not mentioned in the document, provide ample support for the proposition that the City needs to undertake a more intentional and aggressive implementation program to increase dramatically the use of recycled or reclaimed water supplies.

Response 24K: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. The utilization of groundwater for agricultural, urban, or wastewater treatment is a complex issue and the City strives to minimize water use through all possible manners. The City's General Plan Update includes Policy 4.2 and associated Implementing Actions to encourage the use of reclaimed water. The issue is addressed in greater detail in documents such as the Draft Sewer Master Plan (ECO: LOGIC, January 2007), the City of Merced Wastewater Treatment Plant Expansion Project DEIR (August 2006), and the Public Review Document 2011 Urban Water Management Plan (Carollo Engineers, May 2011). These documents are currently being updated, and may be reviewed on the City's website. The comment regarding the proposition for increased recycled or reclaimed water use is noted.

Comment 24L: *In addition, the failure to analyze the alternative program of using a de-centralized system of conservation-focused re-use water treatment facilities needs to be analyzed in the EIR for other reasons, as well. First, by using de-centralized water treatment facilities, the City can ensure that "new growth pays its own way." Second, by requiring the construction and use of de-centralized on-site treatment systems, the City better control growth on a project-by-project or specific area financing system. Third, by requiring the payment for project-by-project or specific area development, the City will not be locked into over-sizing centralized waste water treatment facilities, which require City taxpayers and residents to service debt incurred for the construction of unused capacity or for conveyance facilities 5-10 miles away from the "compact urban form" which is one of the fundamental principles incorporated in the GPU and by SB 375.*

Response 24L: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. The City of Merced maintains a centralized wastewater treatment and collection system as a matter of City policy, which has been in place for many years. City Council previously evaluated the economics, resources, professional licensing, and environmental impacts and issues associated with a centralized treatment system in approving the upgrade and expansion of the Gove Road Wastewater Treatment Facility. This decision was supported by an Environmental Impact Report certified on

December 18, 2006. There is no need to analyze within the General Plan EIR a policy change which is not under consideration by the City. Please see also Response 24K.

Comment 24M: *The failure of the City to disclose, analyze, consider, or discuss the City's duties under the California Water Code ("WC") is significant, because the State Legislature has enacted a number of statutes promulgating the policy of the state that recycled water be used for urban uses and emphasizing the need for local governments to conserve potable water and to re-use recycled water within their jurisdictions. [See, WC sections 13500, 13510-13512, 13550 et seq., and 13385]*

In fact, WC section 13552.2 provides:

"13552.2. (a) The Legislature hereby finds and declares that the use of potable domestic water for the irrigation of residential landscaping is a waste or an unreasonable use of water within the meaning of Section 2 of Article X of the California Constitution if recycled water, for this use, is available to the residents and meets the requirements set forth in Section 13550, as determined by the state board after notice and a hearing.

(b) The state board may require a public agency or person subject to this section to submit information that the state board determines may be relevant in making the determination required in subdivision (a)."

Likewise, the Clean Water and Water Reclamation Bond Law of 1988 provides strong legislative policy and intent in favor of recycling and reusing water. [WC section 14050 et seq.] Section 14051 provides:

"14051. The Legislature finds and declares as follows:

(a) Clean water is essential to the public health, safety, and welfare.

(b) Clean water fosters the beauty of California's environment, the expansion of industry and agriculture, maintains fish and wildlife, and supports recreation.

(c) California's abundant lakes and ponds, streams and rivers, coastline, and groundwater are threatened with pollution, which could threaten public health and impede economic and social growth if left unchecked.

(d) The state's growing population has increasing needs for clean water supplies and adequate treatment facilities.

(e) It is of paramount importance that the limited water resources of the state be protected from pollution, conserved, and reclaimed whenever possible to ensure continued economic, community, and social growth.

(f) The chief cause of water pollution is the discharge of inadequately treated waste into the waters of the state.

(g) Local agencies have the primary responsibility for construction, operation, and maintenance of facilities to cleanse our waters.

(h) Rising costs of construction and technological changes have pushed the cost of constructing treatment facilities beyond the reach of many small communities.

(i) Because water knows no political boundaries, it is desirable for the state to contribute to construction of needed facilities in order to meet its obligations to protect and promote the health, safety, and welfare of its people and environment. G) The people of California

have a primary interest in the development of facilities to reclaim water to supplement existing water supplies and to assist in meeting the future water needs of the state.

(k) A significant portion of the future water needs of California may be met by the use of reclaimed water.

(L) Local public agencies have the primary responsibility for the construction, operation, and maintenance of water reclamation facilities.

(m) Local public agencies need financial assistance to make cost-effective reclamation projects financially feasible.

(n) (1) It is also the intent of this chapter to provide special assistance to small communities to construct facilities necessary to eliminate water pollution and public health hazards.

(2) It is also the intent of this chapter to provide funds for the design and construction of eligible water reclamation projects and for the development and implementation of programs and activities that lead to increased use of reclaimed water in California."

The above-referenced sections of the Water Code set forth the State's strong legislative policy and findings which should have been reviewed, evaluated, and discussed in the EIR, Addendum, and Response to Comments.

