



East Cypress Corridor Specific Plan Final Supplemental EIR

February 2009

State Clearing House #2004092011

EAST CYPRESS CORRIDOR SPECIFIC PLAN

**RESPONSES TO COMMENTS ON DRAFT
SUPPLEMENTAL ENVIRONMENTAL IMPACT
REPORT**

Prepared for:

The City of Oakley
3231 Main Street
Oakley, California 94561
(925) 625-7000

Prepared by:

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Irvine, California 92612
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SCH #2004092011

FEBRUARY 2009

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1.0 INTRODUCTION AND LIST OF COMMENTERS

1.0.1 Introduction

This document contains public and agency comments received during the public review period of the East Cypress Corridor Specific Plan Draft Supplemental Environmental Impact Report (Draft SEIR) and the City's responses to those comments. This document has been prepared by the City of Oakley in accordance with the California Environmental Quality Act (CEQA).

1.0.2 Background

Project Location

The East Cypress Corridor Specific Plan site is located in eastern Contra Costa County within the City of Oakley. The project totals approximately 2,546 acres and includes vacant land, agricultural land, single-family homes, commercial use, overhead power lines, natural gas wells, natural gas pipelines, irrigation canals, and the Summer Lake (formerly Cypress Lake and Country Club) project, which is currently under construction.

East Cypress Corridor Specific Plan

The East Cypress Corridor Specific Plan proposes planned development of mixed-uses for the 2,546-acre site. The project proposes to allow up to 5,609¹ residential units (detached and attached units), 92.6 acres of commercial use (638,600 square feet), 52.6 acres of public schools (2 elementary, one middle), 152.3 acres of man-made lake, 190 acres of open space/easements, 20.5 acres of existing and proposed gas well sites, 122.1 acres of wetlands/dunes, 112.5 acres of flood-control levees (46,100 linear feet), 101.7 acres of parks (neighborhood and community), 5.7 acres of light industrial use (166,356 square feet), 37.3 acres of commercial recreation (162,500 square feet) and a 6-acre beach club.

Planning Areas

The East Cypress Corridor Specific Plan is divided into six Planning Areas (PAs). PAs 1, 3, and 4 have site-specific plans for their development. The EIR evaluates the development of PAs 1, 3, and 4 at a project level analysis based on the specific development plan proposed for these planning areas.

Planning Area 6 includes property that is developed or not proposed for development at this time, thus no development plans have been prepared or proposed for any property in PA 6. The EIR evaluates the potential development of the property in PA 6 at a Program level based on the Oakley General Plan land use designations.

Summer Lake

The East Cypress Corridor Specific Plan includes the previously approved Summer Lake (formerly known as Cypress Lake and Country Club) project that comprises Planning Areas 2 and 5. The

¹ 150 residential units may replace up to 20 acres of the 40 net acres of the Village Center site, which results in a maximum development of 5,759 residential units.

developer of Summer Lake, Shea Homes, proposes changes to PA 2, which is the area north of East Cypress Road. The proposed changes include the elimination of the 18-hole golf course and in its place construction of a 20-acre middle school, 113 residential units, 10,000 square feet of commercial use and the change of 5.7 acres of land from Delta Recreation to Light Industrial land use to accommodate office and maintenance facilities for RD 799 and boat and recreational vehicle storage. The 113 units proposed for PA 2 are in addition to the 1,330 total units approved for the Summer Lake project (PA 2 and PA 5) by the County in 1993. The Summer Lake development plan currently allows the development of 1,330 residential units with 628 units approved for PA 5 and 702 units for PA 2.

The East Cypress Corridor Specific Plan EIR evaluates the proposed land use changes described above for PA 2 at a Program level analysis. No additional units or any other changes are proposed to PA 5, which is currently under construction. The EIR does not provide any environmental analysis of the existing development approved by the County for PA 5.

1.0.3 The EIR Completed for the East Cypress Corridor Specific Plan

In March 2006, the EIR for the East Cypress Corridor Specific Plan was completed. The ECCSP Final EIR was certified by the City and the Specific Plan along with related general plan amendments, were adopted by the City on March 13, 2006. A legal challenge to the City's certification of the ECCSP EIR was filed in April 2006, and in August 2006 the court issued a judgment and peremptory writ of mandate ordering the City Council to set aside its resolution certifying the EIR, its resolution approving the Specific Plan and related general plan amendments. The court determined that the EIR was deficient in two respects: (i) it failed to comply with the tiering provisions of CEQA with respect to its discussion of impacts to agricultural resources and (ii) the EIR did not adequately analyze potentially significant air quality impacts of the Specific Plans area source emissions. The court denied all other challenges to the adequacy of the EIR brought by the petitioners.

1.0.4 Purpose and Scope of the Supplemental EIR

The East Cypress Corridor Specific Plan SEIR (the "SEIR") is intended to respond to the two legal deficiencies identified by the Court by revising and augmenting the analysis in the ECCSP EIR. The SEIR provides a discussion and analysis of impacts to agricultural resources that replaces the discussion of impacts to agricultural resources in section 3.3 of the ECCSP EIR and provides a discussion and analysis of the impacts of area source emissions which supplements the discussion and analysis in the ECCSP EIR. The City has determined that these revisions to the EIR do not affect the discussion and analysis of the other environmental issues covered in the ECCSP EIR, and thus no revisions or additions to the other parts of the EIR are included in the SEIR.

Because the court ruled that the ECCSP EIR was not inadequate in any respects other than the two deficiencies identified by the court, and the purpose of this SEIR is to supplement the discussion and analysis in that EIR, comments on other issues are, as a general matter outside the scope of the SEIR. A further analysis of such issues would only be required if they involved new significant impacts, or an increase in the severity of those impacts, due to changes to the project or changes to surrounding circumstances, or new information substantial importance that was not known, and

could not have been known, shows the project will cause new or more severe significant impacts, alternatives or mitigation measures previously found infeasible are shown to be feasible, or mitigation measures or alternatives considerably different from those considered in the EIR would substantially reduce one or more significant effects. None of these triggers for an expanded environmental analysis exist here. For these reasons, the City has no legal duty to respond to comments that involve environmental issues that were, or could have been, addressed in the ECCSP EIR, other than the discussion and analysis addressing the two deficiencies identified in the courts judgment and writ. Nevertheless, the responses to comments contained in this document provides responses to the comments that have been submitted on issues that are outside the scope of the SEIR in the interests of being responsive to commenters' expressed concerns.

1.0.5 The scoping process for the SEIR

The City of Oakley prepared a Notice of Preparation and Initial Study for the SEIR. The City mailed the Notice of Preparation to the State Clearinghouse, local and regional agencies, surrounding cities and other interested parties for a 30-day review period that began October 26, 2007.

The City of Oakley held a public scoping meeting to solicit input from the public at large regarding the two legal deficiencies that were addressed in the SEIR. The public scoping meeting was held by the City of Oakley on November 14, 2007 at the White House located at 204 Second Street, Oakley, CA 94561.

1.0.6 The Final SEIR

The East Cypress Corridor Specific Plan Draft Supplemental EIR ("Draft SEIR"), was circulated for a 45-day public review period pursuant to CEQA Guideline §15105(a). The 45-day public review period of the Draft SEIR was from September 5, 2008 to October 24, 2008.

The Draft Supplemental EIR was available for review and comment for 45 days. At the conclusion of the comment period, the written responses to comments on the Draft SEIR contained herein were prepared by the City as provided by CEQA. All written comments received during the 45-day public review period are addressed in the Final SEIR. The responses to comments contained in this Responses to Comments document, together with the Draft SEIR, comprise the Final Supplemental EIR. ("Final SEIR")

The ECCSP EIR as revised and augmented by the Final SEIR will be presented to the City Council for review and a determination whether to certify that the ECCSP EIR as revised by the Final SEIR has been completed in compliance with CEQA and the judgment and writ issued by the court. If the City Council determines to certify the ECCSP as revised and augmented by the Final SEIR, the City Council will then consider whether to reapprove the East Cypress Corridor Specific Plan and related General Plan amendments.

1.0.7 Responses to Comments

Responses to comments received to the Draft SEIR during the public review period are presented in Chapter 2, Responses to Comments. Each comment letter received has been numbered at the top and then bracketed to indicate how the letter has been divided into individual comments. Each comment is designated a number with the letter number appearing first, followed by the comment number. For example, the first comment in Letter 1 would have the following format: 1-1. The bracketed letter precedes responses to the letter's comments in Chapter 2 of the Final SEIR.

1.0.8 List of Commenters

The following is a list of the letters received on the Draft SEIR with identifying letter numbers, agency or person submitting the letter, and date of letter. A copy of the original letter is included in Appendix A.

1. State of California Department of Transportation – letter dated October 7, 2005
2. Greenbelt Alliance – letter dated October 13, 2005
3. Mr. and Mrs. Dennis Gilreath – letter dated
4. Kinglsey Bogard Thompson, Representing Knightsen Elementary School District – letter dated October 23, 2008
5. Dee Kerry – letter dated September 13, 2008
6. Knightsen Town Community Services District – letter dated October 14, 2008
7. Contra Costa County Local Agency Formation Commission – letter dated October 24, 2008
8. Transamerica Mineral Company – letter dated October 10, 2008
9. State of California Delta Protection Commission – letter dated October 24, 2008
10. State of California Governor's Office of Planning and Research – letter dated October 28, 2008

1.0.9 References

The following references were cited in preparation of the Draft SEIR and Final SEIR. Copies of these documents are on file with the City of Oakley Planning Department.

Draft SEIR Appendices

- Appendix A NOP/IS – October 26, 2007
- Appendix B Figures Referenced in SEIR
- Appendix C Background Information Relating to resources agricultural resources

Background Reports

1. City of Oakley, Oakley 2020 General Plan Background Report, City of Oakley, September 2001.
2. City of Oakley, Oakley 2020 General Plan, City of Oakley, August 30, 2002.
3. City of Oakley, Oakley 2020 General Plan Draft EIR, City of Oakley, September 2002.
4. City of Oakley, East Cypress Corridor Specific Plan, August 29, 2005.
5. City of Oakley, East Cypress Corridor Specific Plan Draft EIR, City of Oakley, August 2005.

6. City of Oakley, East Cypress Corridor Specific Plan Re-circulated Portion of Draft EIR, City of Oakley, December 2005.
7. City of Oakley, East Cypress Corridor Specific Plan Final EIR, City of Oakley, February 2006.

2.0 RESPONSES TO COMMENTS

Letter 1: CalTrans

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
p, O, BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 622-5491
FAX (510) 286-5559
TTY 711



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OCT 17 2008
CITY OF OAKLEY

October 15, 2008

CC004791
CC-4-R34.92
SCH#2004092011

Ms. Joan Ryan
City of Oakley
3231 Main Street
Oakley, CA 94561

Letter 1

Dear Ms, Ryan:

East Cypress Corridor Specific Plan - Draft Supplemental Environmental Impact Report (SEIR)

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the East Cypress Corridor Specific Plan. The following comments are based on the SEiR.

Internal Trips and Pass-by Trips

As stated before in our letter of February 6, 2006 and October 7, 2005, the Department was unable to review the internal trips or pass-by trips assumptions due to the lack of trip generation analysis.

Additionally, the City of Oakley has never fully addressed our concerns regarding mitigation measures for the impacts of project traffic to the State Route 4jState Route 160 interchange.

1-1

We would be happy to meet with City staff to discuss these issues further,

Ms. Joan Ryan jCity of Oakley

October 15, 2008

Page 2

Should you have any questions regarding this letter, please contact Lisa Courington of my staff at (510) 286-5505 or via email at lisa.ann.courington@dot.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Lisa Carboni". The signature is written in a cursive, flowing style.

LISA CARBONI

District Branch Chief

Local Development - Intergovernmental Review

Attachments:

Copy of October 7, 2005 Letter

Copy of February 6, 2006 Letter

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P.O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5505
FAX (510) 286-5559
TTY (800) 735-2929



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October 7, 2005

CC004791
CC-4-R34.92
SCH2004092011

Ms. Joan Ryan
City of Oakley
3231 Main Street
Oakley, CA 94561

Dear Ms. Ryan:

East Cypress Corridor Specific Plan – Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the East Cypress Corridor Specific Plan. The comments presented below are based on the Draft Environmental Impact Report for the East Cypress Corridor Specific Plan. As lead agency, the City of Oakley is responsible for all project mitigation, including improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. Any required roadway improvements should be completed prior to issuance of the project's building permit. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore, we strongly recommend that the lead agency ensure resolution of the Department's concerns prior to submittal of an encroachment permit application. Further comments will be provided during the encroachment permit process; see the end of this letter for more information regarding encroachment permits.

Additional Turning Movement Traffic

Please provide additional turning movement diagrams for Cumulative General Plan Buildout without the Project and Cumulative General Plan Buildout with the Project, which could reference Figure 3.13-2, Existing Peak Hour Traffic Volumes.

Internal Trips

According to the 2004 Institute of Transportation Engineers' Trip Generation Handbook, Chapter 7, the internal capture rates are not applicable and should not be used to forecast trips for the shopping center.

Pass-by trips

Pass-by trips should not be applicable to AM peak traffic since the shopping center usually opens after 10 AM.

State Route 4/State Route 160 Interchange

There is a planned project to widen Main Street (State Route 4) to six lanes from State Route 160 to Big Break Road. However, the widening project does not resolve the problem of queuing on the State Route 4/State Route 160 ramps.

The traffic impact study done by Fehr and Peers for the widening of Main Street shows that for the 2030 condition, the westbound queues from State Route 4 / State Route 160 southbound ramps and eastbound queues from State Route 4 / Bridgehead Road and Neroly Road are expected to extend to the intersection of State Route 4 / State Route 160 northbound ramps, frequently blocking traffic on the ramps. The Level of Service will be E. The additional traffic from the East Cypress Corridor Specific Plan project will be very significant and will exacerbate the problem.

With all the mitigation measures identified in this report, there was no mitigation identified for the State Route 4/State Route 160 interchange.

Encroachment Permit

Any work or traffic control within the State ROW requires an encroachment permit that is issued by the Department. Traffic-related mitigation measures will be incorporated into the construction plans during the encroachment permit process. See the following website link for more information:

<http://www.dot.ca.gov/hq/traffops/developserv/permits1>

To apply for an encroachment permit, submit a completed encroachment permit application, environmental documentation, and five (5) sets of plans (in metric units) which clearly indicate State ROW to the address at the top of this letterhead, marked ATTN: Sean Nozzari, Office of Permits.

Should you have any questions regarding this letter, please call Lisa Carboni of my staff at (510) 622-5491.

Sincerely,



TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Scott Morgan (State Clearinghouse)

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5505
FAX (510) 286-5559
TTY (800) 735-2929



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February 6, 2006

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CC-4-R34.92
SCH2004092011

Ms. Joan Ryan
City of Oaldea
3231 Main Street
Oaldea, CA 94561

Dear Ms. Ryan:

East Cypress Corridor Specific Plan - Recirculated Draft Environmental Impact Report

Thank you for continuing to include the California Department of Transportation (Department) in the environmental review process for the East Cypress Corridor Specific Plan. The comments presented below are based on the Recirculated Draft Environmental Impact Report for the East Cypress Corridor Specific Plan. We have the following comments to offer:

Internal Trips and Pass-by Trips

Due to the lack of trip generation analysis, we can not adequately review the internal trips or pass-by trips assumptions. Please refer to our letter of October 7, 2005, a copy of which is enclosed.

