

Office of the Mayor

280 North Third Avenue • Oakdale, CA 95361 • Ph: (209) 845-3571 • Fax: (209) 847-6834

Administration 280 N. Third Ave. Oakdale, CA 95361 (209) 845-3571 (209) 847-6834 Fax

Finance Department 280 N. Third Ave. Oakdale, CA 95361 (209) 845-3571 (209) 847-6834 Fax

Facility Rentals & Recreation Division (209) 845-3591

PUBLIC SERVICES DEPARTMENT 455 S. 5th Ave. Oakdale, CA 95361 (209) 848-4344 Fax

Administration, Engineering & Maintenance Divisions (209) 845-3600

Building & Planning Division (209) 845-3625

FIRE DEPARTMENT Station No. 1: 325 East "G" St. Station No. 2: 450 S. Willowood Dr. Oakdale, CA 95361 (209) 845-3660 (209) 847-5907 Fax

POLICE DEPARTMENT 245 N. Second Ave. Oakdale, CA 95361 (209) 847-2231 (209) 847-3790 Fax

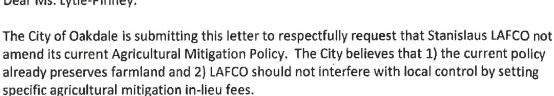
CITY OF OAKDALE WEBSITE www.oakdalegov.com

E-MAIL info@ci.oakdale.ca.us

March 25, 2015

Stanislaus Local Agency Formation Commission Attn: Sara Lytle-Pinhey, Assistant Executive Officer 1010 Tenth Street, 3rd Floor Modesto, CA 95354





1) The Current Policy Preserves Farmland

The current policy is just over two years old having been adopted on September 26, 2012. To date, there have been no indicators showing that the current policy is not fulfilling its purpose of preserving agricultural lands. In fact, this policy is very comprehensive and provides clear guidance on available methods to permanently preserve agricultural land.

2) LAFCO Should Not Interfere with Local Control

The City of Oakdale values the preservation of agricultural land and has worked hard to incorporate that in the City's 2030 General Plan and the Crane Crossing Specific Plan (CCSP). The City has required as a mitigation measure for its upcoming annexation the following:

"Measure 4.1.3a: Agricultural mitigation within the CCSP is required to occur at a ratio of at least 1:1 for conversion of Prime Farmlands, Farmland of Statewide Importance, and Unique Farmlands (as designated by the California Department of Conservation Farmland Mapping and Monitoring Program) to residential uses, consistent with Stanislaus LAFCO policy. This can be achieved by acquisition and dedication of agricultural land, development rights and/or conservation easements to permanently protect agricultural land, or payment of in-lieu fees to an established, qualified, mitigation program to fully fund the acquisition and maintenance of such agricultural land, development rights or easements."

With implementation of this mitigation measure, preservation of similar quality farmland would be permanently preserved within the region. This illustrates that steps have already been taken at the local level to ensure that agricultural land is preserved. An amendment describing how in-lieu fees should be determined is not needed in LAFCO's Agricultural Mitigation Policy. This decision should be left to local city councils.



The City of Oakdale recognizes that as our communities inevitably grow every effort should be made to preserve our precious agricultural land resources. The current LAFCO policy does just that and does not require and amendment at this time.

I urge the Commission to not approve the proposed Agricultural Mitigation Policy amendment.

Sincerely,

Pat Paul

Mayor



IN THE CITY COUNCIL OF THE CITY OF OAKDALE STATE OF CALIFORNIA CITY COUNCIL RESOLUTION 2015-29



A RESOLUTION OF THE CITY OF OAKDALE CITY COUNCIL
OPPOSING PROPOSED AMENDMENTS TO THE
AGRICULTURAL MITIGATION POLICY BY STANISLAUS COUNTY
LOCAL AGENCY FORMATION COMMISSION (LAFCO)

WHEREAS, on September 26, 2012, Stanislaus LAFCO adopted an Agricultural Preservation Policy; and

WHEREAS, the Agricultural Preservation Policy requires cities in Stanislaus County to prepare a Plan for Agricultural Preservation as a condition to annexation; and

