

LAFCO of Monterey County

LOCAL AGENCY FORMATION COMMISSION
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KATE McKENNA, AICP
Executive Officer

DATE: January 25, 2010

TO: Chair and Members of the Formation Commission

FROM: Kate McKenna, AICP, LAFCO Executive Officer

**SUBJECT: DRAFT POLICY ON PRESERVATION OF OPEN SPACE AND
AGRICULTURAL LANDS, INCLUDING AGRICULTURAL LAND
BUFFERS**

SUMMARY OF RECOMMENDATIONS:

It is recommended that the Formation Commission:

- Receive report from the Executive Officer;
- Open and close the period for public comments;
- Discuss the draft policy as recommended by the Sphere of Influence and Annexation Policy Committee (Exhibit A of Attachment 1);
- Find that the draft policy is exempt from provisions of the California Environmental Quality Act; and
- Adopt the draft resolution (Attachment 1) adopting a Policy on Preservation of Open Space and Agricultural Lands.

EXECUTIVE OFFICER'S REPORT:

Overview

Attachment 1 is a draft resolution adopting a policy on agricultural buffers and other aspects of the statutory authority of the Commission to adopt policies to protect open space and agricultural land. The policy reflects the language recommended for approval by the Sphere of Influence and Annexation Policy Committee on December 16, 2009.

The Committee-recommended policy describes the Commission's responsibilities and standards regarding the protection of open space and agricultural land, but does not propose specific protection measures. Instead, the policy identifies the responsibility and discretion of local

governments to craft and propose specific measures. Proposals for Sphere of Influence amendments and annexations will be judged on how they further state-wide policies under the Cortese-Knox-Hertzberg Act, and Commission-adopted policies. Proposals may be deemed incomplete or denied if they do not meet the Commission's standards.

Background

In 2009, the Commission directed the Executive Officer to prepare a work program for the development of an agricultural land buffer policy. The draft work program was distributed to local governments and interested parties, reviewed by the Sphere of Influence and Annexation Policy Committee on September 14, and adopted by the full Commission on September 28.

General Counsel Girard prepared a legal analysis for that work program, at the request of the Executive Officer. His analysis addressed the issue of buffers in the larger context of the Commission's responsibilities to preserve open space and agricultural lands, and is the foundation of the current policy discussion.

Sphere of Influence and Annexation Policy Committee

The Sphere of Influence and Annexation Policy Committee reviewed a draft policy on December 16, 2009. Two members of the public addressed the Committee. Mr. Bob Richelieu, Planning Manager for the City of Salinas, requested that the item be continued because the City did not have sufficient time to place the item on a City Council agenda for the City's official comment. He also expressed a staff concern regarding the requirement for zoning consistency and urged LAFCO to allow inter-governmental agreements to eliminate potential land use conflicts. Ms. Virginia Jameson, Associate Director of the Ag Land Trust, conveyed her organization's support for the adoption of an agricultural land buffer policy.

The Committee discussed the draft policy, considered the comments received, and recommended approval of the policy with one change. The change added language about the purpose of agricultural buffers to the last paragraph of the policy document (see page 3 of Exhibit A to Attachment 1).

The Committee also considered procedural steps for adopting the policy and recommends that the policy be adopted as a stand-alone policy. If staff determines that the wording of existing policies need to be brought into consistency with the new policy, this clean-up can be brought forward by the Executive Officer in coming months.

In a follow-up email, as seen in Attachment 2, Mr. Richelieu stated that he had consulted with the City Attorney and that "the City will not be following up or expressing concern" with the proposed policy as amended by the Committee.

Policy Analysis

The revised draft policy contained in Attachment 1 contains an Introduction and a Policy, and is consistent with policy concepts that were introduced in the adopted work program. It also

contains additional language as recommended by the Sphere of Influence and Annexation Policy Committee.

The Introduction section describes the intent and purpose of the Cortese-Knox-Hertzberg Act with respect to the preservation of open space and agricultural lands. It places agricultural buffers in the context of the Act.

In order to implement the intent and purposes of the Act, the Policy section describes that Sphere of Influence and organization/reorganization proposals shall "provide for planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural land within those patterns." To implement this directive, the draft policy further proposes that:

1. A proposal must discuss how it balances the state interest in the preservation of open space and prime agricultural lands against the need for orderly development;
2. A proposal must discuss its effect on maintaining the physical and economic integrity of agricultural lands;
3. A proposal must discuss whether it could reasonably be expected to induce, facilitate or lead to the conversion of existing open space land to uses other than open space uses; and
4. A proposal must, if applicable, provide for pre-zoning and demonstrate consistency with General Plans and Specific Plans.