Moreover, our comments have yet to be addressed concerning the State Route 4/State Route 160 Interchange, also from the October 7, 2005 letter. We ask specifically that these two items be addressed as the review for the plan proceeds.

Ms. Joan Ryan
February 6, 2006
Page 2

Should you have any questions regarding this letter, please call Christian Bushong of my staff at (510) 286-5606.

Sincerely,

A handwritten signature in cursive script that reads "Timothy C. Sable". The signature is written in black ink and is positioned above the printed name.

TIMOTHY C. SABLE
District Branch Chief
IGRICEQA

e: State Clearinghouse

Ene: Copy of October 7, 2005 Letter

Summary of comment 1-1. The Department asserts that when it previously reviewed the ECCSP EIR, it was unable to review the internal trips or pass-by trips assumptions due to the lack of trip generation analysis. It also asserts that the City had not fully addressed its concerns regarding mitigation measures for the impacts of project traffic on the State Route 4/State Route 160 Interchange.

Response: These comments are outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions. Furthermore, the comments on the SEIR submitted by CalTrans were previously submitted by CalTrans as comments on the ECCSP EIR. They were responded to in the ECCSP Final EIR in responses 15-3, 15-4, and 15-5.

Summary of comment 15-3. CalTrans suggests that internal capture rates are not applicable and should not be used to forecast trips for the shopping center.

Response: This comment is outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions. Furthermore, this issue is addressed on page 3.13-12 to 3.13-4 of the draft ECCSP EIR. In addition, this comment on the Draft SEIR by CalTrans was previously submitted by CalTrans in comments on the ECCSP EIR. Cal Trans' comment on this issue was addressed in the ECCSP Final EIR in Responses No. 15-3.

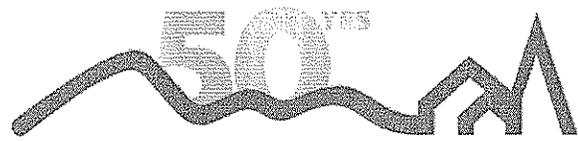
Summary of comment 15-4. CalTrans suggests that pass-by-trips should not be applicable to AM peak hour traffic for the shopping center.

Response: This comment is outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions. Furthermore, this comment on the Draft SEIR by CalTrans was previously submitted by CalTrans in comments on the ECCSP EIR. CalTrans' comments on this issue were addressed in the ECCSP Final EIR in response 15-4.

Summary of comment 15-5. The commenter expresses concern that mitigation for the impact of project traffic to the State Route 4/State Route 160 interchange is not provided.

Response: This comment is outside the scope of the Draft SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions. Furthermore, the issue of potential traffic impacts by the project to the interchange were addressed in the ECCSP Draft EIR on page 3.13-19. CalTrans' comment on this issue was addressed in the ECCSP Final EIR in response 15-5.

Letter 2: Greenbelt Alliance



GREENBELT ALLIANCE
Open Spaces & Vibrant Places

October 24, 2008

City of Oakley
Attn: Rebecca Willis, Community Development Director
3231 Main St.
Oakley, Ca 94561

CITY OF OAKLEY
Community Development Dept

OCT 24 2008

PLANNING DIVISION
RECEIVED

Re: East Cypress Corridor Specific Plan Draft Supplemental EIR

Letter 2

Dear Ms. Willis,

We have reviewed the Draft Supplemental Environmental Impact Report (SEIR) prepared for the City of Oakley's (City) proposed East Cypress Corridor Specific Plan (Project). Greenbelt Alliance submits this letter to express our concern that the SEIR does not adequately mitigate for significant impacts to agricultural resources.

CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. (CEQA Guidelines Sections 15002(a)(2) and (3). (See also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.) Unfortunately, the SEIR fails to implement mitigation measures to compensate for the loss of important farmland within Planning Areas 1, 3, and 4 to a less than significant level. Also, the SEIR falsely concludes that conversion of important farmland within Planning Areas 2, 5 and 6 is less than significant. The SEIR also falsely concludes that there is a less than significant impact on other environmental changes that could result in the conversion of agricultural land to non-agricultural use.

The City of Oakley should adequately mitigate for the loss of agricultural land by implementing mitigation policies that the cities of Brentwood, Davis, Gilroy, Livermore, and Winters have implemented. The City could also follow policies set by the Santa Clara County Local Agency Formation Commission, Yolo County, and the Yolo County Local Agency Formation Commission. The fact that these other jurisdictions in nearby cities mitigate for conversion of agricultural land to urban uses proves that the City of Oakley can implement feasible mitigation measures for the East Cypress Corridor Specific Plan. Thus, the SEIR does not comply with CEQA unless the City of Oakley mitigates for the conversion of important farmland within Planning Areas 1, 3, and 4 to a less than significant level.

The City of Brentwood, City of Gilroy, City of Winters, and the Yolo County Local Agency Formation Commission requires that 1 acre of agricultural land must be protected for each acre developed. The City of Davis requires that any development that takes agricultural land must protect 2 acres of land for each 1 acre of agricultural land developed, with the mitigation land located adjacent to the farm edge of the new project. Yolo County requires 1 acre of agricultural

2-1

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SOUTH BAY OFFICE • 1922 The Alameda, Suite 213, San Jose, CA 95126 • (408) 983-0856 • Fax (408) 983-1001
EAST BAY OFFICE • 1601 North Main Street, Suite 105, Walnut Creek, CA 94596 • (925) 932-7776 • Fax (925) 932-1970
SONOMA-MARIN OFFICE • 555 5th Street, Suite 300B, Santa Rosa, CA 95401 • (707) 575-3661 • Fax (707) 575-4275
SOLANO-NAPA OFFICE • 725 Texas Street, Fairfield, CA 94533 • (707) 427-2308 • Fax (707) 427-2315

2.0-10

land preserved for each acre rezoned. The preserved land is to be within 2 miles of the converted land. If no suitable land is available, the land can be located within 4 miles. The City of Livermore requires 1 acre of agricultural land be preserved for each 1 acre of land converted plus 1 acre for each dwelling unit built in the project. Preservation is accomplished by a conservation easement. The Santa Clara County LAFCO requires mitigation be at a 1:1 ratio along with payment of funds to cover costs of land management and maintenance of agriculture on the lands, etc. The policy further recommends that the easement or lands be transferred to an agricultural conservation entity for permanent protection. For more detailed information on these local government's policies please see Attachment 1.

Further mitigations that the SEIR needs to implement are cited in the opening brief to the court case *Greenbelt Alliance v. City of Oakley*. The opening brief demonstrated that the mitigation measures identified in the General Plan EIR are necessary to mitigate for the conversion of agricultural lands.

significant level. (AR 20:06941 ["The incremental environmental effect of the Proposed General Plan on agriculture [would be] less than significant upon implementation of" the Policies and Programs related to the preservation of agriculture].) One such policy requires the City to "[p]articipate in regional programs that promote the long-term viability of agricultural operations within the City." (AR 20:06940.) Another policy requires the City to "[e]ncourage the promotion and marketing of locally grown agricultural products." (*Id.*) A program within the Open Space and Conservation Element ("OSCE") requires the City to "[i]dentify and map those properties that include prime productive agricultural soils (Class I and II capability according to the U.S. Soil Conservation Service) for use in the review of development applications." (*Id.*) less than significant level. (AR 4:01012 ["The Oakley General Plan includes many policies and programs that *when implemented* will reduce impacts associated with the removal and conversion of agricultural land to urban uses."] [emphasis added]; AR 10:02989; AR 4:01014.)¹¹ Moreover, the Department of Conservation alerted the City to this requirement in its October 13, 2005 letter, by requesting further information on how (or if) the Oakley General Plan goals and policies were being implemented to preserve the region's agricultural resources. (AR 10:03271.) The City of Brentwood also requested such an analysis. (AR 10:02977 ["The draft EIR should list the policies and analyze how they will reduce agricultural impacts to a less than significant level."].) The City, however, declined both these requests (AR 10:02987), and thus failed to demonstrate that the Project would have a less-than-significant impact on the region's agricultural resources.¹²

2-1 Cont.

The SEIR cites that the conversion of important farmland within Planning area 2,5,6 as well as other changes to the environment that could result in conversion of agricultural land to non-agricultural use are less than significant. The Project site is in an area of intensive historic agricultural cultivation. Fully half of the Project's site is prime farmland or farmland of statewide importance. Allowing development in some of the site while leaving other parts in agricultural use creates fragmentation. From this fragmentation, the existing farmland is threatened by further urban development. Therefore, the development in Planning Areas 2, 5, and 6 has significant impacts and could eventually cause the conversion of more agricultural land. The SEIR needs to mitigate for this fragmentation.

Greenbelt Alliance hopes that the City of Oakley seriously addresses our comments and modifies the SEIR. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Christina Wong". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Christina Wong

East Bay Field Representative

Attachment.

Attachment 1: Local Governments with Agricultural Land Mitigation Programs

Source: Santa Clara County Open Space Authority. *Bay Area Agricultural Land Conservation Organizations Study*. July 7, 2008. Online. http://www.openspaceauthority.org/about/pdf/report-ag_study.pdf

CITY OF BRENTWOOD

Contact Information	City of Brentwood, Economic Development Division 708 Third Street Brentwood CA 94513 925-516-5139 FAX: 925-516-5407 www.ci.brentwood.ca.us/department email:
Legal Status	Local government: city
Org/program Started	2001. Council adopted Agricultural Enterprise Program, after 4 year study. Program included: Farmland Mitigation Program, Transferable Agricultural Credits, Agricultural Enterprise Programs.
Funding Sources	Agricultural land mitigation fees paid by land developers. Primarily for easement and land acquisitions. Program manager's salary paid by city general fund.
Operating Budget	Mitigation function not budgeted separately.
Governance	5 member City Council, elected at large, adopts policies and regulations and approves land/easement acquisitions. Council advised by Agricultural Enterprise Committee composed of 2 council members.
Agency Mgr	Linda Maurer, Economic Development Manager Total staff 1
Activity area	Brentwood and nearby unincorporated area in eastern Contra Costa County
Program Highlights	2001 mitigation program requires 1 acre be protected by easement for each acre developed. Developer may acquire and offer the easement or may pay in lieu fee. The mitigation fund is now about \$10 M. 20% of collected fees put into administrative fund for legal and consultant fees, etc. The Transferrable Agricultural Credits (TAC) program allows developers to acquire conservation easements from farmland owners in target ag areas of the the County and get credit for dwelling units in the City as a density bonus up to the maximum allowed by the Genral Plan. Currently, the TAC is not used much, because of market conditions. The Agricultural Enterprise Programs are to improve viability of local agriculture, e.g.: marketing programs for the Brentwood area; negotiation with the County to relax restrictions on value- added activities (processing to create products from locally grown agricultural produce). The City's Agriculture Enterprise Program is now under consultant study to consider possible improvements. In 2002 City initiated the Brentwood Land Trust (BALT) to partner in mitigation program by buying and holding easements, using allocation from City's mitigation fund. In 2007 City discontinued its agreement with BALT and decided to operate the program directly by acquiring easements itself and partnering with other land trusts in the County, including BALT and the Contra Costa County Agricultural and Natural Resources Land Trust. Easements held by the land trusts name the City as the beneficiary. * for number of easements and acreage from mitigation program, see Brentwood Land Trust

CITY OF DAVIS

Contact Information City of Davis Parks and Community Services Department
23 Russell Boulevard
Davis CA 95616
530-757-5626 FAX: 530-758-0204
www.city.davis.ca.us/pcs email: msears@cityofdavis.org

Legal Status Local government: city

Org/program Started 1988

Funding Sources 1. Program operations funded 50% by general fund and 50% by parcel tax approved by voters in 2000. Parcel tax yields about \$600K/year, 20% allotted to operations.
2. Acquisition program augmented by City agricultural land mitigation requirement, adopted 1995
3. Acquisition funds supplemented by state and federal grants

Operating Budget Mitigation function not budgeted separately. \$125,000 estimate.

Governance 5 member City Council, elected at large, adopts policies and regulations and approves land/easement acquisitions. 8 member Open Space and Habitat Commission advises Council on agricultural land conservation and land acquisitions.

Agency Mgr Mitch Sears, Open Space Planner Total staff 3 plus 2 part time

Activity area City of Davis and nearby unincorporated area in Solano and Yolo Counties

Program Highlights Program guided by General Plan policies and by the Acquisition and Management Plan. GP policies are fairly general. Land developments that take agricultural land must protect 2 acres of land for each 1 acre of agricultural land developed, with the mitigation land located adjacent to the farm edge of the new project*. Acquisition plan includes qualitative criteria for acquisitions. Most holdings are in easements, most of which are co-held with local land trust (Solano Land Trust or the Yolo Land Trust). The City holds some lands in fee which have special concerns, e.g. restoration. City holds some easements that may not meet Trusts program goals. City assists Trusts, e.g. legal help if easement is challenged. Some mitigation lands acquired with supplemental state or federal grants. * Adjacency requirement for mitigation easements added in late 2007.
(See Solano Land Trust and Yolo Land Trust)

CITY OF GILROY

Contact Information 7351 Rosanna Street
Gilroy CA 95020

408-846-0440 FAX: 408-846-0500
www.ci.gilroy.ca.us

email: Bfaus@ci.gilroy.ca.us

Legal Status Local government: city

Org/program Started 2004, in response to a law suit regarding mitigation.

Funding Sources Administration of program funded by applicant fees and general fund.

Operating Budget Mitigation function not budgeted separately.

Governance City Council. 7 members.

Agency Mgr Bill Faus, Planning Division Manager Total staff

Activity area Lands within and adjacent to the City

Program Highlights Gilroy has an agricultural land mitigation program that applies to agricultural lands that are developed within the City. It also applies to adjacent agricultural lands which may request inclusion in the City's urban service area. The policy includes criteria for determining if the land qualifies for mitigation, based on the California Agricultural Land Evaluation and Site Assessment (LESA Model). Criteria determining how much mitigation will be required are included. The general requirement is one acre mitigated for each acre developed, with some exceptions and variations. Mitigation may be satisfied by purchase of a conservation easement or the payment of an in-lieu fee, with the easement or fee conveyed to the Santa Clara County Open Space Authority or other City-approved agency. As yet no projects have met the criteria requiring mitigation. The City will not hold agricultural easements or lands, as they are to be vested in a city-approved conservation agency.

CITY OF LIVERMORE

Contact Information 1052 South Livermore Avenue
Livermore CA 94555

925-960-4468

email: Planning @ci.livermore.ca.us

Legal Status Local government: city

Org/program Started 1997. Adoption of the South Livermore Valley Specific Plan. The Specific Plan is the regulatory document.

Funding Sources Applicant fees and general fund.

Operating Budget Mitigation function not budgeted separately.

Governance City Council. 5 members.

