

FARMLAND PROTECTION ACTION GUIDE

24 Strategies for California





INSTITUTE *for* LOCAL
SELF GOVERNMENT

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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 IS NO SUBSTITUTE FOR LEGAL ADVICE

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 of 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).

1 STRATEGY

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 3 ⁴

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 3 ⁴

Chance that a Californian believes that cities and counties should work cooperatively to solve local land use problems: 3 in 5 ⁴

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 6 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).

2 STRATEGY

DEVELOP A GROWTH MANAGEMENT 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,

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/landusepublications.

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).

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.

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).

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.

3 STRATEGY

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 *Lesher 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-range measures 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 be 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

B E W A R E T H E “P L A N B U S T E R ”

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

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.

ELEMENTS OF AGRICULTURAL ZONING

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

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¹ See Cal. Gov't Code § 65850(a); 65910 (authorizing open space zoning).

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.

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).

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 techniques²: conditional use permits and overlay districts³ 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).

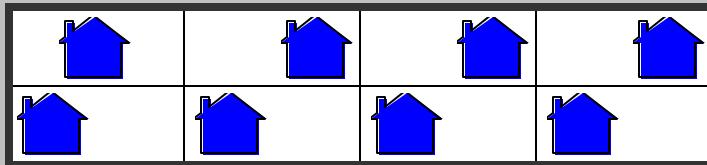
⁶ Randall Arendt, *Rural by Design* (1994).

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

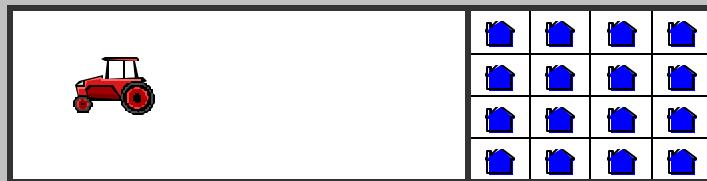
east of the Mississippi River where geography provides a variety of undulations, ridges and valleys. It is perhaps less effective in the broader plains and valleys of the West.

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.

GROUNDS 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 are⁶:

- **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.

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

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”).

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

The logo consists of the word "STRATEGY" in a bold, sans-serif font, with the number "6" integrated into the letter "T".

STRATEGY

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).

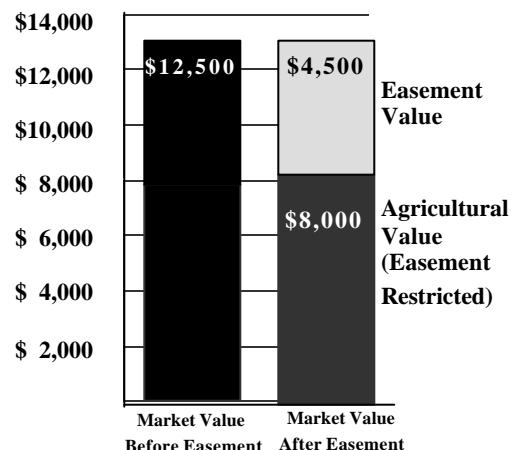
Each conservation easement should be individually negotiated to reflect the needs of the landowner and the purchaser. After the purchase, the easements must still be monitored and enforced. Thus, another important consideration is what role the local agency will play in the easement's long-term holding 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).

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.

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

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,

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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.

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.

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 knowledgeable 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.

