San Diego County
Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

6b

AGENDA REPORT
Business | Discussion

September 18, 2020

TO: Special Districts Advisory Committee

FROM: Keene Simonds, Executive Officer
Robert Barry, Chief Policy Analyst

SUBJECT: **Proposed Update to Agricultural and Open Space Lands Policy**

SUMMARY

The Special Districts Advisory Committee ("Committee") will review a proposed update to the Commission's "Preservation of Open-Space and Agricultural Lands Policy." The proposed update is currently under public review and includes several substantive revisions that collectively aim to better balance the Commission's statutory direction to preserve agricultural and open space resources while reflecting local conditions and objectives. This latter consideration includes – notably – policy provisions to encourage new agricultural uses. The update is being presented for discussion and feedback and ahead of the Commission considering approval of the item at a scheduled October 5th hearing.

BACKGROUND

Agricultural and Open Space Lands Policy

The Commission's Preservation of Open-Space and Agricultural Lands Policy was adopted in November 1978 and last amended in May 1998. The policy restates germane provisions of statute with respect to tasking the Commission to preserve open-space and agricultural lands and associated procedures. This includes a premising statement to discourage proposals that would convert prime agricultural or open-space lands to other uses the actions would promote the planned orderly and efficient development of an area.

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Scheduled Update to Agricultural and Open Space Lands Policy | Initial Presentation and Feedback on a Draft Update in March 2019

The Commission's current 2020-2021 workplan was adopted at a noticed hearing in May 2020 and outlines over two-dozen project goals for the fiscal year. This includes continuation of an earlier scheduled update to the Commission's Preservation of Open-Space and Agricultural Lands Policy as a high priority and – among other considerations – timed in response to the issuance of a topical CALAFCO white paper exploring industry best practices. The project was originally scheduled as part of the 2018-2019 workplan with an initial draft update presented to the Commission in March 2019 with subsequent direction to staff to revisit and perform local stakeholder outreach. The Executive Officer subsequently requested and received approval to continue the project into 2020-2021.

DISCUSSION

This item is for the Committee to review and discuss a proposed update to the Preservation of Open-Space and Agricultural Lands Policy. The update has been prepared by staff and incorporates input solicited from key stakeholders – including the San Diego County Farm Bureau and Wildlife Habitat Conservation Coalition – and was presented for discussion at the Commission's August 2020 meeting with direction therein to proceed with a formal public review and comment period. Notable revisions reflected in the proposed update are summarized below and detailed in Attachment One.

- Distinguish Between Agricultural and Open Space Lands
  Bifurcate the policy to explicitly distinguish between agricultural and open space lands and their distinct societal functions relative to Commission's duties.

- Address Wildlife and Local Habitat Planning in Open Space Considerations
  Expand the policy to distinguish differences in open space types and prioritize the protection of natural (unbuilt) open space lands supporting wildlife.

- Use of Open Space as Municipal Greenbelts
  Encourage the County of San Diego and cities to strategically coordinate and maintain open space lands as municipal greenbelts and create community separators. This addition – pertinently – recognizes open space as a municipal service.

- Expand Focus to Address All Agricultural
  Expand the policy provisions from its existing focus on prime agriculture to address all agriculture (i.e. unique farmland, farmland of statewide or local importance, etc.).

- Distinguish Between In-Ground and Above-Ground Agriculture
  Revise the policy to make distinctions between above-ground agriculture activities (e.g. floral nurseries) and in-ground activities (e.g. row crops) and provide the Commission additional latitude in considering proposals involving the former category.

- No Harm Provision: Lands No Longer Viable for Agricultural Use
  Add a policy exception for lands that otherwise qualify as agriculture or prime agriculture under statute (i.e., potential to generate a commodity value of at least $400 an acre) if disused for agricultural purposes over the preceding 60-month period. This provision helps to locally quantify the economic viability of agricultural uses for lands subject to Commission proceedings and intended to also encourage (or not discourage) new agricultural ventures without triggering future LAFCO restrictions.

- Extending Municipal Services to Support Agricultural Uses
  Broaden the policy to contemplate circumstances when the extension of municipal services to agricultural lands through jurisdictional changes and/or out-of-agency contracts may be appropriate in maintaining economic vitality.

ANALYSIS

The Commission's Preservation of Open-Space and Agricultural Lands Policy directly addresses the Commission's central and sometimes competing interests in statute to protect agricultural and open space while accommodating new growth and development. The proposed update incorporates earlier Commission feedback as well as solicited stakeholder input to better address this balance relative to current trends and local conditions. These efforts are highlighted by the seven highlighted revisions detailed in the preceding section and collectively reflect a more proactive approach to communicating Commission orientation towards agriculture and open space lands to potential applicants.