As recommended by the Committee, the draft policy states that agricultural buffers provide an important means to preserve open space and agricultural lands and the integrity of planned, well-ordered, efficient urban development patterns. While there is no legal definition of buffers, the adopted work program describes them as areas of land designated to protect agricultural uses from the impacts of adjacent urban uses, and to protect the urban uses from the impacts of agriculture. Buffers may be permanent, temporary, or rolling, and may take many forms such as easements, dedications, appropriate zoning, streets or parks.

How local governments address these policy directives is left to the discretion of each local agency. Proposals will be judged on how state-wide policies under the Act, and Commission-adopted policies, are furthered. Proposals may be deemed incomplete or denied if they do not demonstrate compliance with the policy to the satisfaction of the Commission. Agreements between neighboring local agencies with regard to the preservation of open space and agricultural lands are encouraged, and such agreements may become a condition of approval or be required as a condition precedent to approval.

In summary, the recommended policy approach maintains the sole authority of local governments to regulate land use, and at the same time, provides clear guidance on how to comply with LAFCO's mandates and standards.

California Environmental Quality Act Compliance

The attached draft policy is exempt from environmental analysis as it solely lays out general considerations for a Commission decision.

Public Agencies and Interested Parties

Local agencies and interested parties have been invited to participate throughout the process: first in the consideration of a work program, then in the deliberations of the Sphere of Influence and Annexation Policy Committee and now in the consideration of the policy by the full Commission. Local agencies and interested parties were notified on January 13 of the time and place of the January 25 meeting. On January 20, the agenda was distributed to broad email and postal distribution lists. The agenda was posted on January 21 on the LAFCO website, in front of LAFCO's office and in front of the Board of Supervisors Chambers.

ALTERNATIVE ACTIONS:

In lieu of the recommended actions, the Commission may consider these or other alternatives:

1. Modify the draft policy.
2. Refer the draft policy back to the Sphere of Influence and Annexation Policy Committee with specific direction if substantial changes are needed.
3. Recommend that no policy be adopted.
4. Continue the item for action to a future Commission meeting.

Respectfully Submitted,



Kate McKenna, AICP,
Executive Officer

Attachments:

1. Draft Resolution Adopting a Policy on Preservation of Open-Space and Agricultural Lands.
2. Email from Robert B. Richelieu, City of Salinas, Regarding "Agricultural Policies," December 16, 2009.

cc: Distribution List of Local Agencies and Interested Parties

ATTACHMENT 1

Draft Resolution Adopting a Policy on the Preservation
of Open-Space and Agricultural Lands

THE LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

RESOLUTION NO. 10-xx

**ADOPTING A POLICY ON PRESERVATION
OF OPEN SPACE AND AGRICULTURAL LANDS**

WHEREAS, THE Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.) is replete with provisions that grant to a Local Agency Formation Commission the authority to consider and provide for the preservation of open space and agricultural lands; and

WHEREAS, a Local Agency Formation Commission is specifically charged in some instances with protecting open space and agricultural land; and

WHEREAS, a Local Agency Formation Commission is charged with considering specific circumstances affecting open space or agricultural land when making a decision; and

WHEREAS, while a Local Agency Formation Commission has considerable authority to provide for the preservation of open space and agricultural land, it may not directly regulate land use.

NOW, THEREFORE, BE IT RESOLVED that the Local Agency Formation Commission of Monterey County adopts this resolution adopting the attached Policy on Preservation of Open-Space and Agricultural Lands (Exhibit A).

UPON MOTION of Commissioner _____, seconded by Commissioner _____, the foregoing resolution is adopted this 25th day of January 2010 by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

Simón Salinas, Chair
Local Agency Formation Commission of Monterey County

ATTEST: I certify that this resolution is a true and complete record of said Commission's actions.

Witness my hand this ___ day of January, 2010

By: _____
Kate McKenna, AICP, Executive Officer

Exhibit A

POLICY ON PRESERVATION OF
OPEN-SPACE AND AGRICULTURAL LANDS

As Revised by the Sphere of Influence and Annexation Policy Committee
and Recommended for Adoption
on December 16, 2010

[NOTE: Revised wording recommended by the Sphere of Influence & Annexation Policy Committee is shown in **bold and underline.**]

INTRODUCTION

Significant debate exists concerning the authority of a local agency formation commission ("LAFCO") to adopt policies, rules, regulations, guidelines, or conditions regarding the establishment of "agricultural buffers" or other methods to address the preservation of open space and agricultural lands. The Cortese – Knox – Hertzberg Local Government Reorganization Act (the "Act"), California Government Code section 56000 et seq., is replete with provisions that grant to a LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. "Among the purposes of a [LAFCO] are discouraging urban sprawl [and] preserving open-space and prime agricultural lands," Section 56301. Furthermore, "[i]t is the intent of the Legislature that each commission, . . . , shall establish written policies and procedures and exercise its powers pursuant to this part in a manner . . . that encourages and provides planned, well-ordered, efficient urban development patters *with appropriate consideration of preserving open-space and agricultural lands* within those patterns." Section 56300 (a) (emphasis added). The Legislature has also declared that the preservation of open-space and prime agricultural lands is a "state interest" to be balanced against the promotion of orderly development. Section 56001.

A LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land. Section 56375.3 (b)(5). A LAFCO may not approve a change to a sphere of influence where the affected territory is subject to a farmland security zone or Williamson Act contract, unless certain conditions exist. Sections 56426 and 56426.5.

In other situations, a LAFCO is charged with considering specific circumstances affecting open space or agricultural land when making a decision. For example, when considering a proposal that could reasonably be expected to lead to the conversion of open space lands to non open space uses, a LAFCO must consider guiding such conversion away from prime agricultural land towards non prime lands. Section 56377s (a) and 56668 (d). In addition, a LAFCO should encourage the conversion of open space lands within the jurisdiction or sphere of

influence of a local agency before approving any proposal that would lead to such conversion outside the jurisdiction or sphere of influence of that agency. Sections 56377 (b) and 56668 (d). Finally, a LAFCO must consider the "effect of [a] proposal on maintaining the physical and economic integrity of agricultural lands, . . ." Section 56668 (e).

While a LAFCO has considerable authority to provide for the preservation of open space and agricultural land, it may not directly regulate land use: "A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." Section 56375. A LAFCO may, however, require that property sought to be annexed be rezoned, although it may not specify how it shall be rezoned. *Id.*

In order to implement the intent and purposes of the Act with respect to the preservation of open-space and agricultural lands, the Local Agency Formation Commission of Monterey County ("Commission") adopts the following policy.

POLICY

It is the policy of the Commission that, consistent with section 56300 (a) of the Act, applications or proposals for a change in organization or reorganization, or for the establishment or any change to a sphere of influence or urban service area (hereinafter, "Proposal" or "Proposals"), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns. To implement this policy, it is the further policy of the Commission that:

1. A Proposal must discuss how it balances the state interest in the preservation of open space and prime agricultural lands against the need for orderly development. (Government Code section 56001.) Proposals that fail to discuss this balance, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the need for orderly development is balanced against the preservation of open space and prime agricultural lands.
2. A Proposal must discuss its effect on maintaining the physical and economic integrity of agricultural lands. (Government Code section 56668 (a).) Proposals that fail to discuss their effect, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the physical and economic integrity of agricultural lands is maintained.
3. A Proposal must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space land to uses other than open-space uses. (Government Code section 56377.) Proposals that fail to discuss potential conversion, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that: a) they guide development or use of land for other than open-space uses away from existing prime agricultural lands in open-space use and toward areas containing nonprime agricultural lands (Government Code section 56377 (a)); and 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 will

occur prior 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 (b)).

4. A Proposal must, if applicable, provide for pre-zoning (Government Code section 56375 (a)), and must demonstrate that it is consistent with the General Plans and Specific Plans of the existing local agency and any immediately adjacent local agency (Government Code sections 56375 (a) and 56668 (g)). Proposals may be denied if they are not consistent with such plans, or, if not pre-zoned, if the Proposal does not demonstrate to the satisfaction of the Commission that the existing development entitlements are consistent with the local agency's plans.

To further these policies, it is the position of the Commission that agricultural buffers provide an important means to preserve open-space and agricultural lands **and preserve the integrity of planned, well-ordered, efficient urban development patterns**. Such buffers may be permanent, temporary, or rolling, and may take many forms; easements, dedications, appropriate zoning, streets, or parks, for example. How agricultural buffers are used to further the state policy of preserving open-space and agricultural lands within patterns of planned, well-ordered, efficient urban development is left to the discretion of each local agency; however, Proposals will be judged on how state-wide policies under the Act, and Commission adopted policies, with respect to the preservation of open-space and agricultural lands are furthered. Agreements between neighboring local agencies with regard to the preservation of open-space and agricultural lands are encouraged, and such agreements may be incorporated by the Commission into a Proposal as a condition of approval, or may be required as a condition precedent to approval.

ATTACHMENT 2

Email from Robert B. Richelieu, City of Salinas, Regarding "Agricultural Policies,"
December 16, 2009

McCue, Thomas A. 754-5838

From: Bob Richelieu [robertr@ci.salinas.ca.us]
Sent: Wednesday, December 16, 2009 4:18 PM
To: McKenna, Kate 754-5838
Cc: McCue, Thomas A. 754-5838; Vanessa Vallarta; Christopher Callihan; Alan Stumpf
Subject: Agricultural Policies

Hi Kate --

I swapped emails with the City Attorney this morning following the Committee meeting and the City will not be following up or expressing concern with the proposed Agricultural/Open Space Protection Policy.

However, I would appreciate an update of the Policy Document with Mr. Calcagno's added language regarding protection of "planned, well ordered, efficient development..."

Thanks and have a wonderful holiday.

Bob

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