Response 24M: The DEIR includes a number of general references to local, state, and federal regulations guiding the City's obligations in planning for future water and wastewater processing and usage. CEQA does not require that all regulations be quoted in full, or that all regulations germane to a sensitive resource be referenced. The specific references to the Water Code and reuse obligations have been considered. The existing Wastewater Treatment Facility's effluent is currently used for irrigating crops at the Treatment Plant and for environmental purposes at the wildlife management area. This issue was discussed as part of the upgrade and expansion of the Wastewater Treatment Plant in the EIR certified on December 18, 2006. The commentor's citation and reference to the Clean Water and Water Reclamation Bond Law of 1988 is appreciated, but this law applies to entities who apply for and are successful in obtaining a grant. The grant program only applies to "small communities," (i.e. communities of 3,500 persons or less.) [Water Code Section 14052 (k)] Merced's population exceeds 79,000. Because the processing of wastewater and utilization of reclaimed water involve complexities such as installation of appropriate pipelines and purchase of equipment and sufficient land, the details are more appropriately discussed in the plans for water and wastewater management, and their associated environmental documents. Please see Response 24K for detailed information on those documents.

Comment 24N: *As result, the DEIR does not adequately address the issues of the cost of construction of the wastewater infrastructure, the reduction in the use of potable water within the City, the required use of recycled water for landscape and irrigation (WC section 13552.2) and potential penalties which may be imposed on the City, and the reduction of regulated and unregulated pollutants discharged into the waters of the State of California and the U. S.*

Response 24N: Please see Response 24M.

Comment 24O: *Since the DEIR preparer did not perform a systematic and quantified analysis of the legislative mandates of the Water Code, the City has failed to proceed in the manner required by law, in violation of PRC section 21168.5. Therefore, this omission constitutes an abuse of discretion not only based on lack of substantial evidence, due to the unquantified and conclusory statements of the EIR and Addendum preparer, but, also, a failure to proceed in the manner required by the Water Code provisions referred to hereinabove.*

Response 24O: The DEIR for the General Plan provides an overview of potential impacts to sensitive resources. It is not intended to address potential impacts from specific projects, such as the expansion of a wastewater treatment plant, or the economic and physical feasibility of a possible, future installation of pipelines intended exclusively for distribution of reclaimed water, as these are more appropriately addressed by a Project-level EIR. Please see Response 24M.

Comment 24P: *Therefore, the significant new information provided in these comments should result in the preparation and re-circulation of a revised Draft EIR which adequately discloses, analyzes, and considers the conservation-focused, urban re-use project alternative as the environmentally superior alternative. The reason for the re-circulation is so that other responsible and trustee agencies and the public decision makers could consider the City's analysis of a project alternative that saves potable water, implements recycling and urban re-use in the urban area, saves the expenditure of public funds in construction costs for extensive new infrastructure and future expansions of the WWTP, reduces the discharge of heavy metals, ammonia, and unregulated pollutants into the tributaries of the Sacramento-San Joaquin Delta, reduces the amount of energy expended in pumping the untreated effluent to the WWTP, and avoids the increased use of energy to pump treated effluent back to the City for use by its residents for future generations.*

Response 24P: Please see Response 24O.

Comment 24Q: *Given the City's policy of having development pay its own way and the use of Community Financing Districts (CFDs) to finance operating expenses for public safety and fire protection services, the DEIR should be revised and amended to include a more detailed and quantified analysis of the use of de-centralized, conservation-focused on-site wastewater treatment facilities constructed and paid for by the residents of the new developments. This will significantly reduce potentially significant adverse environmental impacts and reduce the costs to City residents by avoiding the premature construction and financing of large-scale, de-centralize wastewater treatment facilities, and will result in better coordination with market forces that respond in a cyclical fashion.*

Response 24Q: Please see Response 24L. The analysis of on-site wastewater treatment facilities for specific Community Facilities Districts (CFDs) would be premature since no such proposals exist. The City's Community Facilities Districts are financing mechanisms to address the maintenance of City infrastructure (such as street lights, street trees, and parks) and City services (such as police and fire) for newly developed areas. All new developments within the City limits are required to utilize the City's wastewater treatment system. Additionally, the wastewater treatment facility expansion project that began in 2009 will be completed soon and will provide capacity for up to 174,000 residents. The issue raised by the commenter was

considered during the environmental review process leading to the EIR certification for the upgrade and expansion of the Wastewater Treatment Plant on December 18, 2006.

Comment 24R: *Proposed Mitigation:*

Prepare and re-circulate a revised DEIR which includes the foregoing analysis and includes new and reasonably feasible mitigation measures to reduce the amount of groundwater used for landscaping and other non-potable uses and reduces costs of new infrastructure and user fees for existing residents. The proposed mitigation measures found at Section 3.16, Impact Nos. 3.16-1 through 3.16-7 should be revised and modified to reflect the revised and amended analysis required for this section.

Response 24R: A revised DEIR is not planned for re-circulation. Please see Responses 24M, 24O, and 24Q.

Comment 24S: *Inadequate Disclosure and Analysis of Noise Impacts*

Comment: The data contained in the Environmental Noise Assessment in Appendix I, Appendices B1 through B5 were obtained on July 11-12, 2007, over three (3) years ago. The noise monitoring was conducted in the middle of the summer, when many schools are closed and when most students at Merced Community College (MCC) and University of California, Merced (UCM) are on summer vacation, as are many of their faculty and staff members. In addition, the data was collected during one of the first years of operation at the University, and the number of students at UCM was in the approximate range of 1,000-1,500. Therefore, the data is outdated and does not represent the current actual noise impacts during the school year, when all schools are in session. [Reference: GPU, p. 10-28, 29, Table 10.6 and 10.7]