WHEREAS, the Agricultural Preservation Policy provides two options for growing cities in preparing a Plan for Agricultural Preservation: (1) adopt a voter-approved urban growth boundary, or (2) establish a plan for agricultural mitigation at a ratio of at least 1:1, through the acquisition of agricultural land or conservation easements, or the payment of in-lieu fees, to permanently protect agricultural land; and

WHEREAS, Stanislaus LAFCO now proposes to amend the criteria for in-lieu fees to require, at the time of annexation, that proposed in-lieu fees will fully fund the costs associated with acquiring and managing an agricultural conservation easement, including the estimated transaction costs and the costs of administering, monitoring and enforcing the easement; and

WHEREAS, Stanislaus LAFCO proposes to add the requirement that in-lieu fees that are determined by LAFCO to be less than 35% of the average per-acre price for five comparable land sales in Stanislaus County, plus a 5% endowment, shall require evidence that the amount will in fact be used to acquire agricultural easements; and

WHEREAS, the City Council finds that the proposed amendment to the Agricultural Mitigation Policy would unreasonably interfere with the City's ability to implement and administer an agricultural mitigation plan; and

WHEREAS, the City Council finds the requirement to show evidence of in-lieu fees and easement acquisitions at the time of annexation will deter annexations and future growth of the City; and

WHEREAS, the City Council finds that the proposed policy will inflate the cost of agricultural mitigation, deterring future growth of the City; and

WHEREAS, the City Council finds that, overall, the proposed amendment to the Agricultural Preservation Policy will be detrimental to the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Oakdale hereby formally opposes the proposed amendments to LAFCO's Agricultural Mitigation Policy and directs staff to prepare a letter expressing opposition to the proposed amendment for the Mayor's signature.

THE FOREGOING RESOLUTION IS HEREBY ADOPTED THIS 16th DAY OF MARCH, 2015, by the following vote:

AYES:	COUNCIL MEMBERS:	Bairos, Dunlop, McCarty and Paul	(4)
NOES:	COUNCIL MEMBERS:	None	(0)
ABSENT:	COUNCIL MEMBERS:	None	(0)
ABSTAINED:	COUNCIL MEMBERS:	None	(0)

SIGNED:

Pat Paul, Mayor

ATTEST:

Kathy Aixeira Kathy Teixeira, CMC

City Clerk

Comment on the Proposed Amendment to LAFCO's Agricultural Preservation Policy

From: Bradley Barker
 braddbarker(a)gmail.com>

To: "pinheys@stancounty.com" <pinheys@stancounty.com>, "blomm@stancounty.com"

<blooming.com>, <gossj@stancounty.com>

Date: 3/23/2015 7:57 AM

Subject: Comment on the Proposed Amendment to LAFCO's Agricultural Preservation Policy

March 21, 2015

To: Stanislaus LAFCO, 1010 10th Street, 3rd Floor, Modesto, CA 95354

Re: Proposed Amendment to LAFCO's Agricultural Preservation Policy

On behalf of the Yokuts Group of the Sierra Club, I am writing to express our support for the proposed amendment to LAFCO's Agricultural Preservation Policy. Please make this letter available to LAFCO commissioners and include it in the packet of relevant public comments.

Our group has nearly 800 members in Stanislaus County, and we strongly endorse LAFCO's stated objectives to preserve agricultural lands and to discourage urban sprawl. These goals are among our highest priorities.

A 2013 report from the American Farmland Trust, "Saving Farmland, Growing Cities," shows Stanislaus County as the worst county in the San Joaquin Valley for the percentage of development that converts high quality farmland. Sadly, it's 87%. Much of the fault here lies with the nine cities of Stanislaus County including the cities raising "concerns" with the proposed amendment.

Stanislaus County has consistently been among the top ten agricultural producing counties in the United States. The farmland here is quite literally among the most productive farmland in the history of the world. Farm production and the connected industries --packing, processing, transporting, marketing, etc. are the backbone of our local economy. The general plans of all nine cities and Stanislaus County recognize the importance of farmland preservation. (Relevant quotes from local General Plans are included with this letter.) And yet, some city officials in some cities are objecting to a fairly-imposed plan to mitigate the loss of agricultural lands. We find that surprising and disheartening. For years now, cities have asked for a "level playing field" when it comes to farmland preservation so that cities with lax development standards don't grab unfair advantage. Developers have asked for more "certainty" in the process. The proposed amendment would help to achieve both of those outcomes. And yet, the usual suspects find new reasons to object. Some people, it appears, are difficult to please.

