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SLO LAFCO - Serving the Area of San Luis Obispo County

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TO: MEMBERS, FORMATION COMMISSION

**FROM: DAVID CHURCH, EXECUTIVE OFFICER
MIKE PRATER, DEPUTY EXECUTIVE OFFICER**

DATE: MARCH 19, 2020

**SUBJECT: STUDY SESSION: LAFCO AGRICULTURE DEFINITIONS,
POLICIES AND GUIDELINES**

Recommendation. It is respectfully recommended that the Commission receive and file this report.

Summary: The purpose of today's study session is to provide information to the Commissioners regarding the definitions of agricultural land in Cortese-Knox-Hertzberg Act (CKH Act) and San Luis Obispo LAFCO's current policy base.

Attachments

A: SLO LAFCO Ag Policies

B: SLO LAFCO Ag
Guidelines

LAFCO must consider the impact that any proposal may have on existing agricultural lands and resources. This is particularly important when the proposal directly involves the conversion of prime agricultural lands. This concern is balanced with the need to ensure orderly development and the efficient provision of services to certain areas. By guiding development toward vacant urban land and away from agricultural land, LAFCO helps to preserve important and valuable agricultural resources.

The CKH Act has specific definitions for agricultural lands; it generally discourages the use of prime agriculture land for development. LAFCO is called on to balance the impacts on agricultural lands and the needs of a community for housing, jobs and economic development. LAFCO carefully considers its decisions that takes into account many of these factors; weighing the importance of each factor.

The definitions and legislative mandates from the CKH Act are found below and determine what prime agricultural land is for LAFCO. The local adopted policies provide LAFCO with guidance and discretion in making decisions that impact prime agricultural land. Government Code Section 56001 provides LAFCO with direction to perform this balancing act:

GC 56001. *The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.*

The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.

As a creation of the State Legislature with a broad mandate, LAFCO has been given “quasi-legislative” authority to complete its mission. This gives Commissioners “broad discretion in light of the record” to make determinations regarding LAFCO proposals. This important responsibility is further spelled out in CKH Act as Commissioners using their “Independent Judgement” to make decisions:

GC 56325.1. *While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.*

This is an important part of LAFCO’s decision making process. The Commission should weigh the importance and significance of a particular factor when considering its decisions. Is water supply more important than housing? Should land be preserved on less than a 1:1 preservation ratio because of the other benefits of a project? Do all the factors when taken as a whole led to approval or denial of a proposal? It is not black and white; careful discretion, local circumstances and independent judgement are considered in the decision making process.

Agricultural Definitions-Cortese-Knox-Hertzberg Act

The Cortese-Knox-Hertzberg Act contains a number of definition and statements that give LAFCO guidance and authority with regard to open space and agricultural resources. The following are taken directly from the CKH Act:

- 56016. *"Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.*

- 56064. *"Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:*
 - (a) *Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.*
 - (b) *Land that qualifies for rating 80 through 100 Storie Index Rating.*
 - (c) *Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.*
 - (d) *Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.*
 - (e) *Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.*
- 56301. *Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, encouraging the efficient provision of government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.*

The Cortese-Knox-Hertzberg Act further describes the intent of the legislation with regard to agricultural resources in Government Code section 56377, which states:

- 56377. *In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses, the commission shall consider all of the following policies and priorities:*
 - (a) *Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.*
 - (b) *Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the Sphere of Influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for nonopen-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing Sphere of Influence of the local agency.*

Policy Discussion

LAFCOs throughout the state take a variety of approaches toward agricultural and open space policies. Some common themes that run throughout the policies:

- Most of the policies implemented by LAFCO's allow discretion for decision makers by encouraging or discouraging a certain activity or action. It is a rare occasion when LAFCO policies require a certain action by a Commission.
- Many policies provide criteria to help LAFCO's judge whether a proposal would lead to planned, orderly, and efficient development. On this basis, the CKH Act does allow for the conversion of Prime Agricultural and Open Space Lands and annexation into a city or district.

The policies regarding agricultural and open lands allow for discretion because of the potential for the Commission to step into land use planning which is prohibited by the Cortese-Knox-Hertzberg Act Chapter 3, Powers, Code Section 56375(a)(3):

A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.

Careful attention to the above code section has been paid by LAFCOs around the state that has adopted an agriculture and open space policy base.

