



May 8, 2019

**VIA EMAIL: RAYALA@CI.ONTARIO.CA.US**

Mr. Richard Ayala  
City of Ontario  
303 East B Street  
Ontario, CA 91764

Dear Mr. Ayala:

INITIAL STUDY/NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE MERRILL COMMERCE CENTER SPECIFIC PLAN PROJECT, SCH# 2019049079

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Initial Study/Notice of Preparation of a Draft Environmental Impact Report for the Merrill Commerce Specific Plan (Project). The Division monitors farmland conversion on a statewide basis and administers the 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 Merrill Commerce Center Specific Plan proposes development and operation of up to 7,014,000 square feet of high-cube fulfillment center warehouse uses and up to 1,441,000 square feet of business park uses on approximately 376.3 acres located in the City of Ontario, within San Bernardino County. The Project would also implement off-site infrastructure (roads, potable water, recycled water, sanitary sewer, storm drains, and fiber optic lines) necessary to support the project. Preliminary studies prepared for the project indicate that an additional 113.3 acres of off-site areas could be disturbed during construction of off-site infrastructure improvements. Predominantly, off-site areas that would be affected by construction of infrastructure improvements comprise already-disturbed/developed rights-of-ways and easements.

The project site contains areas of Prime Farmland as classified by the Department of Conservation's Farmland Mapping and Monitoring Program<sup>1</sup>. According to the City, the site also contains Williamson Act contracted properties<sup>2</sup>.

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<sup>1</sup> California Department of Conservation, Division of Land Resource Protection, Farmland Mapping and Monitoring Program, California Important Farmland Finder, <https://maps.conservation.ca.gov/DLRP/CIFF/>

<sup>2</sup> City of Ontario, [https://www.ontarioca.gov/sites/default/files/Ontario-Files/Planning/williamson\\_act\\_status\\_map\\_november\\_2018.pdf](https://www.ontarioca.gov/sites/default/files/Ontario-Files/Planning/williamson_act_status_map_november_2018.pdf)

## Department Comments

The Department suggests that the applicant file for non-renewal of the current Williamson Act contract, and wait until the contract's non-renewal status has ended and the contract has expired before moving forward with the proposed project. However, if the applicant wishes to proceed with the project before that time they may consider contract cancellation. Cancellation of the proposed project site would prevent the proposed use from conflicting with existing law. Please refer to our website for further information regarding contract non-renewal, cancellation, and other contract removal methods<sup>3</sup>.

The Department recommends the following discussion under the Agricultural Resources section of the Environmental Impact Report:

- Type, amount, and location of farmland conversion resulting directly and indirectly from implementation of the proposed project.
- Impacts on any current and future agricultural operations in the vicinity; e.g., land-use conflicts, increases in land values and taxes, loss of agricultural support infrastructure such as processing facilities, etc.
- Incremental impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely future projects.
- Potential contract resolutions for land in an agricultural preserve and/or enrolled in a Williamson Act contract affect by the proposed project.
- Proposed mitigation measure for all impacted agricultural lands within the project area.

Although direct conversion of agricultural land is often an unavoidable impact under CEQA analysis, mitigation measures must be considered. 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. However, reduction to a level below significance is not a criterion for mitigation under CEQA. Rather, the criterion is feasible mitigation that lessens a project's impacts.

All mitigation measures that are potentially feasible should be considered. A measure brought to the attention of the Lead Agency should not be left out unless it is infeasible based on its elements. The Department suggests that the City consider the adoption of an agricultural land mitigation program that will effectively mitigate the conversion of agricultural land.

## Agricultural Mitigation Program

Agricultural conservation easements are an available mitigation tool that the City should consider. The Department highlights easements as a mitigation tool because of their acceptance and use by lead agencies as an appropriate mitigation measure

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<sup>3</sup> [https://www.conservation.ca.gov/dlrp/wa/Pages/removing\\_contracts.aspx](https://www.conservation.ca.gov/dlrp/wa/Pages/removing_contracts.aspx)

under CEQA and because they follow an established rationale similar to that of wildlife habitat mitigation.

Programs that establish agricultural conservation easements and in-lieu fees for mitigation banking are most effective at conserving comparable quality agricultural land when the easement requirements or fees are determined concurrent with project approval. Should significant time elapse between initial approval and the applicant's receipt of a building or grading permit, conflict may arise over the agricultural quality or value of the land being converted.

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.

A source that has proven helpful for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

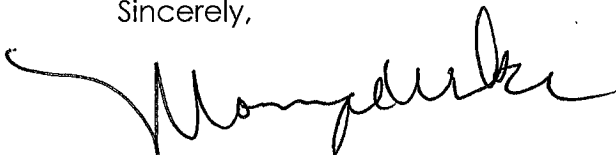
<http://www.calandtrusts.org/resources/conserving-californias-harvest/>

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 many California land trusts. Any other feasible mitigation measures should also be considered.

### Conclusion

Thank you for giving us the opportunity to comment on the Initial Study/Notice of Preparation of a Draft Environmental Impact Report for the Merrill Commerce Center Specific Plan Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Environmental Planner at (916) 324-7347 or via email at [Farl.Grundy@conservation.ca.gov](mailto:Farl.Grundy@conservation.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Monique Wilber". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Monique Wilber  
Conservation Program Support Supervisor