The preservation of farmland is a core belief of the people of Stanislaus County. Last year, Modesto City Council chambers overflowed with residents protesting the possible annexation of Wood Colony. In 2009, Modesto voters rejected all five advisory growth measures proposed by the city. The most successful of the five still lost by 60%. In 2008, Stanislaus County voters overwhelmingly approved Meaure E to restrict residential development on county lands outside the nine cities. The measure passed two-to-one (67%). Certainly the voters were not voting to protect county farmland so that it could be gobbled up by sprawling

(67%). Certainly the voters were not voting to protect county farmland so that it could be gobbled up by sprawling cities. So the question arises: Why do some local officials seem so insulated from the values of the people they represent?

A region that was devastated by the foreclosure crisis needs leaders who are smart about growth. Did we learn anything from the housing bubble that popped and splattered financial ruin on thousands of local residents? That bubble was at

least partially fueled by bad land use decisions by local officials. It seems odd to us that some officials appear eager to return to those old patterns. Ag mitigation is not a cure for previous bad decisions, but is a step in a better direction. We feel strongly that planning officials should focus on revitalizing downtowns and existing neighborhoods. Officials need to find ways to re-invest in the many neighborhoods that suffered greatly during the recession. A return to the patterns of sprawl would once again drain public revenues and spread public services too thin. Ag mitigation will help. Smart, orderly growth that protects important resources is a conservative idea.

At the Planning and Conservation League's annual symposium at UC Davis last month (2/21/2015), a number of top California planning officials gave presentations. In the opening session, the Director of the Governor's Office of Planning & Research, Ken Alex, asked, "Why aren't LAFCOs doing what they're chartered to do?" Later in the day, the Executive Director of the California Association of LAFCOs (CALAFCO), Pamela Miller, explained that some LAFCOs are trying. Nine LAFCOs have already adopted Ag Preservation policies (including Stanislaus), and three more are in the process. We thank Stanislaus LAFCO for adopting such a policy, and we commend the LAFCO staff for proposing a reasonable plan for cities to fairly mitigate the future loss of agricultural lands.

Thank you for considering our comments. --Brad Barker, Conservation Chair, Yokuts Group of the Sierra Club, 1305 Edgebrook Drive, Modesto, CA 95354, Email: braddbarker@gmail.com

Important addendum: Here are direct quotes from the General Plans of the six Stanislaus cities that are raising "concerns" about the proposed amendment to the LAFCO Ag policy. Perhaps city officials should be more concerned about living up to their own policies. --BB

Patterson GP (adopted 11/2010) Policies NR-2.1 Agricultural land preservation. Undeveloped lands that are State designated as Prime Farmland, Farmland of Statewide Importance, and Unique Farmland shall be preserved, to the greatest extent feasible, for open space or agricultural use. ...NR-2.4 Support for County agricultural land preservation. The City shall support strategies adopted by Stanislaus County aimed at maintaining agricultural lands in viable farming units in areas not designated for urban development. NR-2.5 Regional farmland preservation. The City shall continue to work with the County and other jurisdictions to implement conservation plans that preserve prime farmland.

Riverbank GP (adopted 2009) Policy CONS-3.1 The City will prepare a comprehensive Sustainable Agricultural Strategy intended to conserve agricultural production in the Stanislaus River Watershed... This strategy should provide flexibility so that it can be tied to land-use and regional agricultural preservation policies, and is intended to be funded on a fair-share basis by those projects that have a significant impact on the conversion of Important Farmlands, a non-renewable resource, to urban use. ["Sustainable Agricultural Strategy" did not have a successful search on the Riverbank website.]

Oakdale GP (adopted 8/2013) LU-8.3 Retain Agricultural Uses. Work with Stanislaus County and other applicable agencies to retain viable agricultural and rural uses within and adjacent to Oakdale's Planning Area...NR-2.3 Plan for Agricultural Preservation. Prepare and adopt a Plan for Agricultural Preservation consistent with the provisions of and implementing the Stanislaus County LAFCO Agricultural Preservation Policy to minimize the loss of agricultural land, in conjunction with any new Specific Plan adoption or annexation/Sphere of Influence modification. One of the strategies consistent with the LAFCO Policy may require permanent protection of similar quality farmland at a 1:1 ratio for conversion of Prime Farmland, Farmland of Statewide Importance, and Unique Farmland (as designated by the California Department of Conservation Farmland Mapping and Monitoring Program) to residential uses. (RDR, NR-IP2, NR-IP3)

