



DEPARTMENT OF CONSERVATION

Managing California's Working Lands

DIVISION OF LAND RESOURCE PROTECTION

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August 1, 2011

VIA FACSIMILE (408) 292-6055

Mr. John Davidson
City of San José Planning Department
200 East Santa Clara Street, 3rd Floor
San José, CA 95113-1905

Subject: Draft Program EIR for the City of San José General Plan 2040 –
SCH# 2009072096

Dear Mr. Davidson:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Program EIR for the City of San José General Plan 2040. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the proposed project's potential impacts on agricultural land and resources.

Project Description:

The Envision San José 2040 General Plan is a comprehensive update of the Focus on the Future San José 2020 General Plan. Goals and policies are comprehensively revised throughout the General Plan and a series of action items added to implement new and existing policies.

Impacts to farmland from cumulative projects include approximately 300-400 acres within the 1,300 acre proposed Southeast Quadrant project. Build-out allowed under the Morgan Hill and Gilroy General Plans include approximately 120 acres of Prime Farmland in Morgan Hill, rural residential development allowed under the County of Santa Clara General Plan, over 50 acres for US 101 roadway improvements along a 7.6 mile alignment south of Gilroy, and 900- 1,000 acres of agricultural land in north Coyote Valley. Although the future loss of agricultural land in north Coyote Valley has been anticipated for many years in the City's General Plan, this impact combined with other planned or possible impacts to farmland would be substantial and implementation of the Envision San José 2040 General Plan would contribute to a significant cumulative loss of agricultural land in southern Santa Clara County.

Draft Program EIR for the City of San José General Plan 2040
August 1, 2011
Page 2 of 4

Division Comments:

The Draft Program EIR's comments on mitigation measures for cumulative impacts to agricultural land include the following:

"While conservation easements or strengthened zoning protections for agriculture could be used to limit future loss of Prime Farmland in other parts of the County, no feasible mitigation measures are available to offset the cumulative loss of agricultural land, especially prime agricultural land, within areas previously planned and designated for development within the City's Urban Growth Boundary or areas of the County already planned and approved for development. Conversion of developed rural or suburban areas (e.g., "ranchettes" or residences on lots of five to 20 acres) back to farmland may be possible in limited areas as housing stock ages; however opportunities to convert sizeable areas back to prime farmland are limited by the challenges of assembling a sizeable group of properties, removing physical improvements (such as buildings, pavement, and underground utility lines), and cost. Therefore, the cumulative loss of agricultural land would remain a significant¹ and unavoidable impact.

The Division does not agree with the statement, "no feasible mitigation measures are available to offset the cumulative loss of agricultural land, especially prime agricultural land, within areas previously planned and designated for development". Given that, the City of San José most likely receives many of its agricultural goods from surrounding farming communities within Santa Clara County and the rest of the State; it would be in the City's best interests to consider mitigation in outlying areas of the County or regionally to help preserve these resources. The City of San José has areas of prime farmland within its Urban Growth Boundary and any loss of this agricultural land should be mitigated whenever possible. In addition, reduction to a level below significance is not a criterion for mitigation.

The Department's data on land use conversion¹ shows that Santa Clara County lost a total of 22,805 acres of Important Farmland from 1984 to 2010, with an annual average loss of 877 acres per year. This cumulative loss represents a significant and permanent impact to the agricultural resources of the County and the State, and shows why the remaining agricultural resources in the County should be protected whenever feasible. In 2009, approximately \$260,139,000 in farm sales was generated in Santa Clara County². That value demonstrates the significance of agriculture to the economy of Santa Clara County.

¹ Department of Conservation. "Important Farmland Data Availability. Land Use Conversion Table"
http://redirect.conservation.ca.gov/dlrp/fmimp/county_info_results.asp

² California Agricultural Resource Directory 2010-2011
http://www.cdfa.ca.gov/statistics/PDFs/ResourceDirectory_2010-2011.pdf

Draft Program EIR for the City of San José General Plan 2040
August 1, 2011
Page 3 of 4

Mitigation Measures

Although direct conversion of agricultural land is often an unavoidable impact under California Environmental Quality Act (CEQA) analysis, mitigation measures must be considered. The adoption of a Statement of Overriding Consideration does not absolve an agency of the requirement to implement feasible mitigation that lessens a project's impacts.

In some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and therefore, mitigation is not required or cannot be accomplished. However, reduction to a level below significance is not a criterion for mitigation. Rather, the criterion is feasible mitigation that lessens a project's impacts. Pursuant to CEQA Guideline §15370, mitigation includes measures that "avoid, minimize, rectify, reduce or eliminate, or compensate" for the impact.

The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. As such, the Department recommends the use of permanent agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. Conservation easements will protect a portion of those remaining land resources and lessen project impacts in accordance with CEQA Guideline §15370. The Department highlights this measure because of its acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Mitigation via agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

One source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts, which can be found at:

<http://www.calandtrusts.org>

The California Council of Land Trusts deals with all types of mitigation banks. It is suggested that the County contact them to get an understanding of the fees associated with mitigation banking and the options available.

Draft Program EIR for the City of San José General Plan 2040
August 1, 2011
Page 4 of 4

Another source is the Division's California Farmland Conservancy Program (CFCP), which has participated in bringing about conservation easements throughout the State of California involving Land Trust Alliance, the California Council of Land Trusts, and the American Farmland Trust. The establishment of an easement in the County may potentially be feasible. If the City were not able to make arrangements for easement mitigation through one of these or many other land trusts operating in California, the Department would be glad to help. We recommend that the Final Program EIR consider agricultural conservation easement mitigation for this project. Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered.

Thank you for giving us the opportunity to comment on the Draft Program EIR for the City of San José General Plan 2040. Please provide this Department with the date of any hearings for this particular action, and any staff reports pertaining to it. If you have questions regarding our comments, or require technical assistance or information on agricultural land conservation, please contact Meri Meraz, Environmental Planner, at 801 K Street, MS 18-01, Sacramento, California 95814, or by phone at (916) 445-9411.

Sincerely,



John M. Lowrie
Program Manager
Williamson Act Program

cc: State Clearinghouse