Response 24S: The complete Environmental Noise Assessment is included in the DEIR as Appendix I: Figure 2 of the report documents the locations where noise levels were measured. The figure includes residential areas, industrial and commercial areas, recreational areas, and areas in close proximity to railroad tracks within the City. Although the UCM student and faculty population increased from approximately 1,500 to 4,400 between 2007 and 2010, most students and faculty are full-time residents of the community, and were included in the 2007 community noise study. The UCM campus is outside the City limits, and was excluded from the study. Other factors, such as seasonal population fluctuations, climatic conditions, road conditions, and topography, create variations in short-term noise levels during testing. The report states, “The CNEL and Ldn descriptors have been found to provide good correlation to the potential for annoyance from transportation-related noise sources...However, these descriptions do not provide a good correlation to the potential for annoyance from non-transportation or stationary noise sources, such as industrial and commercial operations, because many times stationary noise sources operate sporadically or for short durations...When applying a Ldn or CNEL descriptors, the noise levels associated with these types of short term operations will be averaged over a 24-hours period, underscoring the potential for annoyance.” Increases in noise levels generated by students traveling to and from, and attending schools, is not considered as a significant daily increase, because other activities during the summer also contribute to noise level increases in a similar manner. Additionally, the study was intended to provide information

on noise levels during the current period, with the understanding that individual projects proposed in the future are likely to increase noise levels, and will therefore require project-specific analysis. Therefore, the data provided in the Environmental Noise Assessment are considered valid.

Comment 24T: *Proposed Mitigation:* Since the DEIR should be revised and amended to include an updated noise study conducted at a time during the fall semester when there is not a holiday and all schools are in session, the Revised DEIR should be re-circulated in order to provide the responsible and trustee agencies, the public decision makers, and the public an opportunity to review the Revised DEIR for at least thirty (30) days, in order to re-evaluate the adequacy of the document to make comments on the Revised DEIR. [CEQA Guidelines, section 15088.5; see, *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 50 Cal.Rptr.50]

Response 24T: No updated noise study is required. A revised DEIR is not planned for re-circulation.

Comment 24U: *The mitigation measures for noise impacts found at Section 3.11, at Impact Nos. 3.11-1 through 3.11-7 should be revised and amended to provide specific siting requirements, such as mandatory set-backs from noise contours, for residential and other sensitive receptors, rather than using expensive and unsightly "sound barriers" along major arterials and expressways, in order to achieve mitigation of noise impacts through avoidance of land use conflicts and the avoidance of adverse aesthetic impacts from the construction of "sound barriers" along major arterials and expressways, which result in a "canyon-like" effect in community corridors, such as the Bellevue Community Corridor Plan area, identified in Section 3.7.4, at pp. 3-72 through 3-74.*

Response 24U: The use of noise barriers to reduce impacts from traffic and other noise sources are included as Implementing Actions in the General Plan Update, and are referenced as Implementing Actions 1.5.f and 1.6.a. (page 3.11-29 of DEIR). Language used (e.g., "as feasible" and "only after all other practical design-related noise mitigation measures have been integrated into the project") is intended to convey that noise barriers should be considered only as a last resort effort to reduce noise impacts. They are not intended to exclude other means of reducing noise levels (including increased setbacks). With the implementation of these and other Implementing Actions, impacts are less than significant. Therefore, mitigation measures are unnecessary in Impact #3.11-1, #3.11-5, and #3.11-7, where these Implementing Actions are referenced.

Comment 24V: *Inadequate Alternatives Analysis for Mitigation of Energy Use*

Comment: The comments of this commentator included the request for mandatory use of solar energy [photo-voltaic and photo-thermal] for all development in the City of Merced. The DEIR's disclosure and analysis of the mitigation measures for avoidance or reduction of the use of fossil fuel energy, which causes increased Greenhouse Gas emissions, does not adequately analyze the City's duty to comply with AB 32 [Health & Safety Code, section 38500 et seq. ("Global Warming Solutions Act of 2006")] Health and Safety Code, section 3 850 1 sets forth the

legislative findings and intent which supports the need for a more explicit disclosure and analysis of the City's duty under CEQA to utilize renewable energy technology to avoid and reduce GHG emissions and criteria emissions from power plants in the San Joaquin Valley and the State of California.

Response 24V: The City encourages use of alternative energy such as solar energy, although it is not a mandatory requirement. Please also see Responses 18K and 18L.

Comment 24W: *Proposed Mitigation:* *The DEIR Sections on Energy and reduction of GHGs and Air Quality should be revised and amended to disclose, analyze, and consider the City's duty to require mandatory solar energy and other feasible and available renewable energy sources for all new development within the City, in order to avoid and reduce the GHG emissions and criteria emissions from power plants and internal combustion engines, through the use of on-site solar energy technology, which would allow and promote the use of renewable energy to charge electric powered vehicles in the City and for use by students, faculty, and administrators of UCM and other large employment centers and developments.*

Response 24W: Please refer to Response 24V.

Comment 24X: *Thank you for the opportunity to submit these comments to the Draft EIR for the General Plan Update. Pursuant to PRC section 21166 and CEQA Guidelines, sections 15088.5 and 15162, this commentator requests the preparation and re-circulation of a Revised DEIR and a new comment period for the Revised DEIR.*

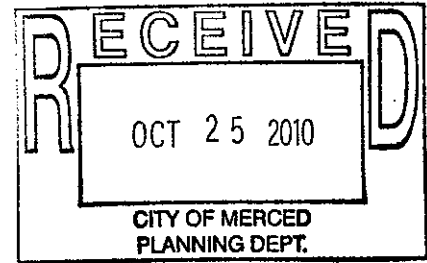
Response 24X: The commenter raises a number of issues that reflect the commenter's interpretation of the facts or states his/her opinion. All such comments are duly noted, but that does not mean that the City agrees with those statements. A revised DEIR is not planned for re-circulation.