RECOMMENDATION

This item is presented to the Committee for discussion and feedback only.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on the Committee's agenda as part of the business calendar. It will include a brief verbal presentation from staff followed by discussion from the Committee.

Respectfully,



Keene Simonds
Executive Officer

Attachment:

1) Proposed Update to Agricultural and Open Space Lands Policy (track-changes)

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Subject

PRESERVATION OF OPEN SPACE AND AGRICULTURAL LANDS

Purpose

To further the policies and priorities of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 regarding the preservation and enhancement of natural open space and ~~prime~~ agricultural lands and provide guidance therein to applicants and other interested parties.

Background

The State Legislature has instructed Local Agency Formation Commissions to establish policies that address the preservation of open space and agriculture (Govt. Codes § 56300 and 56377). This includes considering the effects of all spheres of influence and jurisdictional changes on open space and agricultural lands (Govt. Codes § 56425 and 56668). Additional instruction involves prime agricultural lands and open space supporting wildlife as defined under Fish and Game Code 89.5. ~~LAFCOs are required to consider how spheres of influence or changes of local governmental organization could affect open space and prime agricultural lands.~~ Specifically, Commissions are directed to guide development away from prime agricultural lands and open space supporting wildlife – unless that action would not promote the planned, orderly and efficient development of an area – and to encourage development of existing ~~vacant~~ lands within an agencies' boundaries~~or non-prime agricultural lands within a jurisdiction before approving any proposal that would allow development of open-space lands outside of an agency's boundary (Govt. Code § 56377)~~. ~~Proposals must be further reviewed for their effect on maintaining the physical and economic integrity of agricultural lands (Govt. Code § 56668).~~

Gov. Code § 56064 contains a definition of "Prime Agricultural Land." "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.

Commented [S1]: "enhancement" reflects SD LAFCO discretion to proactively aid existing and new ag and open space uses

Commented [S2]: Unbuilt open space; excludes golf courses, parks, and other improvements, park spaces

Commented [S3]: striking of "prime" broadens policy coverage consistent with legislative direction to LAFCOs in 56300 to "establish written policies and procedures and exercise its powers pursuant to this part and in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open space and agricultural lands with those patterns"

Commented [S4]: "guidance" added to reflect the disclosure aspect/role of the policy

Commented [S5]: 56300 references "agricultural lands" and 56377 references "prime agricultural lands"

Commented [S6]: attempt to highlight order of significance to LAFCOs with respect to ag lands (important) and prime ag lands (most important)

Commented [S7]: "supporting wildlife" serves to distinguish between natural open space v. vacant land…

(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 plan products an annual gross value of not less than four hundred dollars ($400) per acre for three of the previous five calendar years.

Policy

It is the policy of the San Diego Local Agency Formation Commission to:

1. Make appropriate distinctions between open space and agriculture and their separate functions and benefits.

2. Protect and preserve open space lands – and of most importance lands that support wildlife – against their premature conversion.

   (a) Discourage proposals that would convert open space to other uses.

   (b) The Commission reserves discretion to consider proposals involving the conversion of open space based on local conditions and in conjunction with ensuring orderly growth and development reflecting local habitat planning.

   (c) Encourage the County of San Diego and incorporated cities to coordinate the designation and protection of open space lands and associated uses as community greenbelts and separators.

Commented [S8]: make explicit distinction between open space and ag

Commented [S9]: objective for open space is to protect and preserve and different from ag (protect and enhance)

Commented [S10]: Wildlife Coalition…

Commented [S11]: tie back into land use authorities' planning

Commented [S12]: telegraphing tool to land use authorities

3. Protect and enhance agricultural lands and their uses.

(a) Discourage proposals that would convert any agricultural lands – including and of highest priority prime agricultural ~~–or open space lands~~ to other uses~~, unless such an action would not promote the planned, orderly, efficient development of an area *or* the affected jurisdiction has identified all prime agricultural lands within its sphere of influence and adopted measures that would effectively preserve prime agricultural lands for agricultural use;~~

(b) The Commission reserves discretion to consider proposals involving the conversion of agriculture based on local conditions and in conjunction with ensuring orderly growth and development. This includes considering the economic viability of agricultural uses within the affected territory.

(c) No harm provisions.

i) Lands otherwise qualifying as agricultural under Gov Code Section 56016 and prime agriculture under Gov Code Section 56064 shall not be subject to this policy and its limitations on conversions if left fallow, unsown, or disused for agricultural purposes at the present time and for more than 60 consecutive months.

ii) Lands otherwise qualifying as agricultural under Gov Code Section 56016 and prime agriculture under Gov Code Section 56064 shall not be subject to this policy and its limitations on conversions if their qualification commenced only within the last 60 consecutive months.