Waterford GP (adopted 2006) The general plan recognizes that the urban form of the City of Waterford will be shaped through the retention of open space and agricultural lands....OS-B-1a Explore the use of Farmland Trusts, exclusive agricultural zoning, and the transfer of development rights to protect prime agricultural areas. The City, in cooperation with the County of Stanislaus, can explore various agricultural preservation programs in proximity to the City....SD-1 In practical terms, sustainable growth in the City of Waterford means accommodating growth and development without unnecessarily: • Consuming our valuable and limited agricultural soils....

Ceres GP (adopted 2/1997) Ceres' agricultural and natural resources... contribute to the city's economy and are important elements in the quality of life of Ceres' residents. These resources...are at risk of destruction or degradation through continued urban development... 6.A.6.The City shall encourage and support Stanislaus County in the implementation of its agricultural preserve program.

Newman GP (adopted 4/2007) Goal NR-1 Promote the continued productivity of agricultural land surrounding Newman and prevent the premature conversion of agricultural land to urban uses....Action NR-1.1 Adopt an Agricultural Mitigation Fee as a private, marketbased approach to mitigate the direct and indirect impacts of urban development under the General Plan on the loss of agricultural land. The mitigation fee shall be used by either the City and/or a qualifying land trust, such as the Central Valley Farmland Trust, to acquire easement or fee interest in agricultural land that restricts the primary use of the land to agricultural production in perpetuity and precludes subdivision of the property, non-farm development, and other uses inconsistent with agricultural production.





March 24, 2015

Ms. Marjorie Blom Executive Officer Stanislaus LAFCO 1010 Tenth St., 3rd Floor Modesto, CA 95354

Re: Proposed Amendment to Agricultural Preservation Policy

Dear Ms. Blom:

American Farmland Trust, a national conservation organization that has been active in the San Joaquin Valley for 20 years, wholeheartedly supports the proposed change in Stanislaus LAFCO's agricultural preservation policy, which is to be considered at this week's meeting.

The staff report provides sound reasoning and justification for the improvement that this policy represents, clarifying that an agricultural mitigation policy proposed by a city as a condition of LAFCO approval of annexation or sphere of influence expansion, must charge a fee sufficient to acquire a conservation easement on an acre of comparable farmland for each acre developed.

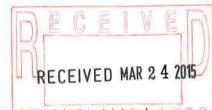
LAFCO has ample authority to adopt such a policy as a means of fulfilling its legal mandate to conserve farmland. A policy such as this that applies to all cities in the county will level the playing field, so that no city may gain what it may perceive to be a competitive advantage by taking a less robust approach to conserving farmland. In any event, that advantage is likely to be small, given that even the highest current farmland mitigation fee appears to be but a small fraction of the average cost of new housing – particularly for denser, more affordable housing – as well as of the gains to be made by those who develop farmland.

We urge Stanislaus LAFCO to adopt the policy as proposed, bringing the county in line with most other jurisdictions that have adopted farmland mitigation fees in California.

Respectfully,

Edward Thompson, Jr. California Director

WATERFORD CITY COUNCIL RESOLUTION # 2015- 21



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATERFORD OPPOSING PROPOSED AMENDMENTS TO THE AGRICULTURAL MITIGATION POLICY BY STANISLAUS COUNTY LOCAL AGENCY FORMATION COMMISSION

WHEREAS, on September 26, 2012, Stanislaus LAFCO adopted an Agricultural Preservation Policy; and

WHEREAS, the Agricultural Preservation Policy requires cities in Stanislaus County to prepare a Plan for Agricultural Preservation as a condition to annexation; and

WHEREAS, the Agricultural Preservation Policy provides two options for growing cities to prepare a Plan for Agricultural Preservation: (1) adopt a voter-approved urban growth boundary, or (2) establish a plan for agricultural mitigation at a ratio of at least 1:1, through the acquisition of agricultural land or conservation easements, or the payment of in-lieu fees, to permanently protect agricultural land; and