San Luis Obispo LAFCO Existing Policy Base. San Luis Obispo LAFCO has adopted policies and guidelines that address agricultural issues and resources. The policies are found in Attachment A. SLO LAFCO also adopted Agricultural Guidelines found in Appendix B of our Policies and Procedures. Appendix B is found in Attachment B of this staff report. Policy 12 is a key policy that San Luis Obispo LAFCO considers:

12. *The Commission may approve annexations of prime agricultural land only if mitigation that equates to a substitution ratio of at least 1:1 for the prime land to be converted from agricultural use is agreed to by the applicant (landowner), the jurisdiction with land use authority. The 1:1 substitution ratio may be met by implementing various measures:*
 - a. *Acquisition and dedication of farmland, development rights, and/or agricultural conservation easements to permanently protect farmlands within the annexation area or lands with similar characteristics within the County Planning Area.*
 - b. *Payment of in-lieu fees to an established, qualified, mitigation/conservation program or organization sufficient to fully fund the acquisition and dedication activities stated above in 12a.*
 - c. *Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural land at a 1:1 ratio.*

Other, more general, but relevant policies considered by San Luis Obispo LAFCO include the following:

- *Policy #1: The Commission shall endeavor to balance the need to efficiently provide public services with the sometimes-competing interests of discouraging urban sprawl, preserving prime agriculture land and open space (CKH-56001).*
- *Policy #3: "Cities and Special Districts are discouraged from annexations outside of their Spheres of Influence unless the need for such services is clearly demonstrated."*
- *Policy #7: "The Commission prefers urban development within Cities as opposed to development in the unincorporated area."*
- *Policy #8: "The Commission will recognize and preserve clearly defined, long term agricultural and open space areas established by the County or other jurisdictions to preserve critical environmental areas and to bolster local economies"*

The attached Policies and Guidelines are intended to support the above more general policy base. The Agricultural Policies provide more detail with regard to the specific issues that should be considered as LAFCO evaluates a proposal. The Guidelines provide information about what subjects and issues should be addressed when an application that affects agricultural resources is submitted to LAFCO. The Guidelines also provide criteria by which LAFCO can evaluate a proposal and consider a decision that involves agricultural resources.

The policies and guidelines found in Attachment A and B express LAFCO's intent to more specifically address the preservation of agricultural land, consistent with current policies and LAFCO's mandates. LAFCO is required by the Cortese-Knox-Hertzberg Act to consider the effect that any proposal may have on existing agricultural lands. This is balanced with the need to ensure orderly development and the efficient provision of services to certain areas. In general, by guiding development toward urban areas and away from agricultural land, LAFCO helps to preserve important and valuable agricultural resources.

CEQA. In considering proposals, SLO LAFCO also uses CEQA documents to identify potential impacts and mitigation regarding agricultural resources. CEQA requires that the conversion of agricultural land be evaluated and mitigated to the greatest extent possible depending on the impacts of a project or proposal.

Summary. SLO LAFCO has adopted a robust policy base with regard to agricultural resources. It is important to remember that in applying these policies and guidelines the Commission has been judicious and the jurisdictions have been very collaborative. The policy base allows the Commission to use its discretion on a case-by-case basis. It also provides LAFCO with a measure of flexibility that can be used on an as needed basis.

Examples. The following are examples of how the Agricultural Policies have been implemented over the years:

- **San Luis Ranch** The Specific Plan converted 56 acres of prime agricultural land to another use. To meet the LAFCO Policy a minimum of 56 acres of prime agricultural land had to be preserved. Fifty-three (53) of the acres were preserved on-site with 30 acres preserved off-site. Bringing the total preserved to 86 acres-more than the needed 56 acres. Here is the Condition
- **Madonna/Gap** Annexation, aka, Target, included the preservation of 18 acres of prime agricultural by placing a conservation easement on the site and off-site as well. 11 acres was preserved on site and 7 acres on Froom Ranch. The City of San Luis Obispo has a similar 1:1 preservation policy. The City complied with the policy by recording a conservation easement on the sites prior to LAFCO filing the annexation with the State Board of Equalization.
- **Orcutt Annexation** to the City of SLO set aside 70+ acres in open space through an easement. The area was not prime agricultural land but it was zoned open space and so the City recorded an easement on that area pursuant to a LAFCO condition of approval.
- **Heights at Vista del Mar to the City of Arroyo Grande** included an open space easement that was recorded for the open space parcel (Lot 24). It is to be held in common by the Homeowner's Association or transferred to public trust or conservancy agency approved by the Department of Planning and Building. The open space parcel is to be maintained as such in perpetuity. This did not include prime agricultural

Attachment A

SLO LAFCO Ag Policies



- h. If the Commission changes the Sphere of Influence agreed upon by the city and the County, the agreement shall not be implemented; however, it may be renegotiated if both parties agree to further discussions.