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

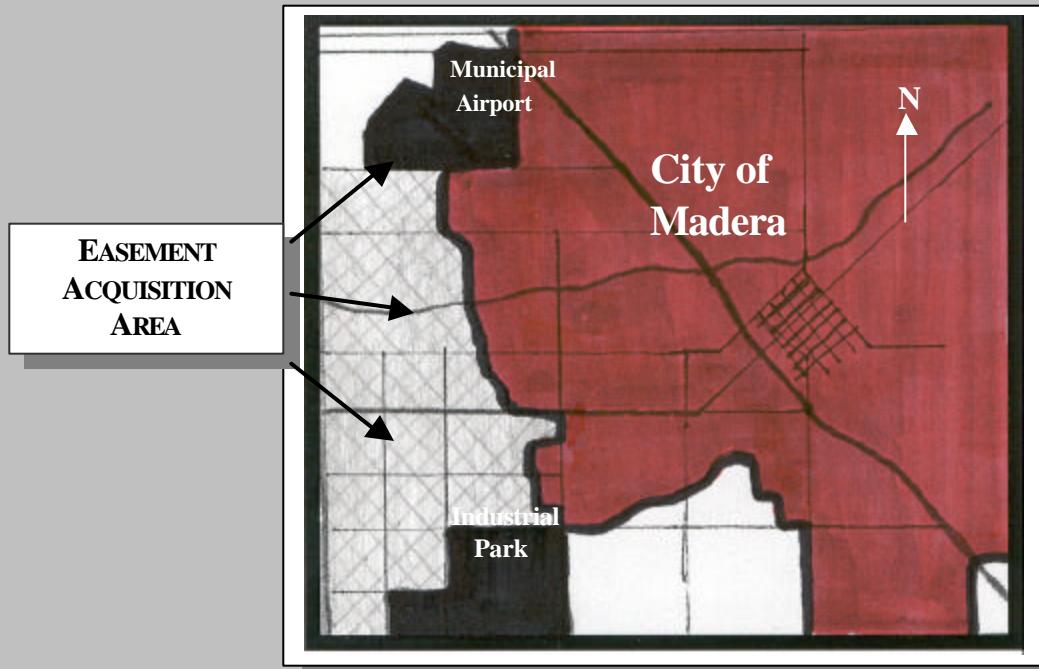
The City of Madera offers a good example of how easements can be used strategically. This area is known for producing several varieties of dessert wines. The landowners in the area are largely a close-knit group of Italian-American vintners whose families have been producing grapes and wine in the area 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.

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 Seaside Corp. v. County of Santa Cruz*, 138 Cal. App. 3d 484 (1982).

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- ***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.

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.

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.

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/department/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.

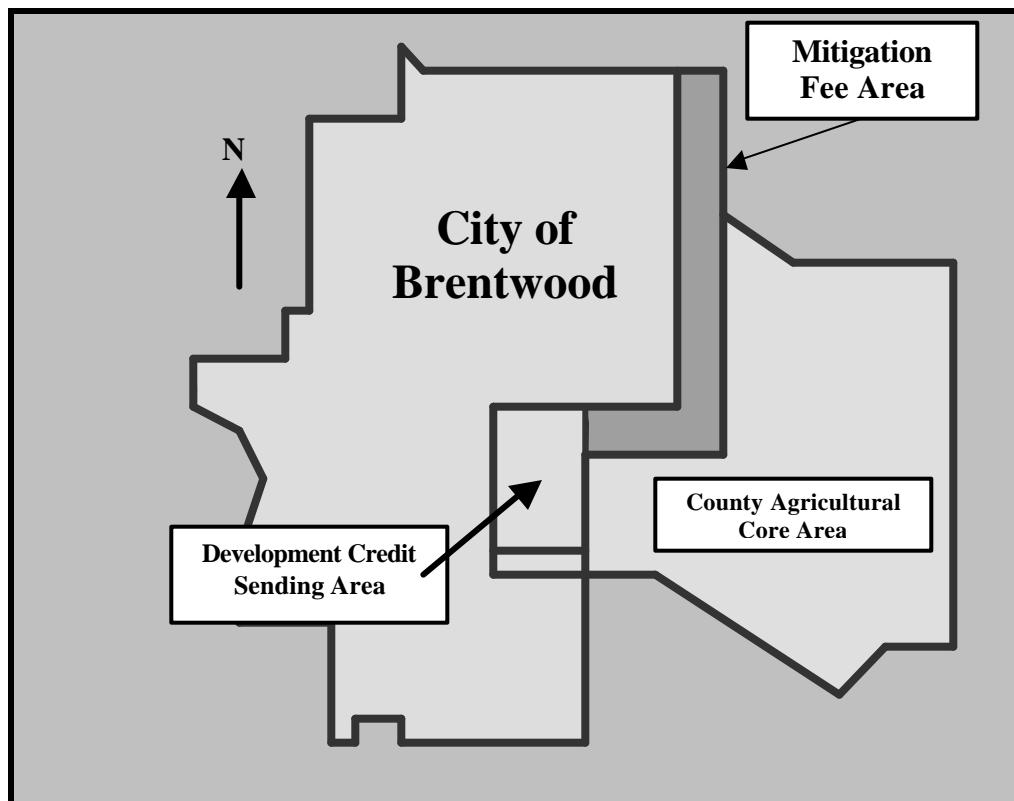
still pending. The fees are deposited into a trust account that may be used only for the conservation easement program. No more than 5 percent of the fee may be applied to administrative costs.