WHEREAS, Stanislaus LAFCO now proposes to amend the criteria for in-lieu fees to require, at the time of annexation, that proposed in-lieu fees will fully fund the costs associated with acquiring and managing an agricultural conservation easement, including the estimated transaction costs and the costs of administering, monitoring and enforcing the easement; and

WHEREAS, Stanislaus LAFCO proposes to add the requirement that in-lieu fees that are determined by LAFCO to be less than 35% of the average per-acre price for five comparable land sales in Stanislaus County, plus a 5% endowment, shall require evidence that the amount will in fact be used to acquire agricultural easements; and

WHEREAS, the City Council finds that the proposed amendment to the Agricultural Mitigation Policy would interfere with the City's ability to implement and administer an agricultural mitigation plan; and

WHEREAS, the City Council finds the requirement to show evidence of in-lieu fees and easement acquisitions at the time of annexation will deter annexations and future growth of the City; and

WHEREAS, the City Council finds that the proposed policy will inflate the already-high costs of agricultural mitigation, deterring future growth of the City; and

WHEREAS, the City Council finds that the proposed policy may incentivize development in unincorporated areas prior to annexation, encouraging urban sprawl

and eroding the City's control over land use matters and the efficient administration of public infrastructure and services; and

WHEREAS, the City Council finds that the proposed amendment to the Agricultural Preservation Policy will be detrimental to the future growth of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Waterford that the City Council formally opposes the proposed amendments to LAFCO's Agricultural Mitigation Policy that require the City to show evidence that conservation easements will be acquired at the time of annexation, inflates already-high costs of agricultural mitigation, and incentivizes unincorporated development and urban sprawl.

PASSED AND ADOPTED by the City Council of the City of Waterford at a regular meeting held on the 19th day of March 2015, by the following vote:

AYES: 5 Van Winkle, Aldaco, Krause, Whitfield, Gothan		
NAYS: 0		
ABSENT: 0		
ABSTAIN: 0		
	CITY OF WATERFORD	
	~	
	Michael Van Winkle, Mayor	
ATTEST:	APPROVED AS TO FORM:	
Lori Martin, City Clerk	Corbett J. Browning, City Attorney	



1215 K Street Suite 1200 Sacramento, CA 95814 916/443-7933 fax 916/443-1960 www.cbia.org

2015 OFFICERS

Chair EILEEN REYNOLDS Tejon Ranch Company

Vice Chair DON HOFER Shea Homes

CFO/Secretary
CHRIS AUSTIN
DPFG

MEMBER ASSOCIATIONS

Building Industry Association of the Bay Area

Building Industry Association of Fresno/Madera Counties

Building Industry Association of the Greater Valley

Building Industry Association of San Diego County

Building Industry Association of Southern California

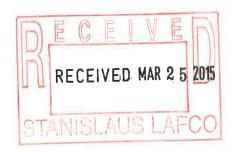
Home Builders Association of Central Coast

Home Builders Association of Kern County

Home Builders Association of Tulare & Kings Counties

North State Building Industry Association March 23, 2015

Chair DeMartini & Commissioners Stanislaus LAFCO 1010 10th Street, 3rd Floor Modesto, California 95354



Subject: Proposed Amendment to Policy 22 – Agricultural Preservation Policy **OPPOSITION**

Dear Chair DeMartini & Commissioners:

I write to express my opposition to the proposed amendment to your Stanislaus LAFCO Policy 22 setting a minimum price for an in-lieu fee to your one-to-one acre agricultural land mitigation requirement. This price would be at 35% of the fair market value of comparable lands plus 5% for overhead.

I believe the policy amendment to be misguided for a number of reasons.

First, the policy amendment will artificially increase the price of agricultural land conservation easements. Having spent most of my career as a land appraiser and three years as the Stanislaus County Assessor, it is clear to me that your policy will have the effect of artificially raising prices for agricultural land conservation easements. This methodology will inevitably establish a price floor. Furthermore, the policy will likely result in less land being placed into conservation easements because of the artificial nature of your pricing structure.

Second, I believe that broad-based funding should be used for policies that provide broad based benefits. Instead of squarely placing the burden of this policy on the buyers of new homes, advocates of agricultural land preservation would be better served by seeking broad-based funding sources for such preservation efforts, with a focus on private sources such as charitable foundations.

