



APRIL 5, 2022

VIA EMAIL: MICHAEL.MEEHAN@PLN.SCCGOV.ORG

County of Santa Clara Planning Office
Attention: Michael Meehan, Principal Planner
County Government Center
70 West Hedding, 7th Floor, East Wing
San Jose CA, 95110

Governor's Office of Planning & Research

Apr 07 2022

STATE CLEARINGHOUSE

Dear Mr. Meehan:

NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE RURAL ZONING ORDINANCE AMENDMENTS PROJECT, SCH#2022030776

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation of a Draft Environmental Impact Report for the Rural Zoning Ordinance Amendments Project (Project). The Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's potential impacts on agricultural land and resources.

Project Description

The proposed amendments to the Zoning Ordinance would apply to rural zoning districts (Exclusive Agriculture, Agricultural Ranch/ands, Hillside, and Rural Residential) within the unincorporated county. The objectives of these amendments are to:

- a) Replace existing provisions of the Zoning Ordinance addressing local-serving uses with objective development standards, to provide a more streamlined approach for development of rural compatible uses;
- b) Preserve rural areas by limiting the development of non-compatible uses; and
- c) Further the County's General Plan policy goals for continued agricultural viability.

The proposed amendments to the Zoning Ordinance would update how development is regulated in rural zoning districts with three primary changes:

- a) Simplify and streamline the permit process for agriculture supportive uses.
 - Broaden the uses that are permitted ancillary to an agricultural operation.
 - Combine use classifications for Agricultural Processing, Agricultural Sales, Agricultural Accessory Structures & Uses, Agriculturally Related Entertainment &

Commercial Uses and Wineries into a new use classification called Agriculture Supportive Uses.

- Streamline the regulation of Agriculture Supportive Uses according to size, either Limited or General.
- b) Align development in agricultural areas with existing County land use policies.
- Remove non-compatible uses in the Exclusive Agriculture zone that are inconsistent with the intent of General Plan policies.
 - Require that certain types of development be accessory to onsite agriculture.
 - Introduce an Agricultural Buffer requirement for new development on properties adjacent to farmland.
 - Allow Agrivoltaics in agricultural areas, which consists of active agricultural uses alongside commercial solar energy production.
- c) Replace "local-serving" provisions with objective development standards.
- Remove regulations related to "local-serving" uses in rural areas.
 - Introduce development standards, Lot Coverage and Development Area, which will regulate the size and scale of new development in rural zoning districts.
 - Streamline the regulation of Religious Institutions according to size, either Limited or General.

Department Comments

The conversion of agricultural land represents a permanent reduction and significant impact to California's agricultural land resources. CEQA requires that all feasible and reasonable mitigation be reviewed and applied to projects. Under CEQA, a lead agency should not approve a project if there are feasible alternatives or feasible mitigation measures available that would lessen the significant effects of the project.

All mitigation measures that are potentially feasible should be included in the project's environmental review. A measure brought to the attention of the lead agency should not be left out unless it is infeasible based on its elements.

Consistent with CEQA Guidelines, the Department recommends the County consider agricultural conservation easements, among other measures, as potential mitigation. (See Cal. Code Regs., tit. 14, § 15370 [mitigation includes "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."])

Mitigation through agricultural easements can take at least two forms: 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 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 helpful source 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:

[California Council of Land Trusts](#)

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. Indeed, the recent judicial opinion in *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 ("KG Farms") holds that agricultural conservation easements on a 1 to 1 ratio are not alone sufficient to adequately mitigate a project's conversion of agricultural land. KG Farms does not stand for the proposition that agricultural conservation easements are irrelevant as mitigation. Rather, the holding suggests that to the extent they are considered, they may need to be applied at a greater than 1 to 1 ratio, or combined with other forms of mitigation (such as restoration of some land not currently used as farmland).

Conclusion

The Department recommends further discussion of the following issues:

- 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.
- Proposed mitigation measures for all impacted agricultural lands within the proposed project area.
- Projects compatibility with lands within an agricultural preserve and/or enrolled in a Williamson Act contract.
- If applicable, notification of Williamson Act contract non-renewal and/or cancellation.

Thank you for giving us the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Rural Zoning Ordinance Amendments 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, Associate Environmental Planner via email at Farl.Grundy@conservation.ca.gov.

Sincerely,

Monique Wilber

Monique Wilber

Conservation Program Support Supervisor