Agency Mgr Eric Brown, Planning Mgr; Steve Stewart, Sr Planner . . . Total staff

Activity area Area in city limits and adjacent unincorporated lands

Program Highlights The South Livermore Valley Specific Plan has the legal function of an ordinance. It requires that the conversion of agricultural land in the Specific Plan area be mitigated. The requirement is that 1 acre of agricultural land be preserved for each 1 acre of land converted plus 1 acre for each dwelling unit built in the project. Preservation is accomplished by a conservation easement. The builder/developer is required to acquire the easement. No in-lieu fee is accepted. The easement is conveyed directly to the Tri-Valley Land Trust. The City holds no easements or lands. The City also has a Transfer of Development Credit program for the North Livermore Valley area. This program is to preserve habitat areas and agricultural land in the unincorporated area adjacent to the City. It allows developers to buy conservation easements from farmland and habitat land owners in the County and get credit for dwelling units in the City as a density bonus.

SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION (LAFCO)

Contact Information	70 West Hedding Street San Jose CA 95112
	408-299-5127 www.santaclaralafco.ca.gov email:
Legal Status	Local Government agency (each California county has a LAFCO)
Org/program Started	LAFCO was created in 1963, and LAFCO's Agricultural Mitigation Policy was adopted April 2007.
Funding Sources	1/3 County, 1/3 City of San Jose, 1/3 other cities, based on city's total revenue, as reported in the most recent edition of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a County.
Operating Budget	Mitigation function not budgeted separately.
Governance	5 members. 2 County Supervisors named by the Board of Supervisors, 1 San Jose City Council Member, 1 other City Council Member, and 1 Public Member named by the other 4 members. 4 alternate members.
Agency Mgr	Neelima Palacherla, Executive officer Total staff 3
Activity area	All of Santa Clara County
Program Highlights	Santa Clara County LAFCO policy encourages the cities to mitigate the conversion of agricultural land to urban use as a result of expansion of city's urban service area and subsequent city annexation of the land. The LAFCO policy recommends that mitigation be at a 1:1 ratio along with payment of funds to cover costs of land management and maintenance of agriculture on the lands, etc. The policy further recommends that the easement or lands be transferred to an agricultural conservation entity for permanent protection. The policy includes guidelines for the lands to be preserved. It includes policies addressing the interface between preserved lands and adjacent land uses. The policy addresses methods to assure the mitigations are implemented. It calls for the cities to present a mitigation plan to LAFCO when it files an application with LAFCO. It includes the expected components of the mitigation plan. 3 cities have extensive agricultural lands in their spheres of influence: Gilroy, Morgan Hill, and San Jose. Gilroy has adopted an agricultural land mitigation policy. Morgan Hill is in the process of developing one. San Jose is beginning its policy development, relative to the Coyote Valley. As yet, no proposals involving agricultural land mitigation have been presented to LAFCO

CITY OF WINTERS

Contact Information 318 First Street
Winters CA 56994

530-795-4910, x 113
www.cityofwinters.org

email: kate.kelly@cityofwinters.org

Legal Status Local government: city

Org/program Started 2006, resulting from community concerns re several high impact projects.

Funding Sources Development fees and mitigation fees fund the program.

Operating Budget Mitigation function not budgeted separately.

Governance City Council.

Agency Mgr Kate Kelly, Planning Manager Total staff na

Activity area Land within the city limits

Program Highlights The City requires mitigation of habitat loss, much of which is agricultural land, as well as agricultural land which is not habitat. Mitigation is generally 1 acre of land protected for each acre developed. Developer acquires and submits the easement, as well as paying costs of project administration and funding its long-term stewardship, monitoring and management. The City has guidelines for what land must be mitigated and what land is acceptable as mitigation. The easement, with stewardship funds, is conveyed directly to a qualified land trust, usually the Yolo Land Trust which has a long successful track record.

YOLO COUNTY

Contact Information	Planning Division 292 West Beamer Street Woodland CA 95696 530-666-8043 www.yolocounty.org	email: eparfrey@yolocounty.org
Legal Status	Local Government: county	
Org/program Started	2000, ordinance adopted in response to Yolo County LAFCO. 2008 ordinance revised after several years study. Now in hearings.	
Funding Sources	Applicant fees and general fund	
Operating Budget	Mitigation function not budgeted separately.	
Governance	Board of Supervisors, 5 members elected by district.	
Agency Mgr	Eric Parfrey, Principal Planner	Total staff na
Activity area	Unincorporated area of Yolo County	
Program Highlights	2000 ordinance required mitigation of agricultural land when it was rezoned to other lot size or use. The required mitigation is one acre preserved for each acre rezoned. The preserved land is to be within 2 miles of the converted land. If no suitable land is available, the land can be located within 4 miles. The fee option has not been used much. Most easements have gone to the Yolo Land Trust. The new ordinance now in hearings adds the mitigation requirement to lands being converted from agriculture where no rezoning is required for the conversion, with some exemptions. It provides for the payment of the in-lieu fee for land conversions of less than 40 acres. It sets the in-lieu fee at \$10,100/acre. It provides for the mitigation lands/easements to go to a qualified land trust, with criteria regarding their qualification.	

YOLO COUNTY LOCAL AGENCY FORMATION COMMISSION (LAFCO)

Contact Information	625 Court Street, #107 Woodland CA 95695	
	530-666-8048	
	www.yolocounty.org/lafco	email: elizabeth.kemper@yolocounty.org
Legal Status	Local Government agency (each California county has a LAFCO)	
Org/program Started	Mid 1990's, in response to development impact mitigation issues. The policy has evolved from quite general to more specific based on experience and response to emerging issues.	
Funding Sources	Program funded by County, cities, and fees.	
Operating Budget	Mitigation function not budgeted separately.	
Governance	5 member commission. County appoints 2 members, cities appoint 2 members, 1 public member appointed by the other 4 members.	
Agency Mgr	Elizabeth Kemper, Executive Officer	Total staff
Activity area	All of Yolo County	
Program Highlights	<p>Yolo County LAFCO policy requires the cities to mitigate the conversion of prime agricultural land to urban use as a result of annexations by the cities or municipal special districts. The impacts relate to loss to development of both agricultural land and habitat.</p> <p>The 4 cities (Davis, Winters, Woodland, West Sacramento) and Yolo County can formulate their own policy specifics. The LAFCO policy is a basic minimum, applicable in the absence of a city or County policy. It has criteria for land to be mitigated. It requires protection of one acre of ag land for each acre of prime ag land developed. It provides for the developer to acquire the mitigation land/easement or pay an lieu fee. The in lieu fee is most applicable to small acreages, to allow fund accumulation for larger acquisitions. The mitigation is usually in the form of easements. The easements/lands are usually held by a land trust, most often the Yolo Land Trust.</p> <p>The LAFCO policy applies also to the County as a recommendation.</p>	

Summary of comment 2-1: According to the comment submitted by Greenbelt Alliance, “the SEIR does not comply with CEQA unless the City of Oakley mitigates for the conversion of Important Farmland in Planning Areas 1, 3 and 4 to a less-than-significant level.”

Response: As shown in the Draft SEIR, the proposed project would convert 828 acres of Important Farmland to developed uses. The loss of this Important Farmland was found by the Draft SEIR to be a significant impact.

The Draft SEIR concluded, however, that no mitigation measures are available that would compensate directly for, or otherwise mitigate, the loss of agricultural land due to the conversion of the Specific Plan Area to developed uses. Ultimately, it will be up to the Oakley City Council to decide whether it agrees with this conclusion. The discussion below evaluates factors relevant to the City Council’s consideration of this issue.

To reduce impacts on farmland, the Specific Plan might have devoted less of the Specific Plan Area to developed uses. However, attempting to preserve some of the Specific Plan Area for agricultural use would exacerbate the already fragmented agricultural lands in Oakley and displace development to some other area within the subregion. This, in turn, could result in increased pressure for development of agricultural land that has been earmarked for preservation under the County’s 65/35 Land Preservation Standard and could result in undesirable discontinuous leap-frog development outside the City. A key policy of the 65/35 Land Preservation Standard is to provide for development of land in identified urban growth areas, such as Oakley, in order to reduce pressure for development of the other 65% of land in the County that is now agricultural or open space land. Preserving land within the Specific Plan Area would conflict with this regional policy. Further, changing the land uses planned for the Specific Plan area would be inconsistent with City General Plan policies which provide for logical, contiguous development within the City. Changing the land use designations for the Specific Plan Area in the General Plan to agricultural, rather than developed uses, would require a wholesale revision of the General Plan, changing the City’s fundamental land use policies. It would also be inconsistent with the planning and policy considerations that resulted in LAFCO approval of annexation of the Specific Plan area to the City.

Greenbelt’s comments about conversion of agricultural land suggest that the City must consider conservation easements over other agricultural land as mitigation for loss of Important Farmland due to development under the Specific Plan.

The identified environmental impact here is the conversion of Important Farmland to developed, urban uses. It is questionable whether requiring that the project pay for off-site conservation easements is “mitigation” of that impact as that term is defined by CEQA. Mitigation, as defined by CEQA Guidelines §15370, includes: (a) avoiding the impact; (b) minimizing the impact; (c) rectifying the impact through restoration, (d) reducing the impact through preservation and maintenance; or (e) compensating for the impact through the replacement or substitution. Requiring acquisition of conservation easements over other land would not avoid, minimize, or reduce the impact of the development of the Specific Plan site, nor would it rectify the impact through restoration. Adopting the no-project alternative, or a smaller developed area variation on that alternative, is the only option that would avoid, minimize, or reduce the impact by precluding development of all or part of the site.

The remaining question is whether off-site conservation easements compensate for the impact of developing agricultural land by “replacing or providing substitute environments” within the meaning of Guideline § 15370(e). Placing conservation easements over *other agricultural land* does not create a new resource to substitute for the one that is lost. Because conservation easements over other agricultural land do not replace the agricultural land that is lost when an approved project converts agricultural land to developed uses, it is doubtful that implementation of such a measure would constitute compensatory mitigation under Guidelines § 15370 for conversion of the Specific Plan area from agricultural use to urban uses. This is because when agricultural land is converted to developed uses, the amount of agricultural land lost would be the same with or without a conservation easement over other agricultural land. Thus, a conservation easement over other agricultural land does not replace or substitute for agricultural land developed for urban uses. Under this view of CEQA’s mitigation requirements, to constitute compensatory mitigation, actions taken to replace or provide substitute resources for a resource lost to development must reduce or eliminate the loss in resource value caused by the project—i.e., it must achieve “no net loss” of the resource.

As an example, in the context of wetland resources, imposing a conservation easement over other, off-site wetlands is not considered mitigation under CEQA because it does not reduce the net loss of wetlands due to the project. By contrast, measures that require creation of new wetlands are considered mitigation because by replacing the resource that is lost, they result in no net loss of the resource. Here, unlike wetlands, it is not physically possible or feasible to create new farmlands.

Placing conservation easements over agricultural land outside the City of Oakley would not have the effect of protecting land from development in this case because that land is not intended to be developed, is outside the City’s urban limit line, and would be contrary to the County’s 65/35 land conservation policy. In other words, there is no current threat of development of those lands, and so a conservation easement would not minimize, reduce, or otherwise compensate for the impact.

Further, there is no significant amount of Important Farmland in the City of Oakley that would be suitable for a conservation easement. All of the parcels designated as Agricultural or Agricultural Limited in the Oakley General Plan are either surrounded by other urban uses or of an insignificant size (under 40 acres, the threshold established by the County’s 65/35 Land Preservation Standard) to serve as a suitable agricultural conservation easement. The largest of these parcels is less than 20 acres and designated as Agricultural Limited, which allows for low intensity agricultural use and very low density residential (1.0 dwelling units/acre). If conservation easements were used, they would have the effect of preventing agricultural land outside the City of Oakley from being developed in situations in which the County or a city with jurisdiction over that agricultural land now, or in the future, planned for development: Development of agricultural land can only occur if the city or county with jurisdiction over the property has designated the property to allow such development in its general plan and zoning ordinances. When a city or county plans for a site to be developed for urban uses in its general plan and zoning ordinances, that action represents the city or county’s land use policy for use of the site. Placing a conservation easement over property that is designated for development by a city or county would prevent the city or county from approving non-agricultural development. Such a conservation easement, would, as a result, create a conflict with that city’s or county’s policies regarding where growth and development should occur. As a matter of comity, as

well as sound land use planning, such a result is not desirable because it would entail one jurisdiction interfering with another jurisdiction's land use planning authority.

In addition, imposing an ad hoc requirement requiring either acquisition of conservation easements or payment of fees for acquisition of conservation easements is not supported by existing City of Oakley policies. As noted above, key to the City's overall strategy for long term preservation of agricultural land is not conservation easements, but instead City policies calling for development of Specific Plan Area to reduce pressure for development of agricultural land in outlying areas.

Ultimately, the determination whether Important Farmland in the unincorporated areas of Contra Costa County will be preserved for agricultural use or developed for other purposes is within the discretion and control of the County Board of Supervisors through its adoption of land use policies and land use designations in its General Plan, through adoption of zoning applicable to agricultural parcels, and through individual determinations whether to approve conversion of a parcel of agricultural land to a developed use. This means that protection of agricultural land within the County is under the jurisdiction and control of the County.

As explained in the Draft SEIR, there are programs in place which will protect agricultural lands within the County from development: the 65/35 Land Preservation Policy and the Urban Limit Line. As noted in the Draft SEIR, the 65/35 Land Preservation Standard and the Urban Limit Line are designed to work in tandem to preserve the long term viability of the County's agricultural and open space land. To implement the 65/35 Land Preservation Standard, the Conservation Element policies in the County General Plan call for preservation of areas highly suited to prime agricultural production and adherence to the 65% standard for non-urban uses. (County General Plan, Conservation Element, p. 8-3.) At the same time, the agricultural resources policies in the County General Plan call for urban development to occur within the Urban Limit Line. (Id. at p. 8-23.) The Urban Limit Line enforces the 65/35 Land Preservation Standard by establishing a line beyond which no urban land uses can be designated. Properties outside the Urban Limit line may not obtain General Plan Amendments re-designating them for an urban land use. In addition, the County may adopt agricultural and open space preservation measures applicable to properties outside the Urban Limit Line incorporated in zoning ordinances. (County General Plan, Land Use Element, at p. 3-8).

The Specific Plan is within the 35% area identified for urban development. The remaining 65% of the County lands, including lands near the Specific Plan area, are identified as non-urban lands. Use of agricultural conservation easements on these non-urban lands would simply add a restriction on development within an area that is already designated as off limits for urban development under these regional policies.

Thus, placing a conservation easement on land outside the urban limit line, and within the area where development is barred by the 65/35 Land Preservation Standard would be redundant because the land is already protected from development. The only purpose a conservation easement over land in this area would serve would be to prevent the County from changing its 65/35 Land Preservation Standard and urban limit line at some time in the future. As noted above, such interference with another jurisdiction's decision-making is not desirable from a land use policy perspective.