Third, this policy amendment will further hamper economic development efforts in Stanislaus County and its cities. Like many of you, I spent a number of years seeking viable economic development strategies for our community. As a member of the Modesto City Council, the State Assembly and the State Senate, I worked with many individuals and organizations seeking effective strategies to increase prosperity in our region. Yet, year after year, we in the San Joaquin Valley were-and are-ranked with the highest unemployment rates and the lowest educational attainment rates in the nation. I concluded that we would not break this cycle of deprivation by making economic development of any kind more expensive than absolutely necessary. Your proposed policy amendment will have that ill effect.

Fourth, by ignoring matters of principle like property rights in this policy matter, you leave economic minorities – whether farmers or home builders at a significant disadvantage against the unending demands of government regulators. You are engaging in the very type of regulation you find intolerable when it is done by the federal Fish and Wildlife Service in protecting endangered species or the State Water Resources Control Board in increasing water flows to endangered fish. Issues like these cannot be fought as popularity contests. They rather must be understood as matters involving key principles like economic freedom, property rights and free enterprise from which we all benefit.

Having viewed this issue from a number of different perspectives – a private citizen, a land appraiser, a small businessman, a city councilmember, a state legislator, a county assessor and now as the President & CEO of the California Building Industry Association – I can say without hesitation that I believe this policy to be ill advised and if implemented, will not achieve its intended goals.

Contrary to your well-meaning intentions, this policy will ensure that our part of the San Joaquin Valley will remain under-invested, under-employed and subject to the pathologies that undermine our communities. In addition, this policy will leave agriculture squarely in the sights of activists and regulators who fervently wish agriculture to be curtailed in the Valley.

I encourage you to vote against the policy amendment.

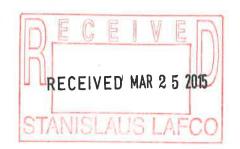
Sincerely,

David E. Cogdill/Sr.

President and CEO

California Building Industry Association

Churchwell White up



churchwellwhite.com

1414 K Street, 3rd Floor Sacramento, CA 95814 T 916.468.0950 | F 916.468.0951

Douglas L. White T 916.468,0947 Doug@churchwellwhite.com

VIA EMAIL

March 25, 2015

Stanislaus Local Agency Formation Commission 1010 Tenth Street, 3rd Floor Modesto, CA 95354

Re: Proposed Amendment to Policy 22 – Agricultural Preservation Policy

Dear LAFCO Commissioners:

We are submitting this letter to respond to specific assertions in the staff report related to the amendment to Policy 22 and Stanislaus LAFCO's authority to impose or prescribe in-lieu fees for agricultural mitigation.

The staff report presents three options for considering the proposed amendment. LAFCO staff does not recommend Option 3, which is to make no changes to the policy. Option 3, however, misstates LAFCO's authority under California law when it states that "[g]iven the broad authority of the Commission to impose conditions related to collection of fees, the Commission could also impose its own fee on a project-by-project basis."

This statement is one of the main reasons over two-thirds of Stanislaus County cities and numerous local constituents oppose the proposed amendment, as it asserts that even if Stanislaus LAFCO took no action, it would have the authority to directly impose a fee for agricultural mitigation during annexation proceedings. Aside from being legally incorrect, this position further confirms that the proposed amendment will be applied in a way that oversteps Stanislaus LAFCO's authority and infringes on the land use and police powers specifically reserved to counties and cities under the California Constitution.

We hope that by identifying our disagreements, we can outline a path forward for Stanislaus LAFCO and its member cities to engage in productive discussions that will affect the future growth and well-being of the entire County.

¹ Staff Report, p. 2.

Stanislaus LAFCO has limited authority under California law

Local Agency Formation Commissions ("LAFCO's") were created by the State Legislature as agencies of limited powers. This means that a LAFCO has only those express powers specifically granted to it by statute.² The express purposes of LAFCO are to discourage urban sprawl, and to preserve open space and prime agricultural lands.³ LAFCO's must also adopt policies and procedures that encourage planned, well-ordered, efficient urban development patterns "with appropriate consideration of preserving open-space and agricultural lands within those patterns."⁴

레스 6 발생의 근행성 및 14명

In comparison, cities and counties have broad "police powers" under the California Constitution, to enact laws and ordinances that promote the health, safety and general welfare of the residents and businesses that they serve.⁵

The distinction between statutory powers and general police powers is subtle, but important

When it comes to implementing LAFCO policies, the role of each LAFCO is therefore limited to its review of an actual proposal that is presented to it for consideration. ⁶ This means that a LAFCO can adopt policies, but it cannot dictate precise methods for complying with its policies, especially when this would interfere with the police powers ordinarily exercised by cities and counties.