Local Agency Formation Commission
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October 25, 2010

Kim Espinosa, Planning Manager
City of Merced
678 West 18th Street
Merced, CA 95340



RE: Comments on the Draft Environmental Impact Report for the Merced Vision 2030 General Plan

Dear Ms. Espinosa: (with handwritten signature 'Kim')

These comments are submitted in response to the Draft Environmental Impact Report (Draft EIR) identified as State Clearinghouse #2008071069, prepared on the City's "Draft Merced Vision 2030 General Plan." In LAFCO's future role to amend the City Sphere of Influence, modify the City's Municipal Service Review and processing of future annexation applications, the Commission will need to rely on the Draft EIR in its role as a "Responsible Agency" under the California Environmental Quality Act (CEQA).

A

Agriculture and Forest Resources (Draft EIR Chapter 3.2)

Impact #3.2-1 identifies the "potentially significant" impact from the General Plan expansion boundary which: "...could result in conversion of approximately 8,750 acres of undeveloped land to developed urban land within the proposed SUDP/SOI and outside the City limits of Merced, of which 1,898 are Prime Farmland." In addition to "prime farmland," the impact statement recognizes two other categories of farmland which are considered "Important Farmlands" according to the CEQA checklist: soils mapped by the State Farmland Mapping and Monitoring Program as "Farmland of Statewide Importance" and "Unique Farmland." The analysis in this section of the Draft EIR does not identify how much Important Farmland is located within the 8,750 acre expansion area. As an additional consideration, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 contains a more extensive definition of "prime" farmland than the State's mapping program, and local LAFCO's are required to utilize this definition of prime when considering jurisdictional boundary changes and Sphere of Influence amendments (Government Code Section 56064). Therefore, the identification of only 1,898 acres of Prime farmland being located within the proposed SUDP/SOI is underestimated. As stated earlier, LAFCO will have to use this EIR for its future role as a responsible agency, and if the prime agricultural impacts are understated, a supplemental EIR may be required.

B

The Draft EIR concludes that even with implementation of one mitigation measure, the impact on some acreage of Prime, Statewide Important and Unique farmland will remain a "significant and unavoidable" impact. The LAFCO of Merced County has not adopted a mitigation policy which would require a jurisdiction to obtain permanent conservation easements on active farmland to off-set the farmland converted through urban development. In future review of the Sphere of Influence revision application and subsequent annexation

C

applications, it would help the Commission to understand whether the City considered this mitigation tool, and why it was rejected. LAFCO will also need to adopt a "statement of overriding considerations" for the loss of prime farmland, and will look to the City's justification as a basis for considering whether to make its own findings as a "responsible agency" under CEQA. The magnitude of this impact is more significant in recognition that the proposed SUDP/SOI boundary may be large enough to accommodate 40 years of projected growth.

C cont.

Urban Growth Boundaries:

The Draft EIR contains a summary of the General Plan's proposed Specific Urban Development Plan (SUDP) boundary which is proposed to be coterminous with an expanded Sphere of Influence (SOI) boundary (Page 2-7). The General Plan proposes the removal of approximately 9,000 acres of land from the 2015 General Plan's SOI which is located north and east of the UC Merced Campus and now mainly consists of conservation easements for wetland habitat. In place of this former SOI territory, various new growth areas are proposed which primarily contain "specific or community plan" areas. One of these areas replaces the former University Community planning area north and east of UC Merced, with the County adopted University Community Plan located south of the Campus and east of Lake Road. Two other large community plan areas are located to the northwest of the City along Bellevue Road, and southwest of the City, west of State Highway 59 and south of the Merced Regional Airport.

D

On Page 2-5 of the Draft EIR, the text states the following explanation for the SUDP/SOI expansion: "The expansion of the urban land use designations define the limits for extending City services and infrastructure so as to accommodate new development anticipated within the 2010-2030 time-frame of the General Plan." With the amount of existing vacant land within the current 2015 General Plan, it is difficult to comprehend how this proposed urban growth expansion is necessary over the twenty year time frame of the Vision 2030 General Plan. A more realistic assessment is presented a couple pages later in the Draft EIR, where, after describing the three major proposed SUDP expansion areas, the EIR acknowledges: "These areas will give the City enough land to accommodate expected growth over the next 20 to 40 years."

In the analysis under Impact #3.9-2, (Pages 3.9-20 and 21), the Draft EIR does not identify part of the local LAFCO policy regarding a City's sphere of influence which addresses the Plan's time horizon for implementation. Policy 1 under Objective II.A. states:

A City's sphere of influence boundary should be large enough to accommodate approximately 20 years of projected growth as well as territory that represents special communities of interest for the City.

E

When City staff presented the proposed SUDP and SOI map to the Commission on December 6, 2007, the Commissioner's questioned the need for this large expansion area given the amount of vacant land already designated for development within the current Sphere north of the City. Part of the City's response is contained in the following quote from

the General Plan "Purpose" statement (presented in Section 2.4.1, Page 2-9 of the Draft EIR): Rapid growth and increasing land costs in Merced have also led to the need to consider additional areas for expansion, thus, one major component of the General Plan Update was to expand the City's existing growth boundary known as the Specific Urban Development Plan boundary (SUDP boundary)." In the three years since the initial General Plan presentation to the Commission the large existing inventory of vacant urban-designated land within the current Sphere and SUDP still remains available due to the depressed real estate and development markets. If the Vision 2030 General Plan is adopted as it is currently proposed, the City will need to be prepared to convince the Commission that the proposed 52.4 square mile urban Sphere of Influence boundary is warranted.