2.9 Agricultural Policies

The policies in this section are designed to assist LAFCO in making decisions that achieve the Goals stated in the previous section. A policy is a statement that guides decision making by indicating a clear direction on the part of LAFCO. The following policies support the goals stated above and shall be used by San Luis Obispo LAFCO when considering a proposal that would involve agricultural resources:

1. Vacant land within urban areas should be developed before agricultural land is annexed for non-agricultural purposes.
2. Land substantially surrounded by existing jurisdictional boundaries should be annexed before other lands.
3. In general, urban development should be discouraged in agricultural areas. For example, agricultural land should not be annexed for nonagricultural purposes when feasible alternatives exist. Large lot rural development that places pressure on a jurisdiction to provide services and causes agricultural areas to be infeasible for farming should be discouraged.
4. The Memorandum of Agreement between a city and the County should be used and amended as needed to address the impacts on and conversion of Agricultural Lands on the fringe of a city.
5. The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers should be established to promote this policy.
6. Development near agricultural land should not adversely affect the sustainability or constrain the lawful, responsible practices of the agricultural operations.
7. In considering the completeness and appropriateness of any proposal, the Executive Officer and this Commission may require proponents and other interested parties to provide such information and analysis as, in their judgment, will assist in an informed and reasoned evaluation of the proposal in accordance with these policies.



8. No change of organization, as defined by Government Code 56021, shall be approved unless it is consistent with the Spheres of Influence of all affected agencies.
9. Where feasible, and consistent with LAFCO policies, non-prime land should be annexed before prime land.
10. The Commission will consider feasible mitigation (found in the following guidelines) if a proposal would result in the loss of agricultural land.
11. The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan and Sphere of Influence areas and that encourage protection of prime agricultural land in a manner that is consistent with this Policy.
12. The Commission may approve annexations of prime agricultural land only if mitigation that equates to a substitution ratio of at least 1:1 for the prime land to be converted from agricultural use is agreed to by the applicant (landowner), the jurisdiction with land use authority. The 1:1 substitution ratio may be met by implementing various measures:
 - a. Acquisition and dedication of farmland, development rights, and/or agricultural conservation easements to permanently protect farmlands within the annexation area or lands with similar characteristics within the County Planning Area.
 - b. Payment of in-lieu fees to an established, qualified, mitigation/conservation program or organization sufficient to fully fund the acquisition and dedication activities stated above in 12a.
 - c. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural land at a 1:1 ratio.
13. Property owners of agricultural lands adjacent to a LAFCO proposal shall be notified when an application is submitted to LAFCO.

Attachment B

SLO LAFCO Ag Guidelines



APPENDIX B

AGRICULTURAL GOALS-POLICIES-GUIDELINES

The Cortese-Knox-Hertzberg Act strongly encourages the preservation of prime agriculture land. LAFCO's mission is to discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies. In general terms, San Luis Obispo LAFCO's current policy base discourages premature conversion of agricultural lands, guides development away from existing agricultural lands and encourages the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. The CKH Act clarified the many factors that LAFCOs must consider and balance in making decisions:

"The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with the sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agriculture lands, and efficiently extending government services."

The written goals, policies, and guidelines in this document express LAFCO's intent to more specifically address the preservation of agricultural land, consistent with current policies and LAFCO's mandate. LAFCO must consider the effect that any proposal may produce on existing agricultural lands. This is balanced with the need to ensure orderly development and the efficient provision of services to certain areas. By guiding development toward urban areas and away from agricultural land, LAFCO helps to preserve important and valuable agricultural resources.

Definitions. Several terms are important in understanding agricultural resources. These terms and definitions are found below and are applicable throughout these policies. The Cortese-Knox-Hertzberg Act has a definition for agricultural land and prime agricultural lands that may include lands other than class one or two soil classification.

56016. "Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

56064. "Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:



(a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.

(b) Land that qualifies for rating 80 through 100 Storie Index Rating.