With respect to the theory that a development project can lead to “pressure” for other development, and that conservation easements can reduce the “pressure” for further conversion of other lands to non-agricultural uses, the opposite is the case here. The City’s decision to develop the Specific Plan Area for urban uses compliments regional policy reflected in the County’s 65/35 Land Preservation Standard and its urban limit line. Under these policies, focusing development within the 35% of the County identified as urban growth areas will relieve pressure to develop agricultural land and other open space land in the remaining 65% of the County.

Greenbelt Alliance points to conservation easement requirements adopted by a small handful of jurisdictions in California. In these limited instances agricultural land programs were largely used to place conservation easements over agricultural land that is designated under the policies of the applicable city or county general plan for long term agricultural use. These programs have been used to implement local land use policies providing for the long term preservation of important agricultural lands within that agency’s jurisdictions or sphere of influence. In this context, agricultural conservation easements are used to reinforce a city or county’s land use and planning policies as an adjunct to its general plan and zoning designations. They are a matter of local city or County policy, and do not change the definition of mitigation under CEQA. It, thus, does not follow that conservation easements constitute appropriate mitigation under CEQA for the conversion of agricultural land resulting from development projects.

In fact, most of the ordinances and policies Greenbelt cites do not treat conservation easements as CEQA mitigation. The stated purpose of the Brentwood ordinance (ordinance 17.730), is “to implement the agricultural enterprise land conservation policies contained in the Brentwood general plan” and is designed to preserve productive farmland “on lands designated for agriculture in the city and/or county general plan.” §17.730.010. The purpose of the Davis ordinance (ordinance 40a) is to work cooperatively with the counties of Yolo and Solano to preserve agricultural land in the Davis planning area, which is not identified in the general plan as necessary for development, to implement city general plan policies. §§40A.01.010, 40A.03.010. The Santa Clara LAFCO’s Agricultural Mitigation Policies recommends provision of agricultural mitigation, including conservation easements. §7. The Yolo County Local Agency Conservation Commission Agricultural Conservation Policy refers to conservation easements as one method for implementing LAFCO policy for preventing annexations that might lead to “premature conversion” of agricultural land to other uses, and requires conservation easements as a condition of annexation of prime agricultural lands. §§IVB, F. Although these ordinances and policies use the term “mitigation” none of them state that they will provide mitigation that will implement CEQA’s standards for mitigation. The City of Winters also has a general plan policy calling for conservation easements when agricultural land is developed, and the City of Livermore has a specific plan calling for the same thing. It is unclear from the documents Greenbelt attaches to its comment letter whether these documents treat off-site conservation easements as CEQA mitigation or not. The one ordinance or policy that Greenbelt alliance cites that implies that conservation easements are to be treated as mitigation under CEQA is the city of Gilroy’s Agricultural Mitigation Policy. §1.02(A). The fact that this is the only ordinance or policy in the entire state that Greenbelt can cite as treating conservation easements as CEQA mitigation is compelling evidence that cities and counties generally do not treat them as CEQA mitigation.

Although the comment letter for Contra Costa LAFCO notes that purchase of agricultural easements was suggested when LAFCO approved annexation of the Specific Plan area to the City of Oakley, the LAFCO did not impose any such conditions on the annexation.

The question of whether conservation easements over other agricultural land constitutes mitigation under CEQA has been addressed in two unpublished court of appeal decisions. Because the opinions in these cases are not published, they do not establish binding legal precedent. However, they do illustrate that these appellate courts do not agree that conservation easements over other agricultural land constitutes mitigation under CEQA for the loss of agricultural land resulting from a development project.

In *Friends of the Kangaroo Rat v. California Dept. of Corrections*, (Fifth District Court of Appeal, Aug. 18, 2003) the State Department of Corrections completed an EIR that concluded that the impact of converting 480 acres of farm land to construct a prison could not be mitigated through funding of conservation easements over other agricultural land. The Court of Appeal held that the Department was correct in concluding that the impact of converting agricultural land to use for a prison could not be mitigated with conservation easements over other land. The Court found that the Department had correctly concluded that conservation easements would not reduce the loss of agricultural land due to the project or create any new agricultural land. The Court therefore held that offsite conservation easements would not constitute mitigation under CEQA and the Department was therefore not required under CEQA to adopt such a mitigation measure.

Similarly, in *County of Santa Cruz v City of San Jose* (Sixth District Court of Appeal, March 27, 2003) the court upheld the city's determination not to adopt offsite conservation easements as CEQA mitigation. The court agreed with the EIR's finding that offsite conservation easements over existing agricultural land would not provide mitigation because they would not compensate for the loss of agricultural land due to the project, or replace the resources lost, because they would not reduce the overall net loss of agricultural land due to the project. The court noted that while cities and counties may adopt policies providing for the preservation of open space and agricultural land, CEQA does not mandate that such policies be adopted as mitigation.

Also relevant to the analysis is the fact that the agricultural land within the Specific Plan Area appears to have marginal value for agricultural production despite its designations on the FMMP map. As the Draft SEIR notes, the existing agricultural use within the Specific Plan area is cattle grazing, including limited irrigated pasture for cattle grazing. No cultivation of crops, orchards, or other farming uses are currently occurring within the Specific Plan area. To qualify under one of the three FMMP categories of Important Farmland, the land must have been used for irrigated agricultural production or cropped during the four years prior to the mapping date. The land in the Specific Plan area, however, has been used for cattle grazing, and growing hay used for cattle feed and this has been the consistent pattern of use of this land for many years. Due to the relatively low quality of the soils, on the site the land evaluation subscore under the LESA model was 23, which barely qualifies as "significant" under the LESA model. Given the history of use of this land, and the relatively low quality of the soils, it does not appear to be likely that it would be used in the future for cultivation of crops if left undeveloped.

It also must be noted that the County and the cities of Brentwood, Clayton, Oakley and Pittsburg have obtained approval from the U.S. Fish & Wildlife Service and California Department of Fish & Game for the East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan. Under the HCP/NCCP, any development in Oakley will be required to pay a per-acre fee towards the land acquisition and other goals of the HCP/NCCP. The Specific Plan is subject to the HCP/NCCP, so this per-acre fee is required of each developed acre within the Specific Plan. While the purpose of the HCP/NCCP is to protect and manage undeveloped land as habitat for threatened and endangered species, the HCP/NCCP will conserve a large amount of agricultural land in Eastern Contra Costa County. The identified land is located in East Contra Costa County within the area of the County identified for preservation under the County's 65/35 Land Preservation Plan. Of the approximate 80,000 acres targeted for acquisition by the HCP/NCCP, over 95% is classified prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, or grazing land.

Thus, as explained in the DEIR, adoption of the Specific Plan will advance the long-term Countywide strategy for conserving agricultural resources in two ways: First, by providing for development in a designated urban development area -- the East Cypress Corridor area -- it will reduce the pressure for growth and development of agricultural land consistent with the County's 65/35 Land Preservation Plan. And second, through the requirement that development within the Specific Plan Area fund acquisition of land to be protected under the HCP/NCCP -- a program that the County is participating in and was agreed to -- it will reinforce existing County policy under the provisions of the County's 65/35 Land Preservation Standard. For these reasons, implementation of the Specific Plan will help to reduce the long term cumulative loss of agricultural land in Contra Costa County.

The Draft SEIR concludes no mitigation measures are available that would compensate for, or otherwise mitigate, the loss of agricultural land due to conversion of the Specific Plan area to developed uses. As a result, the DEIR found that the impact resulting from conversion of important farmland in Planning Areas 1, 3, and 4 remains a significant impact.

Finally, Greenbelt Alliance contests the EIR's finding that conversion of Important Farmland within Planning Areas 2, 5 and 6 is less than significant. The reasons for this determination are explained in the Draft SEIR. Planning Area 2 and 5 were approved for residential development by Contra Costa County as part of the Summer Lake development, before the site was annexed to the city. CEQA review for the Summer Lake project, including its impacts on agricultural land, was completed by the County before it approved the project. No new impact to agricultural resources will occur within Planning Area 2. The site has been graded, and no agricultural uses currently exist on the site. No new impact will occur within Planning Area 5 either and it is currently being developed. As for Planning Area 6, the area comprises existing residential and agricultural uses to be maintained and served by new public facilities and services planned to be provided as part of the development of the Specific Plan. Only 38 acres within Area 6 are identified as Important Farmland. These 38 acres are fragmented and have not been used for any appreciable level of agricultural production. In addition these lands are not planned for development under the specific plan.

Letter 3: Mr. and Mrs. Dennis Gilreath

residential units may replace up to 20 acres of the 40 net acres of the Village Center site, which results in a maximum development of 5,759 residential units.)

Comment Review Period: The City of Oakley will receive public comments on the SEIR during the following review period:

Start of Review Period: September 5, 2008
End of Review Period: October 24, 2008

Public Hearing Venue: There are no public hearings scheduled at the time of this notice. Future public hearing on the proposed project will be held at:

City of Oakley City Hall Council Chambers
3231 Main Street
Oakley, CA 94561

Anticipated Significant Environmental Effects: The SEIR has identified significant effects in the following areas: (i) Conversion of important farmland within Planning Areas 1, 3 and 4 (of the Specific Plan), (ii) Post construction (operational) area source emissions, and (iii) Post construction (operational) area source emissions combined with vehicle emissions.

Copies of the SEIR and documents referenced in the SEIR are available for public review at the City of Oakley City Hall, Community Development Department, 3231 Main Street, Oakley, CA 94561 during normal business hours. The document may also be available on the City's website (www.ci.oakley.ca.us). Also available at City Hall are the Judgment, the Peremptory Writ of Mandate, and the Court's Decision referenced above in the "Purpose of SEIR" section.

For questions concerning this Notice of Availability or the project, please contact:

CITY OF OAKLEY
Community Development Dept

City of Oakley
Attn: Rebecca Willis, Community Development Director
3231 Main Street
Oakley, CA 94561
Ph. (925) 625-7000

SEP 10 2008
PLANNING DIVISION
RECEIVED

MR & MRS Dennis Gilreath .

Comment:

E Cypress is a very damage Road,
it must be followed up on A.S.A.P.

For new improvement ^{on road} before any other
work, project, or construction goes forward.
Very sorry you Mr & Mrs Gilreath.

3-1

Summary of comment 3-1. The commenter states East Cypress Road is damaged and needs repair before any additional development occurs.

Response: This comment is outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions.

Furthermore, the comment does not provide specific information to the location or type of damage that exists on East Cypress Road or recommend the improvements that are needed. If the comment is referring to upgrades and improvements necessary to East Cypress Road to accommodate vehicle traffic associated with the development of the East Cypress Corridor Specific Plan, improvements to East Cypress Road from Jersey Island Road to Bethel Island will be completed by the developers of the East Cypress Corridor Specific Plan or Shea Homes, the developer of Summer Lakes. The developers of the East Cypress Corridor Specific Plan and the Summer Lakes projects are conditioned to complete road improvements to East Cypress Road to accommodate project traffic. The City will require the developers to construct the necessary improvements to East Cypress Road in compliance with adopted conditions of project approval.

In terms of general street maintenance, the City of Oakley has a street maintenance program and regularly monitors city streets. The City provides street maintenance and repairs to city streets, including East Cypress Road, to provide safe roadways. According to the City's Public Works Department, East Cypress Road meets the requirements for a safe public roadway. If at any time East Cypress Road requires repairs or improvements to meet minimum City street standards the necessary repairs and/or improvements will be completed.

Letter 4: Kingsley Bogard Thompson, L.L.P. (for Knightsen School District)



KINGSLEY BOGARD THOMPSON LLP
ATTORNEYS

Direct: pthompson@kbtlaw.us

October 23, 2008

VIA FEDERAL EXPRESS

City of Oakley
Attention: Rebecca Willis
Community Development Director
3231 Main Street
Oakley, CA 94561

RECEIVED
PLANNING DIVISION
OCT 24 2008

Re: East Cypress Corridor Specific Plan
Draft Supplemental EIR
Public Comment

CITY OF OAKLEY
Community Development Dept

Letter 4

Dear Ms. Willis:

This office represents the Knightsen Elementary School District ("District"). In accordance with the California Environmental Quality Act ("CEQA"; Pub. Resources Code section 21000, *et seq.*) and the CEQA Guidelines (14 CCR 15000, *et seq.*), we offer the following comments on the adequacy of the Draft Supplemental Environmental Impact Report ("DSEIR").

As indicated in the DEIR, the East Cypress Corridor Specific Plan ("ECCSP") contemplates development of up to 5,759 residential units (Page 2-2). The project will construct new utilities, including water utilities (Appendix A). The ECCSP also contemplates development of (among other things) 92.6 acres of commercial use, 52.6 acres of public schools, 152.3 acres of man-made lakes, 101.7 acres of parks, 5.7 acres fo light industrial use, 37.3 acres of commercial recreation, and a 6-acre beach club. The majority of the East Cypress Corridor Specific Plan has been annexed into the Contra Costa Water District and the Diablo Water District (Page 2-1), and will be served therefrom.

The Knightsen Elementary School District (along with the Knightsen Community Well and various other existing domestic wells) all draw from the same aquifer that the Diablo Water District ("DWD") will draw from to serve the ECCSP. The District's well supplies the only source of potable water for its students, which may be gravely compromised if DWD pumps millions of gallons per day to serve 5,759 residential units, along with the other development listed in the preceding paragraph.

4-1

Neither the initial draft EIR nor the DSEIR examine impacts on the aquifer or overall water supply to the area. Well water was generally identified as a potential source of water, but was not examined or evaluated. In short, neither EIR has:

- (1) identified the sources of water in the ECCSP;
- (2) analyzed the impacts of water draw-down on the District area (including on the District's well and the Knightsen "Community Well"); or
- (3) set forth potential mitigation to address any such issues.

This utter failure to address impacts on ground water and other water sources due to the pumping of millions of gallons per day is patently ludicrous and violates several pertinent legal standards.

- Neither report attempts to determine the current baseline groundwater conditions. This violates Save Our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 128 (EIR invalid because of failure to adequately describe baseline groundwater pumping conditions).
- Indeed, no mention exists anywhere of the amount of groundwater to be used and/or provided. This violates Dry Creek Citizens Coalition v. County of Tulare (1999) 70 Cal.App.4th 20, 26 (EIR invalid due to failure to provide decisionmakers with information which enables them to make decision which takes into account environmental consequences).
- No mitigation measures for potential impact on the aquifer, the District's well, or other wells *are even contemplated*. Before allowing the development contemplated by the ECCSP to draw from area water supplies, assurances must be made to residents and entities who currently draw from the same water source. Potential assurances would include an obligation to dig the District's well deeper if it dries up, or to put monetary bonds in place to ensure that the District will have water to serve its students moving forward.

4-1 Cont.

In previous correspondence dated November 21, 2007, the District urged that the DSEIR include an analysis of the impacts of the ECCSP on the areas water supply. This request was ignored.

The safety and interests of the District's school children has not been factored in whatsoever. Frankly, this shocks one's conscience. For all of the reasons set forth herein, we urge that a revised EIR be prepared that fully complies with CEQA and factors in the impacts on area water supplies.