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

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").

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.

PROMOTE SOUND ANNEXATION POLICIES

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

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.

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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"> • Infill First. Discourage conversion of territory located on a city boundary prior to developing vacant land within the city area. • Seek Contiguous Development. 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. • Protect Prime Land. Urban services should not be extended into prime agricultural lands. • Plan Proactively. Submit an annexation plan that includes components for protecting agriculture. 	<ul style="list-style-type: none"> • Likely Consequences. Discourage annexations that convert prime land unless effective measures have been adopted to preserve prime agricultural lands within the sphere of influence. • Review Process. 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. • General Limitation. 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/lafco/lafco_stdsproc.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.

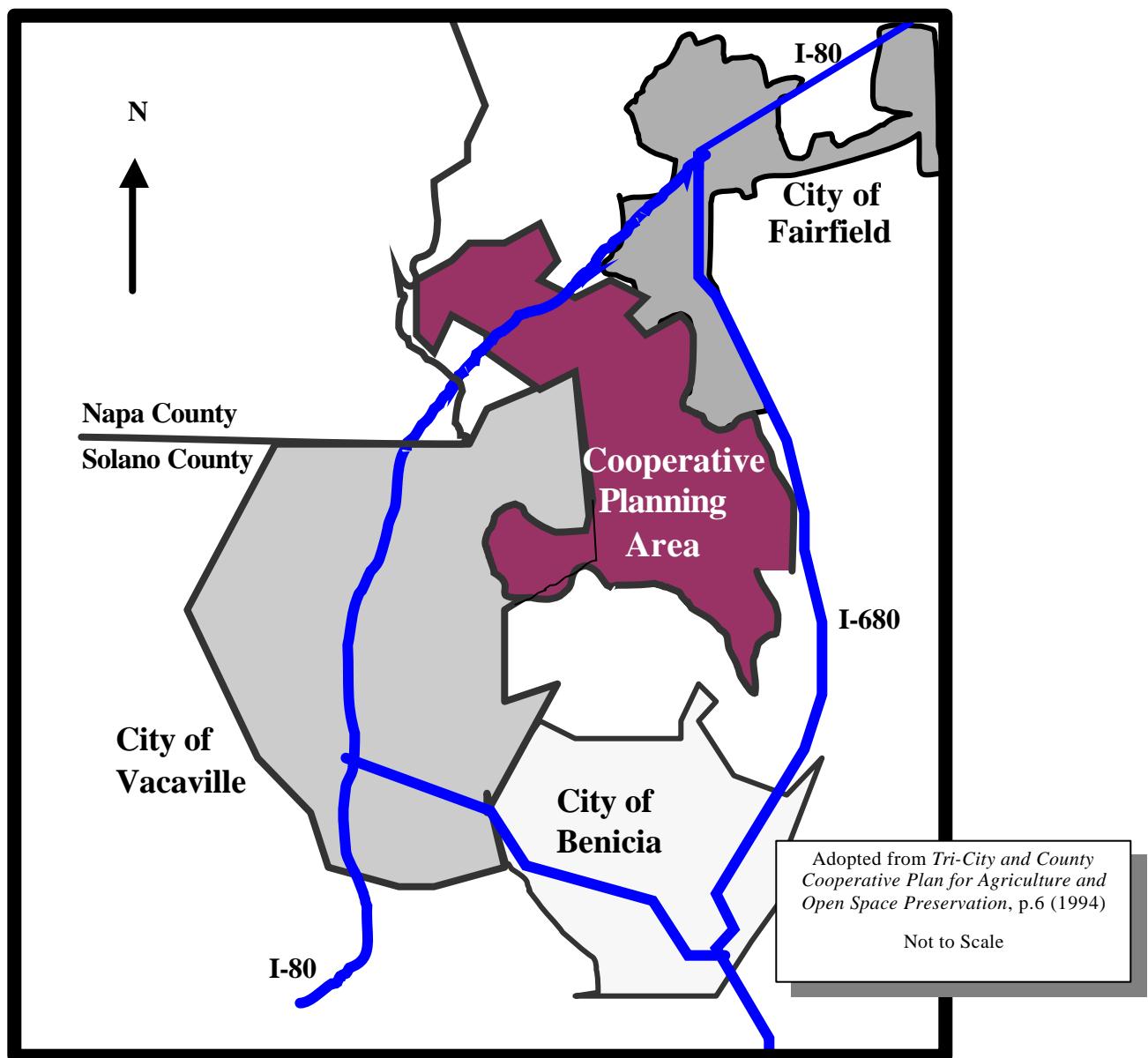
Cooperative planning efforts require an ongoing commitment from everyone involved. Changes in the political or economic climate of even one of the participating agencies can affect the outcome of the planning process. It's essential to address the structure, implementation and funding of the planning 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 4¹