E cont.

The Draft General Plan contains appropriate policies that will help implement LAFCO Policy 3 under Objective II.A. which promotes adoption of phasing policies for the timing of urban growth. The various evaluation criteria proposed under the Draft General Plan "Implementing Action 1.3.g" of Policy UE-1.3 are very well defined and comprehensive. When the City submits an annexation application to the Commission in the future, it will be important for the City to document how the proposal satisfied the six criteria identified.

F

However, one of the criteria under Policy UE-1.6 may be appropriate to add to the Implementing Actions in Section 1.3.g with a minor modification. This would involve adding the consideration for the City Council to review the inventory of vacant land within the City limits that is already designated and zoned for development and determine it has reached a certain level (for example, less than 10 years of inventory for residential growth) to ensure that development within a specific or community plan area will not unduly delay development within the City limits. This type of criteria would help mitigate the potential for leap frog development and ensure that urban services are not extended to newly annexed areas when existing partially developed areas are having difficulty getting completed.

G

Utilities/Services (Draft EIR Chapter 3.16)

One of LAFCO's primary responsibilities is to ensure that government services are efficiently extended (Government Code Section 56001). In terms of sewer capacity, the analysis under Impact #3.16-1 indicates the City is planning for much greater sewer capacity than the General Plan would require. The planned expansion of the City's wastewater treatment plant is 20 Million Gallons per Day, enough capacity to serve a population of 174,000 people which is more than 12% higher than the General Plan projection by 2030 of 155,000 people. This capacity is actually 49% higher than the 2030 population projection from Merced County Association of Governments (MCAG) for the City of 116,800 (Table 3.12-2, Page 3.12-2 of the Draft EIR). The analysis in the Draft EIR under Section 5.3 "Growth Inducing Impacts" does not consider this over-capacity as a significant impact.

H

The Draft EIR provides extensive discussion on the surface and groundwater resources in the Merced Groundwater Basin and efforts with the Merced Irrigation District (MID) to reduce the overdraft condition of the groundwater basin. While there are no specific mitigation measures identified in the EIR, the General Plan contains numerous policies to enhance groundwater supplies and reduce pumping by cooperating with MID to increase surface

I

Kim Espinosa
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water supplies. Due to the complex factors involved in the region's water supply, the Draft EIR's conclusion that the cumulative impact on water resources from urban growth and agricultural pumping is a "significant cumulative impact" to water supply and delivery is appropriate.

I cont.

These comments conclude LAFCO's review of the Merced Vision 2030 General Plan Draft EIR. Please let me know if you have any questions about the content of this letter.

J

Sincerely,



Bill Nicholson,
Executive Officer

cc: LAFCO Commissioners
LAFCO Counsel

Letter 25 Bill Nicholson, Executive Officer, Merced Local Agency Formation Commission (LAFCO)

Comment 25A: *These comments are submitted in response to the Draft Environmental Impact Report (Draft EIR) identified as State Clearinghouse #2008071069, prepared on the City's "Draft Merced Vision 2030 General Plan." In LAFCO's future role to amend the City Sphere of Influence, modify the City's Municipal Service Review and processing of future annexation applications, the Commission will need to rely on the Draft EIR in its role as a "Responsible Agency" under the California Environmental Quality Act (CEQA).*

Response 25A: The City understands and appreciates the LAFCO's need to reference the Draft EIR when amending the City SOI, modifying the City's Municipal Service Review, and in processing of future annexation applications.

Comment 25B: *Agriculture and Forest Resources (Draft EIR Chapter 3.2)*

Impact #3.2-1 identifies the "potentially significant" impact from the General Plan expansion boundary which: "... could result in conversion of approximately 8,750 acres of undeveloped land to developed urban land within the proposed SUDP/SOI and outside the City limits of Merced, of which 1,898 are Prime Farmland." In addition to "prime farmland," the impact statement recognizes two other categories of farmland which are considered "Important Farmlands" according to the CEQA checklist: soils mapped by the State Farmland Mapping and Monitoring Program as "Farmland of Statewide Importance" and "Unique Farmland." The analysis in this section of the Draft EIR does not identify how much Important Farmland is located within the 8,750 acre expansion area. As an additional consideration, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 contains a more extensive definition of "prime" farmland than the State's mapping program, and local LAFCO's are required to utilize this definition of prime when considering jurisdictional boundary changes and Sphere of Influence amendments (Government Code Section 56064). Therefore, the identification of only 1,898 acres of Prime farmland being located within the proposed SUDP/SOI is underestimated. As stated earlier, LAFCO will have to use this EIR for its future role as a responsible agency, and if the prime agricultural impacts are understated, a supplemental EIR may be required.

Response 25B: Although Important Farmlands are discussed on pages 3.2-1, 3.2-4 and 3.2-5 of the DEIR, no description of "Farmland of Statewide Importance" or "Unique Farmland" or the total acreages of each in the lands proposed for inclusion in the SUDP/SOI are included. Text on DEIR page 3.2-1 will be revised as follows:

IMPORTANT FARMLANDS

The Farmland Mapping and Monitoring Program is a farmland classification system that is administered by the California Department of Conservation. The system classifies agricultural land according to its soil quality and irrigation status. The best quality agricultural land is called "Prime Farmland." Prime Farmland is land that has the best combination of physical and chemical characteristics for the production of crops. It has the soil quality, growing season,

and moisture supply needed to produce sustained high yields of crops when treated and managed according to current farming methods. The land must have been used for the production of irrigated crops at least sometime during the two cycles prior to the mapping date. Two other categories of farmland are included as Important Farmland under the farmland classification system. “Farmland of Statewide Importance” is similar to prime farmland, except for minor shortcomings, such as greater slope or less ability to store soil moisture. Land in this classification must have been used for irrigated agricultural production sometime in the four years prior to the mapping date. “Unique Farmland” contains soils of lesser quality, and may or may not include nonirrigated orchards or vineyards. This land must have been used for agricultural purposes some time during the four years prior to the mapping date.