4-2

Sincerely,

KINGSLEY BOGARD THOMPSON LLP



PAUL G. THOMPSON

PGT:ma

cc: Vickey Rinehart, Superintendent

Summary of comment 4-1. The commenter states the Knightsen School District (along with the Knightsen Community Well and various other existing domestic wells) all draw from the same aquifer that the Diablo Water District will draw from to serve the ECCSP and neither the ECCSP EIR nor the Draft SEIR examine impacts on the aquifer or overall water supply to the area.

Response: These comments are outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions.

Furthermore, the recirculated ECCSP Draft EIR addresses groundwater supply and the potential effects of well pumping on other wells, and that analysis extends to wells in the Knightsen area. See recirculated ECCSP Draft EIR, pages 2-8, 18-21, and Appendix A, pages 4-5 to 4-6. The ECCSP Final EIR's responses to comments also addresses the issues raised by the District in responses 48-11, 48-12, and 48-13. See also response 12-2.

It should also be noted that City staff consulted with Diablo Water District staff and confirmed that DWD has no plans to supply water from the Knightsen Well to anywhere in Oakley and DWD is not planning plans for a pipeline from the Knightsen Well to Oakley.

Summary of comment 4-2. The commenter states that the safety and interests of the District's school children have not been considered.

Response: This comment is outside the scope of the SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions.

Furthermore, this comment on the Draft SEIR is addressed as described in response 4-1, above.

Letter 5: Dee Kerry

Kenneth Strelo

From: Rebecca Willis
Sent: Monday, October 27, 2008 10:00 AM
To: Kenneth Strelo
Subject: FW: EIR Specific Plan East Cypress Corridor

CITY OF OAKLEY
Community Development Dept

SEP 13 2008

PLANNING DIVISION
RECEIVED

From: Djkerry1@aol.com [mailto:Djkerry1@aol.com]
Sent: Saturday, September 13, 2008 8:14 AM
To: Rebecca Willis
Subject: EIR Specific Plan East Cypress Corridor

Dear Ms. Willis:

I received a copy of the East Cypress, Corridor Specific Plan from Phil Martin.

Dutch Slough Road should be an important part of this plan as our levees hold back the water for the mainland . We have lots of problems with this levee road.

First: We have no evacuation Route, Our road is not wide enough for Fire Trucks with all the parked and stored cars on both sides of the levee road. Also these vehicles are breaking down the crow of the levee.

We were in your Specific plan for a road to be built behind us where it always should have been. In the new draft we were cut out.

Please re evaluate our New Dutch Slough Road proposal, as we are a vital part of this plan. In an emergency we have no evacuation route and our road will be the short cut for all of Bethel Island and us.

The Fire Department will not be able to pass on our road.

Respectfully submitted,

Dee Kerry
Owner of 2760 Dutch Slough Road (3 lots)

5-1

Psssst...Have you heard the news? [There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.](http://StyleList.com)

Summary of comment 5-1. The commenter is concerned that Dutch Slough Road is not wide enough for fire trucks, the cars that park along both sides of Dutch Slough Road are deteriorating the road crown, and residents along Dutch Slough Road need a second access route in case of emergencies. The commenter suggests the project consider the development of New Dutch Slough Road as a secondary emergency access road for Dutch Slough residents.

Response: This comment is outside the scope of the Draft SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions.

Furthermore, this comment letter does not raise any issues relating to the project because project traffic is not expected to use Dutch Slough Road. As noted in Ms. Kerry's letter, the EIR for the Specific Plan explains that, in the event this area is annexed to the City, the City will examine Dutch Slough Road with respect to safety, hazards, emergency access and level of service to determine the need for potential improvements or relocation of the road. However, the City currently has no plans to annex this area.

Letter 6: Contra Costa County Local Agency Formation Commissions (LAFCO)



October 24, 2008

CITY OF OAKLEY
Community Development Dept

OCT 24 2008

PLANNING DIVISION
RECEIVED

City of Oakley
3231 Main Street
Oakley, CA 94561
Attn: Rebecca Willis
Community Development Director

**SUBJECT: East Cypress Corridor Specific Plan
Draft Supplemental Environmental Impact Report**

Letter 6

Dear Ms. Willis:

Thank you for the Notice of Availability of the East Cypress Corridor Specific Plan Draft Supplemental Environmental Impact Report.

We provided initial comments on this project on November 26, 2007 (attached) relating to the following: 1) loss of agricultural and open space lands, 2) infrastructure including the proposed levee system, 3) timely and available supply of water, and 4) environmental justice.

We appreciate the City's work on the SEIR; in particular, the additional analysis relating to the impacts of the project on agricultural lands.

As you know, in July 2006, LAFCO approved two reorganizations involving the ECCSP (Area I and Area II). A third related reorganization proposal (Area III) was submitted, and subsequently withdrawn. Should the City wish to pursue annexation of all or portions of Area III in the future, then LAFCO, as a Responsible Agency, will need to rely on the City's environmental document in conjunction with such a proposal. We encourage the City to address the issues above, as well other relevant LAFCO factors, in any future application to LAFCO.

Again, we appreciate the City keeping LAFCO informed of this project and for your consideration of our comments. Please contact the LAFCO office if you have any questions.

Sincerely,

Lou Ann Texeira
Executive Officer

Attachment

c: LAFCO Planner (w/o attachment)

6-1



November 26, 2007

City of Oakley
3231 Main Street
Oakley, CA 94561
Attn: Rebecca Willis
Community Development Director

SUBJECT: East Cypress Corridor Specific Plan

Dear Ms. Willis:

Thank you for including the Contra Costa LAFCO in the environmental review process for the above project.

We received the Notice of Preparation for the East Cypress Corridor Specific Plan (ECCSP) on October 30, 2007. We understand that the City will prepare a Supplemental Environmental Impact Report (SEIR) for the ECCSP in response to a recent judgment issued by the Superior Court. Further, we understand that the judgment ordered that two legal deficiencies be addressed, including tiering provisions of CEQA relating to the discussion of impacts to agricultural resources, and analysis of potential air quality impacts.

As you know, in July 2006, LAFCO approved two reorganizations involving the ECCSP (Area I and Area II). A third related reorganization proposal (Area III) was submitted, and subsequently withdrawn.

Should the City wish to rely on the SEIR for any future boundary change in the ECCSP area (e.g., Area III), then LAFCO will assume the role of Responsible Agency pursuant to CEQA. Consequently, the LAFCO actions will need to be evaluated in the City's environmental document.

LAFCO is required to consider a variety of factors when evaluating a project, including, but not limited to the proposed project's potential impacts upon agricultural land and open space, the provision of municipal services, including the timely availability of water supply, adequate and proximate affordable housing, etc. These factors are provided for in Government Code §56668 (attached).

In consideration of these factors, we offer the following comments.

1. One of LAFCO's primary missions is to preserve open space and prime agricultural lands. In reviewing the City's previous ECCSP reorganizations proposals, there were concerns raised regarding the impacts of converting agricultural land to urban uses. It was suggested that the City provide additional information regarding these impacts, consider appropriate offsets for losses

associated with these proposals (e.g., coordination with the State Department of Conservation on a plan to reduce the loss of agricultural land, purchase of agricultural easements, etc.).

Should the City wish to rely on the SEIR for any future LAFCO action, we encourage you to adequately address the environmental impacts of the project on agricultural lands.

2. Pursuant to Government Code §56668, one of the factors LAFCO must consider in the review of a proposal is topography, natural features and drainage basins of the project area.

The average ECCSP project site elevation is -2.6 feet, with some areas as much as eight feet below mean high tide (3.3 feet). The area is protected by levees which were constructed in 1910.

The City indicated in its previous ECCSP proposals that it would construct new perimeter levees and rehabilitate the existing historic levees as part of the proposed development for the area. At the time LAFCO considered the ECCSP Area I and II reorganization proposals, the levee system had not yet been designed and engineered; and placement of the western levee and additional environmental issues were pending. Given some of the unknown factors at the time, LAFCO staff expressed concerns regarding infrastructure, costs and impacts to property owners.

Should the City wish to rely on the SEIR for any future LAFCO action, we encourage you to adequately address the environmental issues relating to the levee system as previously identified.

3. Another important factor LAFCO must consider in the review of a proposal is the timely availability of water supply. In reviewing the City's previous ECCSP reorganization proposals, there were concerns regarding the timely availability of water due to pending approval by the U.S. Bureau of Reclamation; and the lack of information regarding alternative water supply, groundwater supply, and potential overdrafting.

Should the City wish to rely on the SEIR for any future LAFCO action, we encourage you to adequately address the environmental impacts relating to the timely and available supply of water, including alternative water supply, ground water and potential overdrafting.

Finally, we would like to make you aware of a new provision. On October 10, 2007, the Governor signed SB 162 (Negrete McLeod), Ch. 428, which adds a new factor to those LAFCO must consider in the review of any boundary change proposal [Government Code §56668(o) – see attached]. This provision becomes effective beginning January 1, 2008. We would encourage the City to address this new factor in its future applications to LAFCO.

Again, we appreciate the City of Oakley keeping LAFCO on its CEQA notification list.

Thank you for your consideration of our comments. Please contact the LAFCO office if you have any questions.

Sincerely,


Lou Ann Teixeira
Executive Officer

Attachment

c: Barbara Graichen, LAFCO Planner

56668. Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

- (a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas during the next 10 years.
- (b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion of alternate courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services", as used in this subdivision, refers to governmental services whether or not the services are those which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- (c) The effect of the proposed action and of alternative actions on adjacent areas, on mutual social and economic interests, and on the local government structure of the county.
- (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development; and the policies and priorities set forth in Government Code §56377.
- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Government Code §56016.
- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- (g) Consistency with city or county general and specific plans.
- (h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- (i) The comments of any affected local agency.
- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for such services following the proposed boundary change.
- (k) Timely availability of water supplies adequate for projected needs including, but not limited to, the projected needs as specified in §65352.5.
- (l) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.
- (m) Any information or comments from the land owners or owners.
- (n) Any information relating to existing land use designations.
- (o) *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. (effective 1/1/08)*

Summary of comment 6-1. LAFCO states that it submitted a letter dated November 26, 2007 in response to the SEIR Notice of Preparation and in that letter made comments relating to the following: 1) loss of agricultural land and open space lands; 2) infrastructure including the proposed levee system; 3) timely and available supply of water; and 4) environmental justice. In LAFCO's October 24, 2008 letter in response to the SEIR they acknowledge that Areas I and II of the ECCSP were annexed into Oakley and that annexation of Area III was withdrawn. LAFCO acknowledges that should the City of Oakley wish to annex all or a portion of Area III in the future that LAFCO would rely on the City's environmental document for that annexation.

Response: The comment letter from the Contra Costa Local Agency Commission provides suggestions for the information that should be contained in any CEQA document prepared to support any future boundary change for the East Cypress Corridor Specific Plan area. The comment points out that in the event such an application is prepared, the LAFCO would be a Responsible Agency under CEQA, and any CEQA document prepared to support any such future boundary change application would have to evaluate such a boundary change.

No boundary change is currently proposed. In the event a boundary change is proposed, further CEQA review will occur to the extent necessary to provide a legally adequate environmental evaluation of the proposed boundary change.

Letter 7: Transamerica Mineral Company



1899 Western Way
Suite 330
Torrance, CA 90501
Telephone 310 533-0508
Fax 310 533-0520

October 10, 2008

RECEIVED
CITY OF OAKLEY

OCT 17 2008

City of Oakley
Attn: Rebecca Willis
3231 Main Street
Oakley, CA 94561

COMMUNITY DEV DEP
PLANNING DIVISION

Letter 7

RE: East Cypress Corridor Specific Plan & Dutch Slough Natural Gas Field

Ladies and Gentlemen:

Transamerica Minerals Company ("TMC") is the owner of the entire oil, gas, and mineral fee estate in and under the lands described on the Schedule of TMC Mineral Rights attached hereto as Exhibit A. TMC is wholeheartedly interested in protecting the rights of access to the mineral estate which is known to have significant natural gas reserves in the Dutch Slough Natural Gas Field.

TMC proposes 2 additional well sites be located along Bethel Island Road as shown on the attached maps. The first well site in Planning Area 6 located at or near the corner of Bethel Island Road and Street F (APN 032-082-004). The second well site in Planning Area 1 located at or near the corner of Bethel Island Road and Street B (APN 032-082-006). Each well site consisting of 2.5 acres. Without the addition of the above proposed well sites, a large amount of natural gas reserves and other minerals will be significantly impacted.

The City of Oakley, in making land use decisions, must be mindful of subsurface rights, and must be careful not to restrict or prohibit the ability to explore, develop, and produce available minerals. The planning department therefore must attempt to create a fair and reasonable balance between the mineral estate and the surface estate. TMC believes the City of Oakley will easily be able to accommodate additional well sites in the Specific Plan and EIR. The mineral estate falls within the scope of the Takings Clause of the 5th Amendment, which provides that private property shall not be taken for public use without just compensation.

7-1

Thank you very much for your attention to these concerns. We look forward to working with you.

Sincerely,

Joel W. Miller
Sr. Energy Asset Analyst

Enclosures

Exhibit A

Schedule of TMC Mineral Rights

Township 2 North, Range 3 East, M.D.B. & M., Contra Costa County, California

Section 21: All lands South of the Slough

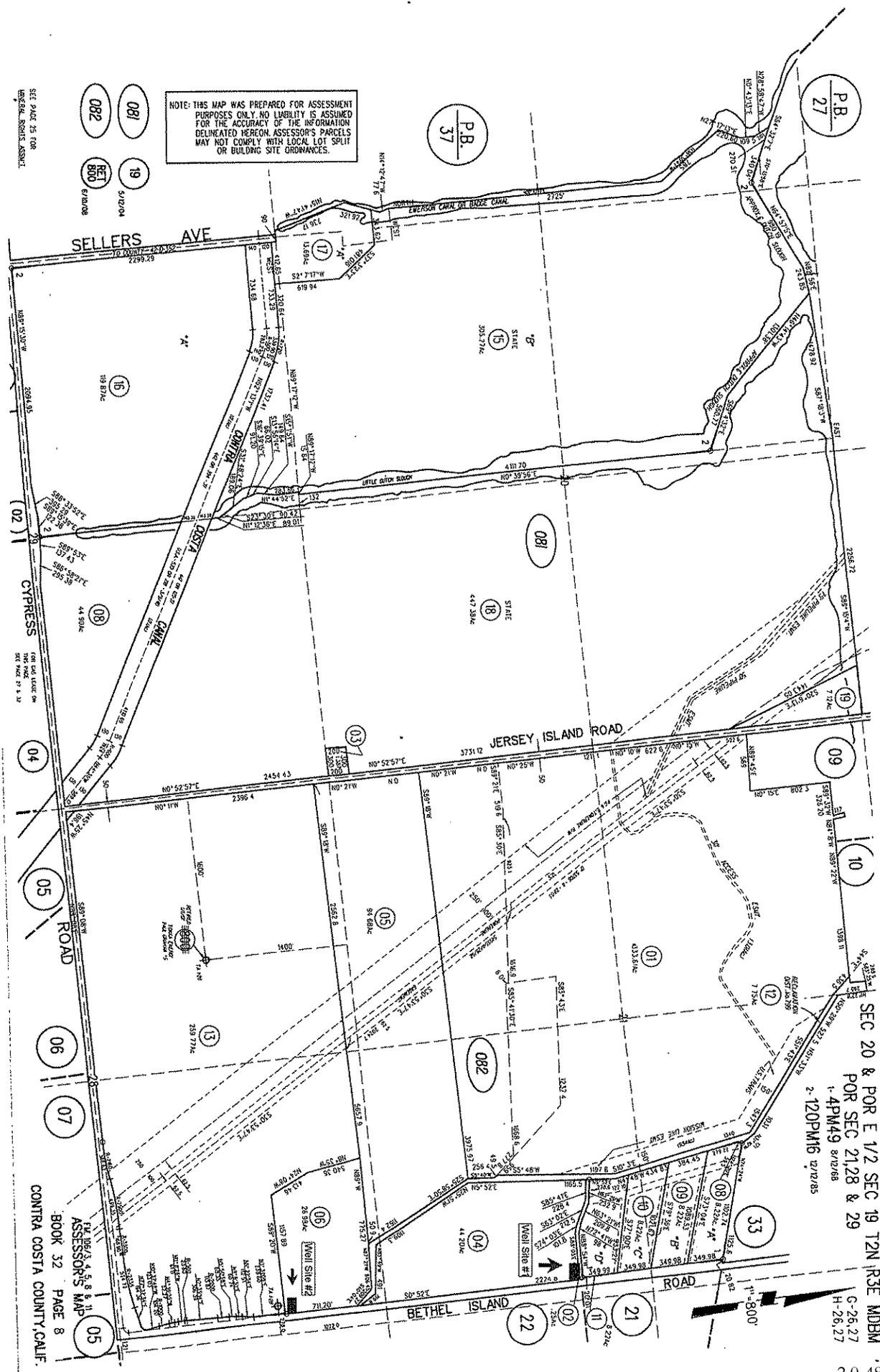
Section 22: All lands South and West of the Slough