(d) Encourage landowners to establish and/or expand agriculture uses if permissible under zoning. This includes – but not limited to – the Commission considering proposals to extend municipal services in support of maintaining and enhancing agricultural uses.

(d) Recognize the uniqueness of agricultural uses in San Diego County to include above-ground and mobile production, such as nurseries, that merit separate considerations when applying State statutes.

~~Require prezoning of territory (city only) to identify areas subject to agricultural/preservation and planned development;~~

Commented [S13]: objective for ag is to protect and enhance and different from open space (protect and preserve)

Commented [S14]: opportunity for landowners to show LAFCO that ag is not cost-effective

Commented [S15]: makes explicit the sunset provided in statute with the addition of unsown and disused, i.e. long-time ag uses are no longer viable

Commented [S16]: does not penalize new ag ventures

Commented [S17]: addresses broad definition for prime ag in LAFCO law to include any land that produces an annual gross value of $400 per acre (not net but gross…) under 56016(e)

~~3~~4. Follow San Diego LAFCO's adopted procedures when reviewing proposals that could effect agricultural and open space lands and provided herein as Appendix A. ~~to define agricultural and open space lands and to determine when a proposal may adversely affect such lands.~~

Adopted:	November 6, 1978
Amended:	June 4, 1990
Amended:	May 4, 1998
Technically Updated:	January 1, 2001
Technically Updated:	June 16, 2015

~~Cross-reference~~Appendix:

SAN DIEGO LAFCO PROCEDURES:
-Open Space and Agricultural Preservation

APPENDIX A

Open Space and Agricultural Preservation

The Cortese-Knox-Hertzberg Act requires LAFCOs to consider how adoption of spheres of influence or changes of local governmental organization could affect open space and prime agricultural lands. In determining spheres of influence, LAFCOs are directed to prepare a written statement of determinations with respect to the present and planned land uses including agricultural and open space lands (56425(e)(1)).

In reviewing and approving or disapproving proposals for changes of organization, LAFCOs must consider the effect of the proposal on maintaining the physical and economic integrity of agricultural lands (56668) and guide development away from existing prime agricultural and open space lands and towards areas containing non-prime agricultural lands — unless that action would not promote the planned, orderly, efficient development of an area (56377(a)). LAFCOs are further directed to encourage development of existing vacant or non-prime agricultural lands within a jurisdictional boundary or sphere of influence before approving a proposal that would allow development of open-space lands outside of the jurisdiction (56377(b)).

Definitions

Agricultural Lands: Agricultural land 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 (56016).

Prime Agricultural Land: 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 (56064):

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

2. Land that qualifies for rating 80 through 100 Storie Index Rating;

3. 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 Handbook on Range and Related Grazing Lands, July 1967, developed pursuant to Public Law 46, December 1935;

4. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a non-bearing 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; or

5. 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;

Open Space: Open space is any parcel or area of land or water that is substantially unimproved and devoted to an open-space use and designated on a local, regional or state open space plan as any of the conditions described in Section 65560(b)(1) through (6).

Procedure

The following criteria will be considered when reviewing a proposal that could adversely affect agricultural and open space lands:

1. The use and value of the proposal area and surrounding parcels;

2. Determination as to whether any of the proposal area is designated for agricultural preservation by adopted local plans, including Local Coastal Plans and the County Agricultural Element; and

3. Determination of:

   A. Whether public facilities would be extended through or adjacent to any other agricultural lands to provide services to the development anticipated on the proposal property;

   B. Whether the proposal area is adjacent to or surrounded by existing urban or residential development;

   C. Whether surrounding parcels may be expected to develop to urban uses within the next five years; and

   D. Whether natural or man-made barriers would serve to buffer the proposal area from existing urban uses.

Special Annexation Procedures for Williamson Act Territory (51243.5, 56738, 56752)

The Williamson Act provides that a property owner may enter into a contract with a county or city whereby the assessed property taxes are reduced in return for keeping the property in an agricultural preserve for a minimum of ten years. Except as provided in Government Code Section 51243.5, on and after the effective date of an annexation by a city of any land under contract with the county, the city shall succeed to all rights, duties, and powers of the county under the contract.

A city may refuse to succeed to a Williamson Act contract if either of the following conditions exist:

1. Prior to December 8, 1971 the land being annexed was within one mile of the city boundary when the contract was executed and the city filed a resolution protesting the contract with the board of supervisors; or

2. Prior to January 1, 1991: (a) the land being annexed was within one mile of the city boundary; (b) the city had filed a resolution protesting the contract with LAFCO; (c) LAFCO held a hearing to consider the protest; (d) LAFCO made a finding of inconsistency with future land use; and (e) LAFCO approved the city's protest.

Please refer to the applicable code sections for specific procedures regarding the annexation of Williamson Act territory.