Important Farmland is land characterized by one or more of the following characteristics: (1) presence of prime agricultural soils; (2) presence of soils of statewide agricultural importance; and (3) active agricultural lands. The ~~2006~~ 2008 FMMP Merced County Land Use Conversion Table C-1 (~~Appendix B~~) indicates that 589,615 acres of the County are Important Farmland, 272,096 acres of which are considered Prime Farmland. Between ~~2004 and 2006~~ and 2008, the County experienced a ~~net gain of 289~~ 2,896 acres of Important Farmland from the conversion of other land uses to irrigated agriculture. However, the County experienced a net loss of approximately ~~709~~ 1,193 acres of Prime Farmland ~~to Urban and Built-up land~~ because of conversion to other uses. Overall the County lost a total of ~~3,512~~ 7,895 acres of agricultural lands ~~where~~ where were converted to ~~Urban and Build-up lands~~ and another 1,800 acres was categorized as being lost ~~to~~ to other land use. These changes in land uses, according to the FMMP data, are “aside from urbanization,” although a net loss of 199 acres did occur as the result of conversion of Important Farmland to Urban use.

Text on DEIR pages 3.2-4 will also be revised to reflect more recent and complete data from 2008 as follows:

Discussion/Conclusion: Adoption of the *Merced Vision 2030 General Plan* will result in existing agricultural areas being re-designated for residential, commercial, and public land uses. Such re-designation will indirectly result in the conversion of Farmland to urban uses over time. According to the ~~2006-2008~~ Farmland Mapping and Monitoring Program Map (Figure 3.2-1), the Plan Update could result in conversion of approximately ~~8,750~~ 9,286 acres of ~~undeveloped land~~ undeveloped land ~~and Farmland~~ and Farmland to developed land within the proposed SUDP/SOI and outside the City limits of Merced, of which ~~4,898~~ 2,313 acres are Prime Farmland, ~~2,774~~ 2,774 acres are Farmland of Statewide Importance, and 4,194 acres are Unique Farmland. The remaining undeveloped land is either not farmland, or is not included in the State definition of “Important Farmland.”

Comment 25C: *The Draft EIR concludes that even with implementation of one mitigation measure, the impact on some acreage of Prime, Statewide Important and Unique farmland will*

remain a "significant and unavoidable" impact. The LAFCO of Merced County has not adopted a mitigation policy which would require a jurisdiction to obtain permanent conservation easements on active farmland to off-set the farmland converted through urban development. In future review of the Sphere of Influence revision application and subsequent annexation applications, it would help the Commission to understand whether the City considered this mitigation tool, and why it was rejected. LAFCO will also need to adopt a "statement of overriding considerations" for the loss of prime farmland, and will look to the City's justification as a basis for considering whether to make its own findings as a "responsible agency" under CEQA. The magnitude of this impact is more significant in recognition that the proposed SUDP/SOI boundary may be large enough to accommodate 40 years of projected growth.

Response 25C: As discussed on Page 5-1 of the DEIR, agricultural and forest resources are one of the seven resource issues that cannot be mitigated to a less than significant level with or without mitigation measures. "Where the decision of the public agency allows the occurrence of significant effects which are identified in the Final EIR but are not at least substantially mitigated, the Lead Agency shall state in writing the specific reasons to support its action based on the Final EIR and/or the information in the record (Section 15093(b)). This statement is called a "Statement of Overriding Consideration." This statement will be prepared at the end of the CEQA review process, after the Final EIR for this project has been completed." Also see Response to Comment 5P regarding the consideration of a conservation easement.

Urban Expansion Implementing Action 1.1.f on page 2-26 of the Draft *Merced Vision 2030 General Plan* outlines the City's position on agricultural land preservation programs as follows:

1.1.f Work with Merced County and the other cities in the County to develop a County-wide agricultural land preservation policy.

A number of years ago, there was an effort to establish a Countywide Agricultural Preservation Strategy (CAPS) in which the cities in Merced County and the County worked on ways to address preservation of prime agricultural land. That effort ultimately failed and the County of Merced has imposed agricultural mitigation on certain large development projects, such as the University Community, on a case-by-case basis. However, in order to assure fairness and to be truly effective, a comprehensive strategy for dealing with agricultural preservation needs to be established Countywide. The City of Merced is committed to working with the County and the other cities to resolve this issue.

Comment 25D: *Urban Growth Boundaries:*

The Draft EIR contains a summary of the General Plan's proposed Specific Urban Development Plan (SUDP) boundary which is proposed to be coterminous with an expanded Sphere of Influence (SOI) boundary (Page 2-7). The General Plan proposes the removal of approximately 9,000 acres of land from the 2015 General Plan's SOI which is located north and east of the UC Merced Campus and now mainly consists of conservation easements for wetland habitat. In place of this former SOI territory, various new growth areas are proposed which primarily

contain "specific or community plan" areas. One of these areas replaces the former University Community planning area north and east of UC Merced, with the County adopted University Community Plan located south of the Campus and east of Lake Road. Two other large community plan areas are located to the northwest of the City along Bellevue Road, and southwest of the City, west of State Highway 59 and south of the Merced Regional Airport.