Section 27: All lands West of the Slough

Section 28: ALL

Section 29: Southeast Quarter (SE/4)

Section 31: 40 acre portion of the Southwest Quarter (SW/4)



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

SELLERS AVE

CYPRESS ROAD

JERSEY ISLAND ROAD

BETHEL ISLAND ROAD

CONTRA COSTA COUNTY, CALIF.
BOOK 32 PAGE 8
ASSESSOR'S MAP # 11
F.M. 196/3, 4, 5, 8 & 11

SEC 20 & POR E 1/2 SEC 19 T2N R3E MDBM
POR SEC 21, 28 & 29
1- 4PM49 8/12/08
2- 120PM16 12/12/08

800'
G-26-27
H-26-27
2.0-8

BRIGHT AND BROWN
ATTORNEYS AT LAW
660 NORTH BRAND BOULEVARD
SUITE 2100
GLENDALE, CALIFORNIA 91203
(818) 243-2121 (213) 489-1414
FACSIMILE (818) 243-3225

COPY

WRITER'S EMAIL:
JQUIRK@BRIGHTANDBROWN.COM

October 7, 2005

VIA FACSIMILE [925-625-9194]
E-MAIL and
UPS EXPRESS

City Council
City of Oakley
3231 Main Street
Oakley, California 94561

Attention: Rebecca Willis [Willis@ci.oakley.ca.us]
Community Development Director

Re: East Cypress Corridor [draft] Specific Plan
and [draft] EIR
Transamerica Minerals Company Comments

Dear Council Members:

I have been asked by Transamerica Minerals Company ("*Transamerica*") to express Transamerica's comments concerning the [draft] Specific Plan for the East Cypress Corridor (the "[draft] *Specific Plan*" or, in reference, "*dSP*") and the accompanying [draft] environmental impact report (the "[draft] *EIR*" or, in reference, "*dERF*"). As you may already know, Transamerica is the fee owner of all natural gas rights within nearly all of the Specific Plan Area. As such, Transamerica is concerned that the Specific Plan ultimately adopted achieve its stated goals and objectives of "establish[ing] the type and distribution of land uses" within the Specific Plan Area (dSP § 2.4.2, p. 2.10), and that "accommodation is made for continued production of natural gas within existing active gas well sites and standards applied for development of new gas well sites." (dSP § 2.5, p. 2.11.)

1. General-Overview

From its particular point of view, and speaking broadly, Transamerica believes that the [draft] Specific Plan fails to present a coherent description of past, present and potential future natural gas operations and improvements within and nearby the Specific Plan Area, while the [draft] EIR does not fully reflect the extent to which any potential for adverse environmental impacts associated with such

BRIGHT AND BROWN
ATTORNEYS AT LAW

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City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 2

past, present and potential future natural gas operations and improvements has been anticipated and addressed.

Again, speaking broadly, Transamerica would request your attention to the text of the [draft] Specific Plan in § 3.2, "Surrounding Land Uses," pp. 3.27-28, and § 3.5.2, "Gas Well Sites," pp. 3.31-32, as well as to "Exhibit 6,^{1/} Table 1,^{2/} Exhibit 11,^{3/} and Exhibits 20, 21, 22, 23 and 24,^{4/} in the [draft] Specific Plan. These materials discuss and depict certain aspects of the actual and potential past, present and future natural gas operations and improvements in the Specific Plan Area and its vicinity. However, neither here nor elsewhere does the [draft] Specific Plan or the [draft] EIR provide readily available details that would greatly improve the informational character of these materials.

In regard to past and present natural gas operations and improvements, these materials could include information that is available to provide at least a depiction of the extent of oil and gas operations in the Specific Plan Area and its vicinity. We have attached here, at Tabs 1 and 2, respectively, (1) portions of the Munger Directory which reflect such information,^{5/} and (2) a plat provided to us by Venoco, Inc. (an operator of natural gas wells in the Specific Plan Area), which are indicative of the type of material that could be included to provide a better understanding of the extent of natural gas operations in the area.

In addition to providing the correct number of gas well sites^{6/} and the location of each gas well site, the [draft] Specific Plan and [draft] EIR should reflect (in an exhibit or in discussion) the specific size of each well site, and any well site operations and improvements within each of them. Information which is available concerning at least the general location of anticipated access routes to the individual gas well sites should be included. Information should also be included

¹ dSP Ex. 6, Land Use Plan, following p. 2.16.

² dSP Table 1, "Overall Project Summary," immediately following Ex. 6.

³ dSP, Ex. 11, "Site Constraints," p. 3.35.

⁴ dSP "Land Use, Ex. 20 (PA-1), Ex. 21 (PA-2), Ex. 22 (PA-3), Ex. 23 (PA-4) and Ex. 24 (PA-5), following p. 4.56.

⁵ Munger Directory, California and Alaska Oil and Gas Wells (1997 ed.) p. 25 and p. W-21. These are taken from materials that were available to us on short notice. We believe that more current materials would not differ substantially from those attached here. The placement of the Specific Plan Area on these materials (in yellow) is intended only as an approximation.

⁶ A subject that is discussed further below.

City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 3

which shows the individual gas well sites to be in conformity with the set-back and other requirements of the City's recently enacted oil and gas ordinance. While relevant to each of the gas well sites, this last matter seems particularly relevant to the two adjoining gas well sites in the Northeast corner of PA-4 and the Southeast corner of PA-5 which appear to be separated by a levee from a proposed elementary school site.

2. Specific Points of Discussion

The balance of this letter will address serially specific points of interest or concern to Transamerica within these materials, considering first the [draft] Specific Plan, and then the [draft] EIR.

a. Gas Well Sites—[dSP]

The individual gas well sites (as, for example, depicted in Exhibit 6 to the [draft] Specific Plan) should be increased to include two additional well sites within PA-1. The first of these would be within the "CR" zoned area, adjacent to Bethel Island Road, in the Northeast portion of PA-1, and the second, also adjacent to Bethel Island Road, in the "VC" area at the Southeast corner of PA-1.

This would result in a total of thirteen gas well sites within the Specific Plan Area: 5 in PA-1, 3 in PA-2, 1 in PA-3, 3 in PA-4 and 1 in PA-5 (none in PA-6). Each of these gas well sites should be separately identified by a specific number such as, for example, within PA-1, #1-1, #1-2, etc., and in PA-2, #2-1, #2-2, etc., and so forth. Those identifying numbers should be reflected wherever relevant in the various plats that reflect the well site locations and in the text discussing them.

Also, Table 1 and/or Exhibits 20, 21, 22, 23 and 24 could be revised (or further materials added) to reflect the specific acreage of each individual well site rather than, as at present, a single "total" well site figure. We are not sure how or by whom the location and dimensions of the gas well sites reflected in the [draft] Specific Plan and the [draft] EIR were determined. However, based on the "total" well site acreages that are provided, it is clear that not all of the contemplated gas well sites would be large enough to serve their intended function. Transamerica believes that each well site should include at least 2.5 acres to be of any real use and benefit for existing and potential future gas well operations. The text of the

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City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 4

Specific Plan, and perhaps also of the EIR, should include a discussion demonstrating the adequacy of each gas well site, as well as the compatibility of each gas well site with the contemplated adjacent uses and improvements. As already noted, this seems particularly significant in connection with the adjoining well sites in the Northeast corner of PA-4 and the Southeast corner of PA-5 which appear to be separated by a levee from a proposed elementary school site.

In addition, existing materials could be revised (or further materials added) to reflect such information as may be available concerning at least the general location of contemplated access routes for each of the gas well sites, and to reflect the location of already abandoned wells within the Specific Plan Area and in the nearby lands.

b. Other Points of Discussion—[dSP]

The "Specific Plan Summary" (§ 2.6, pp. 2.14 & 2.16) and/or the "Land Use Summary" (§ 2.7, pp. 2.16-2.23) could at least mention the gas well sites and the extent of present gas well activity in and about the area. The various subsections of § 2.7, providing a discussion of the various contemplated uses, could be enlarged to include an eighth such subsection discussing the contemplated "*Gas Well Site*" use.

In Section 3 ("Existing Conditions"), the discussion of the "Existing Project Site" (§ 3.1, p. 3.27) could, again, include mention of existing gas well sites, and the discussion of "Surrounding Land Uses" (§ 3.2, pp. 3.27-28) could be expanded to include discussion of the extent of present and prior natural gas operations in the surrounding area, perhaps including the kind of information reflected in the materials attached here at Tabs 1 and 2.

Section 3.5.2 ("Gas Well Sites" pp. 3.31 & 3.33) appears not to confine itself to "Existing Conditions" but also touches upon future drilling of new gas wells. This might more appropriately be included in an expanded discussion of that subject within Section 4 ("Land Use"), where the discussion of "Gas Wells and Drill Sites" (§ 4.7, p. 4.54) consists of a single, 5-sentence paragraph. That section could be expanded to include a more detailed discussion of the contemplated ongoing and additional use and improvement of the gas well sites. Also, or in the alternative, such further detailed discussion could be included in the various subsections of § 4.8 ("Planning Areas" pp.4.55-56). Each of those subsections discusses, in turn, the

City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 5

anticipated nature and acreage of land uses within the several Planning Areas—but none of them includes any mention of the gas well sites. As already mentioned above, the land use detail provided for each Planning Area within Exhibits 20-25 could include the specific acreage of each well site rather than merely a single “total” acreage figure as at present. (Although, as already noted, it is clear even from the total acreage figures provided that not all of the gas well sites could serve their intended purpose.)

Section 5.1 (“Circulation” pp.5.69-74) might be enlarged to include text and/or a chart reflecting the available information concerning anticipated access routes for each gas well site. It might also be appropriate to suggest that “well site” traffic involving vehicles that exceed the size of typical residential traffic should be limited in its hours of operation within the Specific Plan Area to specified periods during the day.

Finally, the individual Planning Area “Conceptual Plans” that are included in Ap. A-1, -2, -3 and -4 seem to already reflect the gas well sites but do not *consistently* and *uniformly* identify them as such. Transamerica believes they should be modified to correct that situation.

c. The [draft] EIR ⁷

The List of Tables (p.vi) does not include Table 1-1 (“Summary of Impacts and Mitigation Measures”).

Although Table 2-1 (“Overall Project Summary”) includes the total acreage of well sites for each Planning Area, there seems to be no single exhibit in the [draft] EIR that shows the location of the individual well sites. Figure 1-14 is confined by its terms to “existing” well locations. A further exhibit could be added to disclose all gas well site locations within the [draft] EIR.

The “Specific Plan Summary” or the statements of “Purpose and Objectives” (both at pp. 2.0-2 and -3) might include accommodating existing and potential future natural gas operations and improvements, and the designation of

⁷ Hopefully, it will be more convenient for the reader that these comments are provided in the order they appear to arise within the [draft] EIR that in an order reflecting their relative significance.

BRIGHT AND BROWN
ATTORNEYS AT LAW

COPY

City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 6

specific gas well sites for that purpose. And the Specific Plan Description, pp. 2.0-3 and -4, should consistently mention the number and size of gas well sites within each Planning Area.

Again, the seven specific "uses" summarized at pages 2.0-5 and -6 should be expanded to include an eighth — a discussion in equivalent detail of the "Gas Well Site" use.

The "Subdivision Descriptions" at p. 2.0-8 should correctly and consistently identify the number of gas well sites in each proposed development.

The discussion in § 3.2.3.3 ("Substantial Degradation to the Existing Visual Character or Quality of the Site and Its Surroundings" p. 3.2-7, et seq.) might include mention of the "viewscape" benefits of conducting existing and potential further gas drilling and operations within the gas well sites.

The discussion of "Natural Gas Wells," at p. 3.2-12, could be expanded to include discussion of the specifics of existing and anticipated further oil and gas operations and improvements within the designated well sites. This might also be an appropriate spot in the dEIR to discuss the compatibility of each well site with the adjacent uses and improvements that are proposed. That discussion could include compliance with the City's oil and gas ordinance, any deviations from the requirements of that ordinance, and all of the mitigation measures and considerations which justify the conclusion that those uses and improvements are compatible.

The sentence which introduces a mitigation measure concerning PM₁₀, at p. 3.4-16, might be expanded to expressly include future well site construction, i.e., "The following measures shall be implemented to reduce PM₁₀ emissions during project grading and construction, including any well site grading and construction, to less-than-significant."

The discussion of "Subsurface Conditions" in § 3.7.2.1, pp. 3.7-1 and -2, should also include mention of the specific name and depth of subsurface formations from which natural gas has been obtained, and could also include mention of the volumes of natural gas which have been produced in the area and available estimates of the natural gas remaining unproduced in the area.

City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 7

The discussion of "Loss of Mineral Resources" in § 3.7.2.4, p. 3.7-9, should mention that no loss of mineral resources results from allowing future gas well drilling and operations within specified gas well sites within the Specific Plan Area, with an explanation as to why the specified gas well sites are adequate in number, size and location.

"Hydrocarbon Drilling Operations" at p. 3.8-12 might discuss the beneficial effect of compliance with the City's oil and gas code in connection with future gas well operations. The first sentence in the second paragraph of this discussion ("In drilling wells drilling mud can contain contaminants of concern without an accidental release.") might mean either that the materials are of concern even if they are not released or that the operations can be conducted in such a way that there is no release. This should be clarified as to the intended meaning.