Chance that a farm had Internet access in 1999: 1 in 2¹

Amount of each dollar spent on food that actually goes to farmers: 21 cents¹

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 billion¹

Total number of jobs supported by agriculture in California: 1.1 million¹

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).

10 STRATEGY

ADOPT A PROPERTY TAX INCENTIVE PROGRAM

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 Williams on 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.

11 STRATEGY

PLAN FOR ADEQUATE WATER SUPPLIES

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 involved 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.

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

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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. <i>Identify Extraction Points.</i> 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. <i>Define Outputs.</i> Calculate the amount of groundwater extracted plus consumptive use, exports, evapotranspiration, surface flow and other outputs. 3. <i>Define Inputs.</i> Quantify how much water is coming into the basin through precipitation, surface water and other inputs. 4. <i>Draft and Map a Water Budget.</i> 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. <i>Estimate Specific Yield.</i> 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. <i>Project Future Extractions.</i> 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. <i>Develop a Management Plan.</i> 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.dppla.water.ca.gov/grants-loans/](http://wwdppla.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>.
- **WaterReuse 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 Toulu 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 “FARBUDSPERSON” 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.

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

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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.carc.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/inde.xg.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/r0005loc.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/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

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”)

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.

- **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 Newslett.*, 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.

STRATEGY 17

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 MODELS ¹		
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.

DEVELOPING A REGIONAL BRAND

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.

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

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

20
STRATEGY

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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Implementation Issues 121

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Transition Zones 123**

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/BuffQual.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 Principles.** 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 2⁴

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 years¹

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: 144,000¹

Number of farms in California in 2000: 74,000¹

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: 62,000¹

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.

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.

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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.