On Page 2-5 of the Draft EIR, the text states the following explanation for the SUDP/SOI expansion: "The expansion of the urban land use designations define the limits for extending City services and infrastructure so as to accommodate new development anticipated within the 2010-2030 time-frame of the General Plan." With the amount of existing vacant land within the current 2015 General Plan, it is difficult to comprehend how this proposed urban growth expansion is necessary over the twenty year time frame of the Vision 2030 General Plan. A more realistic assessment is presented a couple pages later in the Draft EIR, where, after describing the three major proposed SUDP expansion areas, the EIR acknowledges: "These areas will give the City enough land to accommodate expected growth over the next 20 to 40 years."

Response 25D: A number of other commenters have expressed concern over the estimated rate of population growth and the associated need to increase the size of the SUDP/SOI. Response to Comment 23B describes the need to expand the urban land use boundary to allow for planning for development and the prevention of premature conversion of agricultural lands.

The City respectfully disagrees with the idea that the General Plan should only include enough land to accommodate population projections, which can be modified over time. As stated on page 2-6 of the Draft *Merced Vision 2030 General Plan*:

The Land Use Diagram has been designed to take advantage of some opportunities presented by development plans, and the construction of the new U.C. Merced campus. The Land Use Diagram will accommodate a population larger than what is projected in Table 2.1. This is beneficial in two ways. In the short term, it provides enough locational options that the market is free to operate. In the long run, the additional land within the plan will add to the useful life of the plan. Absent any significant change in circumstances, the plan provides for as much as 40 years' worth of growth.

Comment 25E: *In the analysis under Impact #3.9-2, (Pages 3.9-20 and 21), the Draft EIR does not identify part of the local LAFCO policy regarding a City's sphere of influence which addresses the Plan's time horizon for implementation. Policy 1 under Objective II.A. states:*

A City's sphere of influence boundary should be large enough to accommodate approximately 20 years of projected growth as well as territory that represents special communities of interest for the City.

When City staff presented the proposed SUDP and SOI map to the Commission on December 6, 2007, the Commissioner's questioned the need for this large expansion area given the amount of vacant land already designated for development within the current Sphere north of the City. Part

of the City's response is contained in the following quote from the General Plan "Purpose" statement (presented in Section 2.4.1, Page 2-9 of the Draft EIR): Rapid growth and increasing land costs in Merced have also led to the need to consider additional areas for expansion, thus, one major component of the General Plan Update was to expand the City's existing growth boundary known as the Specific Urban Development Plan boundary (SUDP boundary)." In the three years since the initial General Plan presentation to the Commission the large existing inventory of vacant urban-designated land within the current Sphere and SUDP still remains available due to the depressed real estate and development markets. If the Vision 2030 General Plan is adopted as it is currently proposed, the City will need to be prepared to convince the Commission that the proposed 52.4 square mile urban Sphere of Influence boundary is warranted.

Response 25E: As the Commenter noted, the General Plan Update was initiated in 2005. At that time, economic conditions were different and anticipated growth rates were greater than the revised estimates. However, the City must plan for growth as expected to occur between 2015 and 2030 and beyond using the data available at the time. Additionally, as explained in Response to Comment 25B and elsewhere in this Final EIR, by planning in advance for areas outside the current City limits, Merced can ensure that future development is well designed; areas within the current County are integrated into the City's utility and service plans (e.g., emergency response, schools, and libraries); jobs/housing issues are considered before expansion occurs; and resources, including important farmland, can be conserved appropriately.

Comment 25F: *The Draft General Plan contains appropriate policies that will help implement LAFCO Policy 3 under Objective II.A. which promotes adoption of phasing policies for the timing of urban growth. The various evaluation criteria proposed under the Draft General Plan "Implementing Action 1.3.g" of Policy UE-1.3 are very well defined and comprehensive. When the City submits an annexation application to the Commission in the future, it will be important for the City to document how the proposal satisfied the six criteria identified.*

Response 25F: The City appreciates the Commenter's analysis of the policies and implementing actions.

Comment 25G: *However, one of the criteria under Policy UE-1.6 may be appropriate to add to the Implementing Actions in Section 1.3.g with a minor modification. This would involve adding the consideration for the City Council to review the inventory of vacant land within the City limits that is already designated and zoned for development and determine it has reached a certain level (for example, less than 10 years of inventory for residential growth) to ensure that development within a specific or community plan area will not unduly delay development within the City limits. This type of criteria would help mitigate the potential for leap frog development and ensure that urban services are not extended to newly annexed areas when existing partially developed areas are having difficulty getting completed.*

Response 25G: There is no Implementing Action 1.3.g under Policy UE-1.6; the Commenter must, instead, be referring to Implementing Action 1.3.g, on Page 2-29 of the General Plan Update under Policy UE-1.3. Although the suggestion of the Commenter to revise this

Implementing Action has merit and may be considered by the City, the revision of this policy is outside the scope of the DEIR.

Comment 25H: *Utilities/Services (Draft EIR Chapter 3.16)*

One of LAFCO's primary responsibilities is to ensure that government services are efficiently extended (Government Code Section 56001). In terms of sewer capacity, the analysis under Impact #3.16-1 indicates the City is planning for much greater sewer capacity than the General Plan would require. The planned expansion of the City's wastewater treatment plant is 20 Million Gallons per Day, enough capacity to serve a population of 174,000 people which is more than 12% higher than the General Plan projection by 2030 of 155,000 people. This capacity is actually 49% higher than the 2030 population projection from Merced County Association of Governments (MCAG) for the City of 116,800 (Table 3.12-2, Page 3.12-2 of the Draft EIR). The analysis in the Draft EIR under Section 5.3 "Growth Inducing Impacts" does not consider this over-capacity as a significant impact.