Figure 3.8-1 ("Potential Safety Hazards" following p. 3.8-23) should reflect all existing and proposed well sites, as well as the location of known previously abandoned wells.

Figure 3.9-10, in the series of figures following p. 3.9-58, reflects only two gas well (i.e., "G") locations. It is not clear why those two locations were selected to be shown there or why other existing and already abandoned gas wells were not.

Policy 2.1.8 noted at p. 3.10-5, concerning the compatibility of adjacent uses, suggests to us an additional implementation point, that could be included at p. 3.10-6, discussing the compatibility of the gas well sites with the uses and improvements that are proposed to adjoin them.

The discussion of "Surrounding Land Uses" at pp. 3.10-11 and -12 should include mention of the Dutch Slough gas field and other producing gas fields in the area. (Please refer to the materials at Tabs 1 and 2.)

The discussion of the City's Oil and Gas Ordinance, at p. 3.10-13, should be updated to reflect the fact that, as we understand, the Ordinance has been enacted.

The discussion in § 3.10.3.2 (p. 3.10-16 and -17) concerns conflicts between land uses, specifically between the contemplated residential use and the existing

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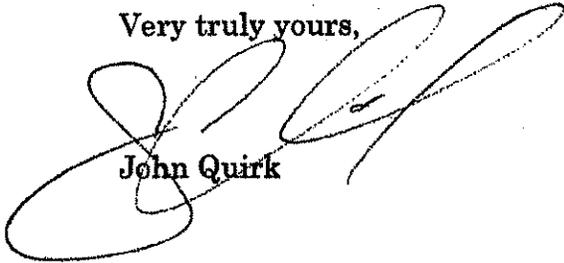
City Council, City of Oakley
Attention: Rebecca Willis
October 7, 2005
Page 8

adjoining agricultural use. It would appear that a similar discussion could be included concerning potential conflicts between the contemplated residential, school, and other uses, on one hand, and the continuing and potential further natural gas well site use, on the other. Similarly, a prior written notification to prospective residents of the existing adjoining agricultural use is discussed in the related mitigation measure (3.10-1, p. 3.10-17). The same type of prior notification with respect to the continuing and potential further natural gas well site use seems equally appropriate, and could be added at page 3.10-21 under the discussion of "Natural Gas Sites."

In connection with the discussion of "Gas Well Site Access" (under Transportation and Circulation), p. 3.13-39, or in an accompanying exhibit, there might be described or depicted the anticipated access routes to individual well sites, to the extent that such information is available at this time. This might also be an appropriate location for discussion of potential restrictions on vehicular traffic related to well site operations.

We hope that the foregoing will be of assistance to the City Council in its review and evaluation of the draft Specific Plan and accompanying draft EIR. It is our intention that a representative of Transamerica will deliver oral comments on these subjects to the City Council during its scheduled hearing on the evening of October 10, 2005.

Very truly yours,



John Quirk

JQ:sb

Enclosures

cc: Joan Ryan [ryan@ci.oakley.ca.us]
Terry L. Allred (via e-mail)
Gary L. Plotner (via e-mail)

COPY

Delivered by Certified Mail

September 23, 2004

City of Oakley
Planning Department
3639 Main Street
Oakley, CA 94561

Attn: Ms. Joan Ryan, Senior Planner

RE: City of Oakley General Plan 2020
Bethel Island Area and the Dutch Slough Natural Gas Field
Contra Costa County, California

Ladies and Gentlemen:

Transamerica Minerals Company is the owner of the entire oil, gas and mineral fee estate in and under the lands described on the Schedule of TMC Mineral Rights attached hereto (the "TMC Lands"). Though we have never been contacted or otherwise notified by the City, Transamerica has recently learned that some or all of the TMC Lands may be annexed to the City of Oakley and rezoned pursuant to the City's General Plan 2020. As part of its mineral estate, Transamerica has a record blanket easement to use as much of the surface as is reasonably required to conduct mineral exploration and extraction operations necessary to the use and enjoyment of our subsurface mineral fee. As the City is no doubt aware, much of the TMC lands have either been productive or are now producing natural gas and most of the lands are currently subject to record oil and gas leases. To eliminate or "zone away" Transamerica's (or its mineral lessee's) ability to use the surface for mineral exploration and production operations could be considered a governmental taking of valuable property rights.

Transamerica believes it is incumbent upon the City of Oakley to address the record fee property and use rights of all mineral owners in its General Plan 2020. In particular, we believe the City should enter into a dialog with mineral owners to identify certain areas within each quarter section that will be set aside and appropriately zoned for mineral extraction activities. In this regard, Transamerica respectfully requests that the City contact us immediately to address these matters. Further, Transamerica requests that it be provided timely notice of all matters under your jurisdiction concerning any annexation, zoning, development or other land planning matters that could limit or restrict Transamerica's

COPY

access to its fee mineral estate and surface use easements. That would include, but is not limited to any request for public comment or hearings on land use matters, developer land use proposals or other hearings or administrative action concerning annexation, development, zoning, rezoning or environmental studies involving the potential annexation, commercial or residential development of the TMC lands. Please direct your response and any such notices or other information to the undersigned at the letterhead address.

Very truly yours,

Terry L. Allred
Vice President and Manager

Attachment

cc: The County of Contra Costa

Attachment I

Schedule of Transamerica Minerals Company Mineral Rights in
the Bethal Island Area of the Dutch Slough Natural Gas Field

Township 2 North, Range 3 East, MDB&M, Contra Costa County, California

Section 21: All Lands South of the Slough

Section 22: All Lands South and West of the Slough

Section 27: All Lands West of the Slough

Section 28: All

Section 29: Southeast Quarter (SE/4)

Section 31: 40 acre portion of the Southwest Quarter (SW/4)

Summary of comment 7-1. The commenter is requesting the ECCSP include two additional natural gas well sites along the west side of Bethel Island Road.

Response: These comments are outside the scope of the Draft SEIR, which is limited to a discussion and analysis related to impacts to agricultural resources and the impacts of stationary source emissions.

Furthermore, these comments on the Draft SEIR were previously submitted by the commenter as comments on the ECCSP EIR. The ECCSP Final EIR's responses to comments address the comments raised by the commenter in responses 10-1 to 10-24.

Letter 8: Knightsen Town Community Services District



KNIGHTSEN TOWN COMMUNITY SERVICES DISTRICT

PO BOX 763, KNIGHTSEN, CALIFORNIA 94548

BOARD MEMBERS

NILES FREEMAN
JEFF MIDKIFF
AL SIMAS
RON STACY
LINDA WEEKES

City of Oakley
Att: Rebecca Willis
Director of Community Development
3231 Main Street
Oakley, CA. 94561

October 14, 2008

RECEIVED

OCT 24 2008

CITY OF OAKLEY

RE: Supplemental Environmental Impact Report (SEIR)
East Cypress Corridor Specific Plan

Letter 8

Dear Ms Willis,

Knightsen Town Advisory Council would like to direct its comments to the portion titled **Anticipated Significant Environmental Effects, (iii) Post construction (operational) area source emissions combined with vehicle emissions**

The attached map of an alternative alignment of the extension of Bethel Island Road toward Highway 4 near Discovery Bay could conceivably address the following concerns of the City of Oakley and adjoining communities for the betterment of East County. Consider the following positive features of an alternative alignment of Bethel Island Rd to Highway 4 toward Discovery Bay "Bixler Route".

- 1) A direct north-south road in a remote undeveloped area having no infrastructure to encourage development.
- 2) Would not create undue hardship on dozens of existing residents.
- 3) Would not have growth inducing features as the Bixler route runs through remote low lying area.
- 4) Could act as an emergency exit and faster response for emergency vehicles from or to Discovery Bay
- 5) No agricultural effects as the route is open range and right of way for the power company.
- 6) Could be protective flood/drainage wall acting as a backup to levees diverting water away from low lying areas and routing to a possible bio filter and onto No Name Slough.
- 7) Minimal impact on residences in the area, there aren't homes within hundreds of feet/yards
- 8) Possible partial funding through FEMA as alternate emergency escape route from levee breach, earthquake or fire disaster.
- 15) Possible partial funding by clean water funds
Possible partial funding by levee maintenance/repair bill

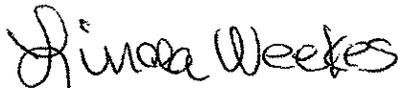
8-1

- 10) Create better access to south and east commuters and revenue for Discovery Bay and Oakley bypassing Knightsen (not inducing growth on Knightsen).
- 11) Create North- South express route on east side around Ag Core. (Sellers would be N/S express west side)
- 12) Eliminate the immediate need to revise, repair, or upgrade Byron Hwy from Delta Road to Hwy 4
- 13) Allow planning for North South Pedestrian/Equestrian/Bicycle trail without added imminent domain.
- 14) Right of way for Bixler route far less expensive than imminent domain on existing small developed ranchettes parcels on Byron Hwy.
- 15) More tax generating for Oakley and Discovery Bay, keeping Byron Hwy/Delta Road from rezoning pressures for stores and/or gas stops.
- 16) Bixler route could provide for a possible AMTRAC stop for Discovery Bay and all far east county communities at Orwood (midway to Antioch and Stockton).
- 17) Construction would not impact current traffic
- 18) Would not interfere with agricultural operations and vehicles in the ag core.
- 19) Bixler would allow for future increase traffic patterns north and south as it can be designed for expansion with minimal affect to existing property owners. (Byron route would need to condemn several homes and forcing families out located close to the current roadways).
- 20) Funding can be shared as a joint project State, Federal, County, and Local as the project would achieve several milestones (i.e. Drainage, Traffic, Trail, Clean Water, Levee, Time, Emergency Response and Direct Corridor for two newly formed Cities).

8-1
Cont.

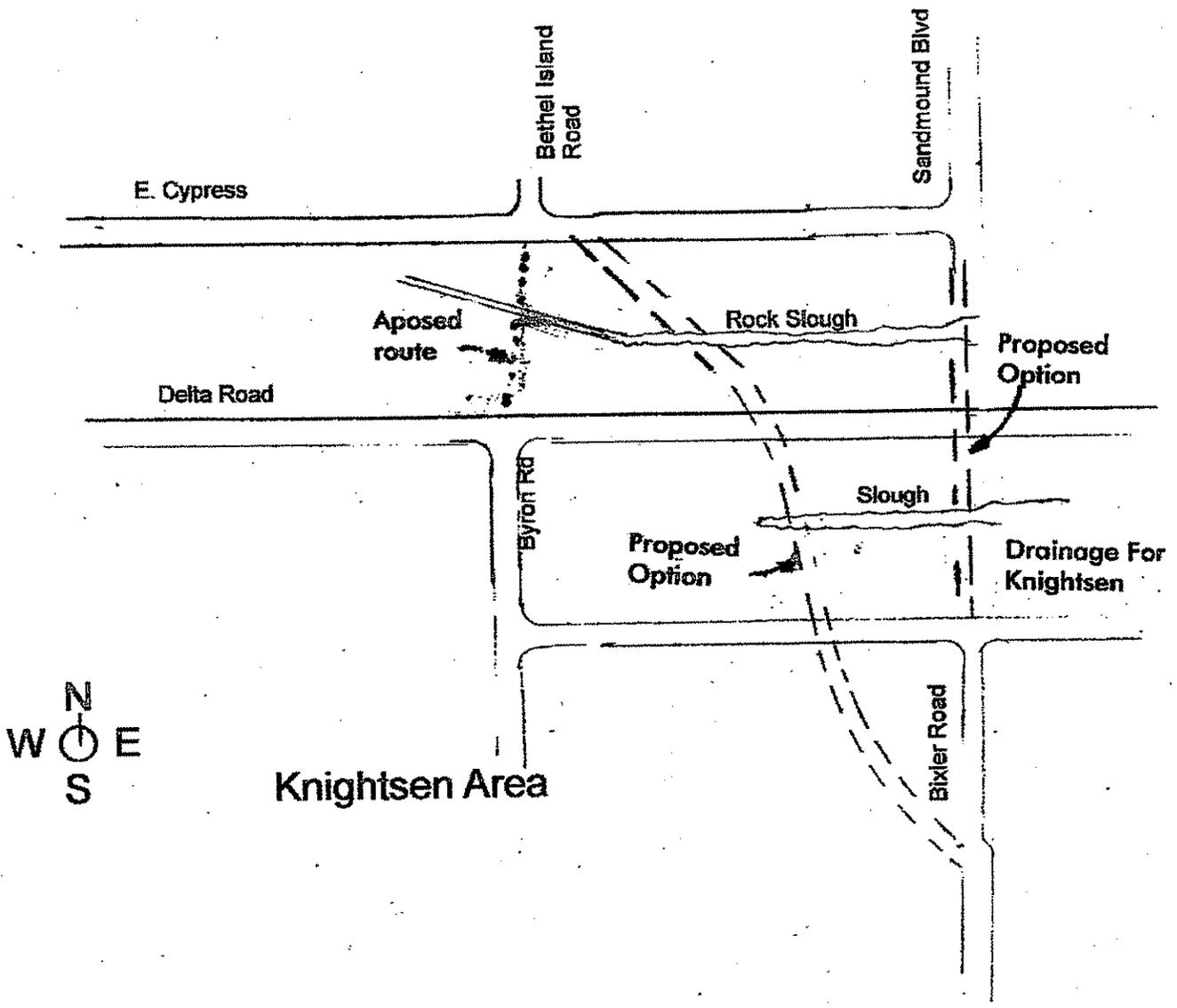
Thank you for your attention to our concerns and we would encourage The City of Oakley to cooperate in any studies that could occur in the future.

Sincerely,



Linda Weekes, Chair
Knightsen Town Community Services District
PO Box 763
Knightsen, CA. 94548
lweekes@ecis.com / 925-625-2764

cc: Supervisor Mary N. Piepho, District III
Supervisor Federal D. Glover, District V



Summary of comment 8-1. The commenter references the discussion and analysis of post construction (operational) area-source emissions combined with vehicle emissions on page 3.2-5 of the Draft SEIR and suggests an alternative alignment of the extension of Bethel Island Road toward Highway 4 near Discovery Bay could conceivably address concerns of the City of Oakley and adjoining communities for the betterment of East County.

Response: The Draft SEIR estimates both mobile and area sources emissions generated by the project and determines whether or not the estimated emissions meet BAAQMD significance thresholds.

The commenter suggests an alternative alignment of the extension of Bethel Island Road south of the project site different than the alignment proposed by the project. Under CEQA, an agency is only required to consider alternatives to the project as a whole, and need not evaluate in an EIR alternatives to parts of the proposed project, such as a different road alignment. Furthermore, the comment points to no information indicating that the road alignment proposed by the comment would reduce or eliminate mobile source air emissions. In fact, it appears that the proposed alternative route would not reduce emissions in comparison to the proposed extension of Bethel Island Road because the proposed extension of Bethel Island Road would provide a direct connection between Bethel Island Road and Byron Road. In contrast, the suggested Bixler extension would provide a much longer, indirect connection to Bethel Island Road. The other alignment proposed by the comment, a direct connection from Bixler to Bethel Island Road, would also not significantly reduce mobile sourced emissions, and would entail development of a road connection across a wide swath of open space, while the proposed alignment would develop significantly less open space land. In addition, the proposed alternative route is partially within unincorporated Contra Costa County and is not consistent with the County's adopted General Plan.