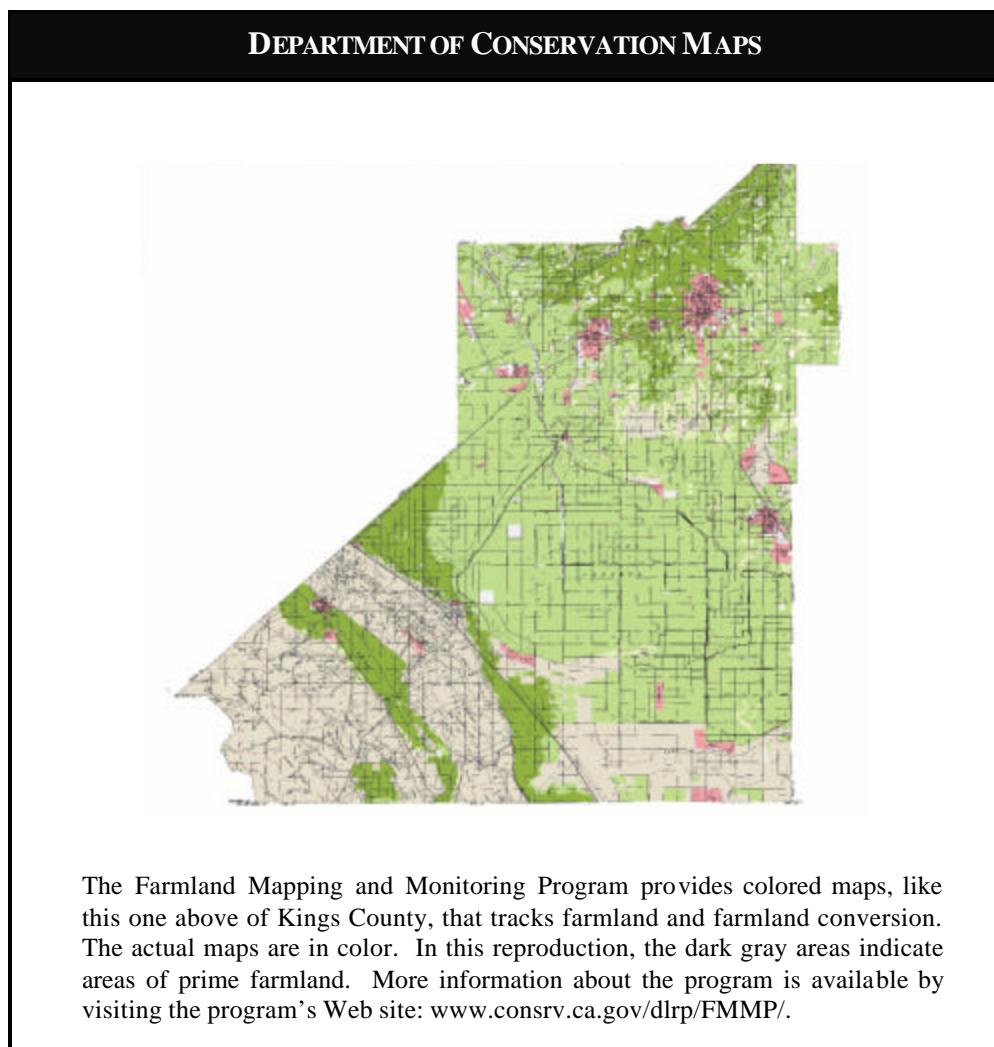
The FMMP classifies land's suitability for agricultural production based on the soil's physical and chemical composition and the actual land use. Two kinds of maps are compiled: Important Farmland Maps for areas that have modern soil surveys, and Interim Farmland Maps for areas lacking soil survey information. 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



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 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”).

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.

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
- County Farm Bureau
- Farmers’ market vendors
- Farmworker groups
- Agricultural product associations
- Irrigation districts
- Local land trusts
- Environmental organizations
- Agricultural tourism industry
- Developers
- Neighborhood groups
- Housing groups
- County agricultural commissioner
- Resource conservation district

STAKEHOLDER AND ADVISORY GROUPS

A stakeholder is a person or group with a significant interest in a program or policy. A stakeholders’ committee represents all the interests most likely to be affected by a proposal. Stakeholders’ 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.

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.

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.

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.

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.ncrs.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

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.

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

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. XIID, § 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. XIID, § 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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