Response 25H: The population figure of 174,000 quoted by the commenter is found on page 3.16-1 of the DEIR. This figure was determined by referencing the DEIR prepared for the wastewater treatment plant expansion in 2006. At that time, the wastewater treatment plant EIR estimated that with the estimated population increase within the City, as well as the UC Merced community, and annexed lands from the surrounding SOI, the expanded wastewater treatment facility would provide service through approximately 2025. Expansion and upgrades would be completed in phases. However; "actual rates of development will determine when the subsequent 20 mgd phase would be warranted." (DEIR for City of Merced Wastewater Treatment Plant Expansion Project, Volume 1 – Report, page 2-19). The expansion of the wastewater treatment facility to a capacity of 20 gmd will not occur until the increase population of the City warrants the completion of this final phase of construction.

Comment 25I: *The Draft EIR provides extensive discussion on the surface and groundwater resources in the Merced Groundwater Basin and efforts with the Merced Irrigation District (MID) to reduce the overdraft condition of the groundwater basin. While there are no specific mitigation measures identified in the EIR, the General Plan contains numerous policies to enhance groundwater supplies and reduce pumping by cooperating with MID to increase surface water supplies. Due to the complex factors involved in the region's water supply, the Draft EIR's conclusion that the cumulative impact on water resources from urban growth and agricultural pumping is a "significant cumulative impact" to water supply and delivery is appropriate.*

Response 25I: The City agrees with the Commenter's conclusion that cumulative impacts on water resources from urban growth and agricultural pumping will have a significant cumulative impact to the water supply.

Comment 25J: *These comments conclude LAFCO's review of the Merced Vision 2030 General Plan Draft EIR. Please let me know if you have any questions about the content of this letter.*

Response 25J: The City thanks Mr. Nicholson for his comments on behalf of the LAFCo of Merced County.

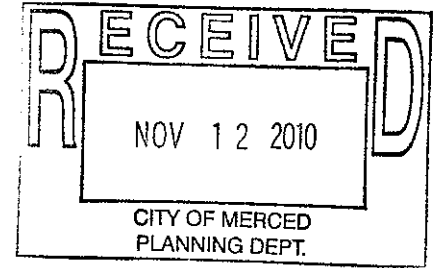
CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov

LETTER 26 (Late)



November 9, 2010



Kim Espinosa
City of Merced Planning & Permitting Division
678 West 18th Street, 2nd Floor
Merced, CA 95340

Dear Ms. Espinosa:

The California Energy Commission has received the City of Merced Planning & Permitting Division's Draft EIR titled Merced Vision 2030 General Plan, SCH 2008071069 that was submitted on 8/24/2010 for comments due by 10/22/2010. After careful review, the California Energy Commission has no comment at this time and would like to share the following only as a resource of information.

The Energy Commission would like to assist in reducing the energy usage involved in your project. Please refer to the enclosed Appendix F of the California Environmental Quality Act for how to achieve energy conservation.

In addition, the Energy Commission's *Energy Aware Planning Guide* is also available as a tool to assist in your land use planning and other future projects. For further information on how to utilize this guide, please visit www.energy.ca.gov/energy_aware_guide/index.html.

Thank you for providing us the opportunity to review the City of Merced Planning & Permitting Division's Draft EIR. We hope that the above mentioned resources will serve helpful in your project's environmental review process.

If you have any further questions, please call Gigi Tien at (916) 651-0566.

Sincerely,

BILL PFANNER
Supervisor, Local Energy & Land Use Assistance Unit
Special Projects Office
Fuels and Transportation Division
California Energy Commission
1516 Ninth Street, MS 23
Sacramento, CA 95814

Enclosure

A

Appendix F

ENERGY CONSERVATION

I. Introduction

The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

- (1) decreasing overall per capita energy consumption,
- (2) decreasing reliance on natural gas and oil, and
- (3) increasing reliance on renewable energy sources.

In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.

Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, lifetime costs may be determined more by energy efficiency than by initial dollar costs.

II. EIR Contents

Potentially significant energy implications of a project should be considered in an EIR. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances, specific items may not apply or additional items may be needed.

A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation, and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Initial and life-cycle energy costs or supplies.
5. Total estimated daily trips to be generated by the project and the additional energy consumed per trip by mode.

B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.

C. Environmental Impacts may include:

1. The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, opera-

tion, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.

2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.
6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

D. Mitigation Measures may include:

1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy.
3. The potential for reducing peak energy demand.
4. Alternate fuels (particularly renewable ones) or energy systems.
5. Energy conservation which could result from recycling efforts.

E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

F. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

G. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.

H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the energy costs over the lifetime of the project.

I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.

Letter 26 Bill Pfanner, Supervisor Local Energy & Land Use Assistance Unit, Special Projects Office, Fuels and Transportation Division, California Energy Commission

Comment 26A: *The California Energy Commission has received the City of Merced Planning & Permitting Division's Draft EIR titled Merced Vision 2030 General Plan, SCH 2008071069 that was submitted on 8/24/2010 for comments due by 10/22/2010. After careful review, the California Energy Commission has no comment at this time and would like to share the following only as a resource of information.*

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Thank you for providing us the opportunity to review the City of Merced Planning & Permitting Division's Draft EIR. We hope that the above mentioned resources will serve helpful in your project's environmental review process.

Response 26A: Comment noted.