LAFCO's statutory powers are separate from the police powers of cities and counties, but the difference can be subtle. For example, LAFCO's must ensure that each sphere of influence proposal demonstrates the financial ability of a city to provide public services such as sanitary sewer, water and police protection to future annexation areas.⁷ LAFCO's do not have the

² City of Ceres v. City of Modesto (1969) 274 Cal.App.2d 545, 550; Community Water Coalition v. Santa Cruz County Local Agency Formation Comm. (2011) 200 Cal. App. 4th 1317, 1324.

³ Gov. Code § 56301.

⁴ Gov. Code § 56300.

⁵ Cal. Const. art. XI, § 7; see also Building Industry Assn. of Central California v. County of Stanislaus (2010) 190 Cal.App.4th 582, 589, noting that "[t]he power of a city or county to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state.

⁶ Timberidge Enterprises, Inc. v. City of Santa Rosa (1978) 86 Cal.App.3d 873, 884 (citing Gov. Code § 56375).

⁷ Gov. Code § 56430.

authority, however, to set sewer rates and water rates, or to require a specific ratio of police officers per capita.⁸ Those decisions are reserved to be made by cities and special districts.

The adoption of in-lieu fees is a function of local government under the police power

Cities and counties impose in-lieu fees through their police power to offset the negative impacts of urban development. All in-lieu fees are forms of monetary exactions, regardless whether they are imposed to curb the loss of agricultural lands, inclusionary housing requirements or Swainson's Hawk habitat. As exactions, in-lieu fees must meet the constitutional requirements of having a "nexus" and being "roughly proportional" to the impact of the development. More importantly, the authority to impose in-lieu fees and other exactions is limited to the police powers of cities and counties.

The recent legal decision regarding Stanislaus County's Farmland Mitigation Program (the "FMP") clearly established that "[l]and use regulation, such as the FMP, is a function of local government under the constitutional grant of police power" ¹¹ This position is consistent with numerous cases in California that have held that in-lieu fees are authorized exclusively under the police powers of cities and counties. ¹² Moreover, Cortese-Knox-Hertzberg¹³ expressly prevents LAFCO's from imposing conditions that would directly regulate land use, property development, or subdivision requirements, during their review and approval of annexation or sphere of influence applications. ¹⁴

⁸ Gov. Code § 56886. Note that § 56886(b) authorizes LAFCO to set certain rates or assessments under an extremely limited context, for the transfer of property between cities during annexations.

⁹ Building Industry Assn. of Central California v. County of Stanislaus (2010) 190 Cal.App.4th 582, 590; see also Home Builders Assn. of Northern California v. City of Napa (2001) 89 Cal.App.4th 897.

¹⁰ Nollan v. California Coastal Comm. (1987) 107 S.Ct. 3141; Dolan v. City of Tigard (1994) 114 S.Ct. 2309.

¹¹ Building Industry Assn of Central California v. County of Stanislaus (2010) 190 Cal.App.4th 582, 593.

¹² San Remo Hotel L.P. v. City and County of San Francisco (2002) 27 Cal. 4th 643, 657; Associated Home Builders etc., Inc. v. City of Walnut Creek (1971) 4 Cal.3d 633, 644.

¹³ Gov. Code § 56000 et seq.

¹⁴ Gov. Code §§ 56375, 56886

LAFCO cannot step into the role of the cities to impose or prescribe in-lieu fee amounts

The staff report claims that in-lieu fees for agricultural mitigation are "not a direct regulation of land use, density or intensity, or subdivision requirements..." and that, instead, "the requirement is a method for LAFCO to ensure that it has met its statutory duty to preserve such lands." 16

The proposed amendment, however, is equivalent to the County's Farmland Mitigation Program, which the Fifth District Court of Appeal expressly ruled is a land use regulation authorized exclusively under the police powers of the County.¹⁷

Cortese-Knox-Hertzberg does not authorize LAFCO to impose in-lieu fees

Alternatively, the staff report suggests that LAFCO has independent statutory authority to prescribe an in-lieu fee methodology. This suggestion is based on general provisions of Cortese-Knox-Hertzberg stating that LAFCO's may condition their approval of an annexation or sphere of influence application on the acquisition, or transfer of property, 18 or on the transfer or division of money or funds. 19 These general provisions do not apply, however, as they are limited by their preamble that "none of the following terms and conditions shall directly regulate land use" and, as detailed above, in-lieu fees for agricultural mitigation have been determined by the court to be land use regulations.