(c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003, developed pursuant to Public Law 46, December 1935.

(d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

The Cortese-Knox-Hertzberg Act further describes the intent of the legislation with regard to agricultural resources in Government Code section 56377, which states:

56377. *In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses, the commission shall consider all of the following policies and priorities:*

(a) Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

(b) Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the Sphere of Influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing Sphere of Influence of the local agency.



Government Code Section 56377 has been used by LAFCOs as the basis for developing more specific policies that address local circumstances and conditions.

Guidelines

Guidelines provide further direction regarding the application of the goals and policies, but are more flexible giving LAFCO more discretion in application. These guidelines are used to advise and assist the public, agencies, property owners, farmers and other stakeholders with regard to LAFCO's expectations in reviewing a proposal that involves agricultural resources.

Guideline 1.

Applications submitted to LAFCO involving agricultural resources shall include analysis that evaluates the potential impacts (direct and indirect) of the proposal on agricultural resources. The California Environmental Quality Act (CEQA) analysis for a proposal shall evaluate the impacts affecting agricultural resources. At a minimum the following topics should be addressed:

- a. Detailed analysis of direct and indirect impacts on agricultural resources of the site and surrounding area.
- b. Potential diversion, availability and use of water that could impact agricultural lands or operations.
- c. A detailed description of the agricultural resource that is affected, including but not limited to soil types, existing and potential productivity, and surrounding land uses
- d. Use of transfer of development credits programs and purchase of development credits for the preservation of agricultural land and other approved programs.
- e. Analysis of mitigation measures that could offset impacts.
- f. Consultation with the County Agricultural Commissioners office.
- g. Williamson Act, Agricultural Easements, and other preservation programs.
- h. Urban Reserve Lines, Urban Limit Boundaries and Spheres of Influence.
- i. County and City General Plan Policies.



Guideline 2.

Consider including agricultural land as defined in the Cortese-Knox-Hertzberg Act into a Sphere of Influence if the following factors are addressed:

- a. Potential impacts of the conversion of the prime agricultural land.
- b. Future capability of farming activities for the site and surrounding area.
- c. Existing and potential productivity of the prime agricultural land.
- d. Land Preservation status: Williamson Act, easements, etc.
- e. Growth patterns in the surrounding area.
- f. General Plan Policies and Standards.
- g. Other relevant issues, such as potential impacts on agricultural tourism.

Guideline 3.

Consider approval of proposals that convert agricultural land when the Commission finds that the proposal will lead to planned, orderly, and efficient development. A proposal leads to the planned, orderly, and efficient development if all of the following criteria are met:

- a. The land subject to the change of organization or reorganization is contiguous either to lands developed with an urban use or to lands which have received all discretionary approvals for urban development.
- b. The proposed development of the subject lands is consistent with the Sphere of Influence of the affected agency or agencies.
- c. The land subject to the change of organization is likely to be developed within five years.

Guideline 4.

If a LAFCO proposal involves a loss of prime agricultural lands, property owners, Cities, the County, Special Districts, Community Advisory Councils, Resource Conservation Districts, and agricultural conservation agencies should work together as early in the process as possible to adequately mitigate the impacts.

Guideline 5.

Detachment of prime agricultural lands and other open space lands should be encouraged if consistent with the Sphere of Influence for that agency.



Guideline 6.

The following factors should be considered for an annexation of prime agricultural and open space lands:

- a. The proponent of the annexation should provide a land use inventory of the jurisdiction that indicates the amount of available land within the subject jurisdiction for the proposed land use.
- b. Evaluation of effective measures to mitigate the loss of agricultural lands, and to preserve adjoining lands for agricultural use to prevent their premature conversion to other uses. Such measures may include, but need not be limited to:
 1. Acquisition and dedication of farmland, development rights, open space and agricultural conservation easements to permanently protect adjacent and other agricultural lands within the county
 2. Participation in other development programs that direct development toward urban areas (such as transfer or purchase of development credits)
 3. Payments to responsible recognized government and non-profit organizations for the purpose of preserving agricultural lands;
 4. Establishment of buffers to protect adjacent agricultural operations from the effects of development

Guideline 7.

Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's Sphere of Influence.
- b. The Commission makes findings required by Government Code Section 56856.5.
- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the County.



- f. There is a pending, or approved, cancellation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has not been renewed and final approval of the non-renewal has been granted.