The statutes governing LAFCO are therefore consistent with California law authorizing cities and counties to impose in-lieu fees exclusively under their police powers. These statutory limitations are also consistent with established case precedents regarding the limited or special jurisdiction of LAFCO's, generally, and the exclusive authority of cities and counties to adopt mitigation fees under their police powers.

¹⁵ Staff Report, p. 6.

¹⁶ Id

¹⁷ Building Industry Assn. of Central California v. County of Stanislaus (2010) 190 Cal.App.4th 582, 589 and 590.

¹⁸ Gov. Code § 56000(h).

¹⁹ Gov. Code § 56000(i)

The proposed amendment infringes on the local control of LAFCO's member cities

For these reasons, the majority of cities within the County view the proposed amendment as an attempt by Stanislaus LAFCO to impose a policy that would overstep its statutory authority during the review of annexation and sphere of influence proposals. It is not within the LAFCO's authority or jurisdiction to impose or prescribe an in-lieu fee for agricultural mitigation at \$8,000, \$10,000 or any amount per acre.

Further, where LAFCO staff states that the proposed in-lieu fees would be advisory only, such comments are viewed as disingenuous. The practical application of this proposed amendment is to require cities to collect in-lieu fees according to the criteria that Stanislaus LAFCO deems sufficient, in its sole discretion.

We respectfully request that the Commission deny the proposed amendment.

Sincerely,

CHURCHWELL WHITE LLP

Douglas L. White

CC:

Chair DeMartini

Vice Chair Hawn

Commissioner Bublak

Commissioner Beekman

Commissioner Withrow

Alternate Commissioner Richard O'Brien

Alternate Commissioner William O'Brien

Alternate Commissioner Gammon

Garth Stapley





City of Modesto
Office of the City Manager
1010 Tenth Street, Suite 6100
Modesto, CA 95354

March 25, 2015

Re: Stanislaus Local Area Formation Commission

Dear Members of the Commission:

The City of Modesto joins its sister cities of Ceres, Riverbank, Oakdale, Patterson, Newman and Waterford in opposition to the proposed Amendment to Policy 22, Agricultural Preservation Policy.

Modesto is nearing the completion of a General Plan Amendment and upon conclusion will commence a Comprehensive General Plan Update. Through this process we hope to further our pursuit of smarter, sustainable growth providing much needed jobs for the region. Our compact growth history is well documented by LAFCO as well as data substantiating Modesto as one of the higher population densities in California. Through existing practices and new collaborative endeavors in our Comprehensive General Plan Update, we will continue to grow compactly and responsibly, thereby preserving agricultural lands outside our boundary.

We find the proposed amendment as written interferes with the City's ability to implement and administer agricultural mitigation in a responsible fashion; deters annexations and future sustainable growth; inflates the cost of agricultural mitigation and overall is not in the best interest of the City of Modesto.

Respectfully submitted,

Jim Holgersson

City Manager

Jennifer Goss - Tonight's Ag Mitigation decsion

From:

John Gunderson < jgunderson@modestogov.com>

To:

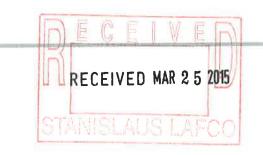
Sara Lytle-Pinhey <pinheys@stancounty.com>

3/25/2015 1:35 PM Date:

Subject: Tonight's Ag Mitigation decsion

CC:

LAFCO LAFCO <LAFCO@stancounty.com>



Please share my input with the commissioners as I cannot find all their addresses. Not sure is the cc is correct.

I would like to urge the LAFCO Commission to postpone a decision on this important issue so that some clarity can be developed as to what is being proposed. I think every Council should have the opportunity to better understand and give a discussed opinion on how to make current policy fair to all. I think LAFCO staff should address each Council and partake in subsequent discussion.

John Gunderson District One City of Modesto