Letter 9: State of California Delta Protection Commission

DELTA PROTECTION COMMISSION

14215 RIVER ROAD
 P.O. BOX 530
 WALNUT GROVE, CA 95690
 Phone (916) 776-2290
 FAX (916) 776-2293
 E-Mail: dpc@citlink.net Home Page: www.delta.ca.gov



October 24, 2008

State Clearinghouse
 1400 Tenth Street
 Sacramento, California 95814

Letter 9

Dear Project Manager:

**Subject: East Cypress Corridor Specific Plan/Draft Supplemental EIR
 (SCH # 2004092011)**

Staff of the Delta Protection Commission (Commission) has reviewed the subject document dated September 5, 2008. As referenced in the Commission's letters of February 27, 2006, February 2, 2006, October 13, 2005, December 20, 2004, staff has determined that the proposed project is located within the Secondary Zone of the legal Delta. Actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission. However, under the California Environmental Quality Act (CEQA), the environmental analysis for the proposed project should address any potential impacts to the resources of the Primary Zone of the legal Delta resulting from activities in the Secondary Zone.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Land Use and Resource Management Plan for the Primary Zone (Management Plan) was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs. As mandated by the Act, the policies of the Management Plan are incorporated in the General Plans of local entities having jurisdiction within the Primary Zone. Both documents are available for your reference at the Commission's website, www.delta.ca.gov.

9-1

The policies and recommendations from the Management Plan that are relevant to this project include, but are not limited to the following:

Agriculture:

Policy 6: Each local government shall continue to implement the necessary plans and ordinances to: maximize agricultural parcel size; reduce subdivision of agricultural lands; protect ordinary agricultural activities; protect agricultural land from conversion to other uses; and clearly define areas in that jurisdiction where urban land uses are appropriate and where agricultural land uses are appropriate. An optimum package of regulatory and incentive programs would include: (1) an urban limit line; (2) minimum parcel size consistent with local agricultural practices and needs; (3) strict subdivision regulations regarding subdivision of agricultural lands to ensure that subdivided lands will continue in agriculture; (4) delete from zoning ordinances "other" land uses which are not compatible the agriculture; (5) require adequate buffers between agricultural and non-agricultural land uses particularly residential development outside but adjacent to the Primary Zone; (6) an agriculture element of the general plan; (7) a right-to-farm ordinance; and (8) a conservation easement program.

9-2

Policy 7: Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta-wide habitat management plan.

Land Use

Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

9-3

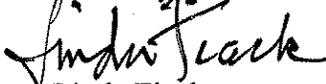
State Clearinghouse
October 24, 2008
Page Three

Policy 8: Local government policies regarding mitigation of adverse environmental impacts under the California Environmental Quality Act may allow mitigation beyond county boundaries, if acceptable to reviewing fish and wildlife agencies, for example in approved mitigation banks. Mitigation in the Primary Zone for loss of agricultural lands in the Secondary Zone may be appropriate if the mitigation program supports continued farming in the Primary Zone.

9-3 Cont.

Thank you for the opportunity to provide input on this project. Please contact me at (916) 776-2290 or lindadpc@citlink.net if you have any questions about the Commission of the comments provided herein.

Sincerely,

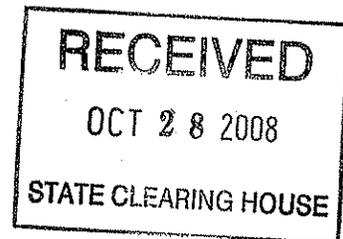


Linda Fiack
Executive Director

Attachment

DELTA PROTECTION COMMISSION

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February 27, 2006

Mr. David Huerta, Chair
City of Oakley Planning Commission
3231 Main Street
Oakley, CA 94561

Subject: Final Environmental Impact Report (FEIR) for East Cypress Corridor
Specific Plan (SCH #2004092011)

Dear Mr. Huerta,

In staff's review of the subject FEIR, it is unclear whether previous comments provided by the Delta Protection Commission have been taken into consideration in the City's CEQA analysis of the proposed project. For your convenience, the December 30, 2004 letter of comment is provided as an attachment, as it identifies the primary areas needing clarification.

Your attention is specifically called to the areas, or portions thereof, within the Primary Zone that include Jersey Island, water areas such as Big Break and portions of Dutch and Taylor Sloughs.

The Commission appreciates the opportunity to provide input on this project. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you need further clarification about any of the comments provided herein.

Sincerely,

A handwritten signature in cursive script that reads "Linda Fiack". There are some small marks above and below the signature.

Linda Fiack
Executive Director

Cc: Chair, Contra Costa County Board of Supervisors

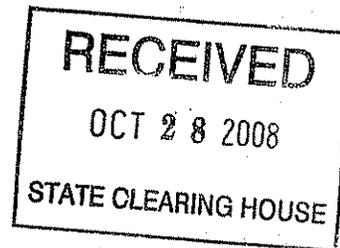
DELTA PROTECTION COMMISSION

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February 2, 2006

State Clearinghouse
Box 3044
Sacramento, CA 95814



SUBJECT: East Cypress Corridor Draft Specific Plan – Recirculated Portions of Draft Environmental Impact Report (SCH #2004092011)

Dear Mr. Morgan:

The staff of the Delta Protection Commission (Commission) has reviewed the subject document dated December 23, 2005. As noted in the Commission's comment letters submitted in response to the Notice of Preparation (NOP) dated December 30, 2004, the Draft Environmental Impact Report (DEIR) dated May 5, 2005, and the Recirculated Portions of the DEIR (Recirculated Draft) dated October 13, 2005, the proposed project is located within the Secondary Zone of the Legal Delta. Actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission. However, under the California Environmental Quality Act (CEQA), the environmental analysis for the proposed project should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone.

The letter from the Commission dated October 13, 2005 provides information about the Delta Protection Act (Act) and the Commission, and references findings, policies, and recommendations within the Commission's Land Use Management Plan for the Primary Zone of the Delta (Management Plan) that should be addressed in the project analysis. The letter from the Commission dated December 30, 2004 also cites potential areas of concern and issues the Commission would like to see addressed, or incorporated into, the project analysis in order to provide consistency with the goals and objectives of the Commission pursuant to the Act.

Staff has reviewed the subject document and has determined the comments provided in ~~previous letters of comment, pertinent to the re-circulated portions, have not been~~ adequately addressed. Following are the specific areas of potential impact warranting analysis, with the pertinent sections of the Recirculated Draft in which the analysis should be provided shown in parenthesis: agriculture activities and setback or buffer areas to protection agricultural lands (Ch. 3.10-Land Use/Planning); traffic (Ch. 3.13-Transportation/Circulation); and levee protection (Ch. 3.9-Hydrology/Water Quality).

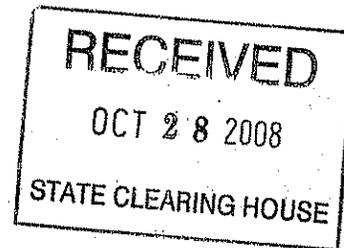
DELTA PROTECTION COMMISSION

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October 13, 2005

Joan Ryan, Senior Planner
City of Oakley
3231 Main Street
Oakley, California 94561



Dear Ms. Ryan:

Re: East Cypress Corridor Draft Specific Plan/EIR (SCH: 2004092011)

The staff of the Delta Protection Commission (Commission) has reviewed the subject document dated August 29, 2005. As noted in the Commission's comments provided in response to the Notice of Preparation (NOP) on December 30, 2004, and the Revised NOP on May 5, 2005, the proposed project is located within the Secondary Zone of the Legal Delta. Actions for approval or denial on projects in the Secondary Zone are not subject to appeal to the Commission. However, under the California Environmental Quality Act (CEQA), the EIR should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation. Pursuant to the Act, a Land Use and Resource Management Plan (Management Plan) for the Primary Zone was completed and adopted by the Commission in 1995 (updated in 2002).

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs. As mandated by the Act, the policies of the Management Plan are incorporated in the General Plans of local entities having jurisdiction within the Primary Zone.

Based on the information provided to the Commission, the following comments, together with those provided during the NOP review process, should be considered in the preparation of the Final EIR to provide consistency with the Management Plan.

Environment (p. 8)

- Best Management Practices to address and minimize mosquito production in drainage, and potential flood areas should be implemented.
- Opportunities for long-term protection of wildlife habitat on potentially impacted Delta islands should be of adequate size and configuration to provide significant habitat for birds, small mammals, and other wildlife.
- Opportunities to protect and enhance aquatic habitat should be implemented.

Joan Ryan
October 13, 2005
Page Two

- Potential for erosion related to public access to waterways and levees should be addressed through measures such as planting native plants.

Utilities and Infrastructure (p. 12-13)

- Crossings and bridge structures should not be constructed in a manner that is dependent on infeasible roadway expansion.
- Development of groundwater wells to meet the needs of additional water users should be monitored to ensure wells do not result in overdraft and possible intrusion of saline water into groundwater supplies.

Land Use (p. 20)

- Buffer zones that take into consideration agricultural practices should be provided.

Water (p. 30)

- Water quality monitoring, consistent with the requirements of the appropriate regulatory agency, should take into consideration levels appropriate for water contact recreation in addition to maintaining regulatory standards at drinking water intakes.

Recreation and Access (p. 36-37)

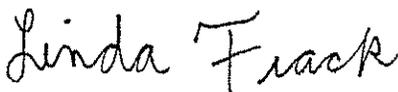
- Commercial and public recreation facilities that allow safe, supervised access, to and along Delta waterways should be considered, where feasible. Such facilities could include: pedestrian and bike trails, boat launch ramps, windsurfing access, overlooks, nature observation areas, interpretive information and picnic areas.

Levees (p. 43-45)

- Levee maintenance, rehabilitation, and upgrading should be considered as the highest priority of levee use. Potential impacts to levees from habitat, trails, recreational facilities, or roads should be considered and measures should be implemented to assure that such activities do not adversely impact maintenance activities.
- Levee maintenance should take into consideration beneficial vegetative practices, where feasible, to assure long-term loss of habitat is mitigated.

Thank you for the opportunity to review the DEIR. If you need additional information from the Commission regarding this project, please contact me at (916) 776-2292 or at lindadpc@citlink.net.

Sincerely,



Linda Fiack
Executive Director

cc: Contra Costa County Board of Supervisors
Contra Costa County LAFCO

DELTA PROTECTION COMMISSION

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December 30, 2004

Mike Porto
City of Oakley
3639 Main Street
Oakley, CA 94561

Subject: Revised Notice of Preparation (NOP) of Draft Environmental Impact Plan (DEIR) for East Cypress Corridor Specific Plan; SCH No. 2004092011

Dear Mr. Porto:

I am writing regarding the revised NOP dated December 1, 2004 regarding preparation of a DEIR for the East Cypress Corridor Specific Plan on Hotchkiss Tract in Contra Costa County. Hotchkiss Tract is located in the Secondary Zone of the Delta, outside the planning area of the Delta Protection Commission, so these are advisory comments only. The proposed project has not been reviewed by the Commission itself, so these are staff comments only. These comments are, however, based on the Commission's law and adopted land use plan and the California Environmental Quality Act.

Project Description:

The proposed project is development of 2,546 acres of unincorporated land with mixed-uses, including residential, commercial and public utilities. The site is currently in the City of Oakley's Sphere of Influence and includes the County-approved, 1,330 unit Cypress Lakes development, currently under construction. There are currently 530 residential units in the project area, most of them located adjacent to the levee on the north and eastern shorelines of the Tract. The Plan would allow development of up to 3,585 new residential units (for a total maximum of 5,445 units), 1,236,015 square feet of commercial use, 232 acres of public and semi-public use, five acres of Delta recreation, and 19 acres of park land. The proposed project includes annexation into the City of Oakley.

Project Location:

The proposed project lies largely within a leveed area, Hotchkiss Tract or Reclamation District 799. To the north is Jersey Island, owned by the Ironhouse Sanitary District, and Bethel Island, a growing area also in the Secondary Zone; to the east is Sand Mound Slough and Holland Tract in the Primary Zone; to the south, Rock Slough and lands in the Primary Zone; and to the west, the Contra Costa Canal, lands in the Primary Zone, and the habitat restoration site known as Dutch Slough. The site is the eastern edge of developable lands in Contra Costa County and thus serves as an interface between urban

Contra Costa County and the agricultural, wildlife habitat and recreational lands in the Delta Primary Zone.

Delta Protection Commission:

The Delta Protection Commission is a state agency with responsibilities in partnership with the five Delta Counties to protect and enhance the existing land uses in the Delta Primary Zone, including agriculture, wildlife habitat, and recreation. The Commission has adopted a regional land use plan which has been incorporated into the County General Plans. The Plan is accessible on the Commission's web site: www.delta.ca.gov.

Comment: The DEIR should describe the Commission's jurisdiction and responsibilities and should include a map identifying lands in the Primary Zone and their proximity to the project location.

Utilities and Infrastructure:

The proposed project will increase residential and commercial development in lands adjacent to agricultural areas. The design of new roadways should identify existing transportation needs and incorporate those uses into new construction. For example, agricultural activities often include movement of slow-moving agricultural equipment and large trucks laden with agricultural products. The region is identified as a natural gas rich area; several wells are operating in the area.

Comment: The DEIR should identify roads used by nearby agricultural activities, and design, sign, and ensure oversight of roads and traffic to ensure that agricultural equipment and products can continue to safely use public streets, and that the new residents and workers understand and respect the bulk, speeds, and purpose of the agricultural traffic.

Comment: The DEIR should include an inventory of the existing gas wells, gas pipelines and other associated facilities. The DEIR should describe any restrictions on development in the proximity of such facilities and should include mitigation measures to protect public health and safety.

Land Use:

The East Cypress Corridor proposed development will be adjacent to the Primary Zone to the north, east, south and west. In some of those areas, a waterway lies between the Primary Zone and Secondary Zone. The Commission's land use plan recommends the incorporation of buffers into development in the Secondary Zone to ensure that the resources of the Primary Zone are protected. The land use plan recommends use of berms and vegetation, as well as setbacks of 500 to 1,000 feet.

Comment: Where the project area abuts the Primary Zone, the DEIR should identify the nature of the natural resources and land uses in the Primary Zone, and prescribe an appropriate buffer between development in the Secondary Zone to ensure that development does not adversely impact the resources of the Primary Zone. Buffers may include berms and vegetation and should include setbacks of 500 to 1,000 feet

The DEIR should also evaluate the value of another 500 foot to 1,000 foot buffer parallel to Dutch Slough Road and the boundary of the habitat restoration area.

Agriculture:

The proposed project designates lands in the northeast corner of Hotchkiss Tract for agriculture use. These lands will be surrounded by residential and commercial recreation. Special efforts will be needed to protect viability of these lands for agricultural use.

Comment: The City should adopt and enforce an aggressive right to farm ordinance, to ensure that all new landowners, tenants, and workers understand and respect the right of agriculture to continue in designated locations. Signage and other education and interpretive facilities should be used to continually update and educate the overall community about the history of the area and the economic contribution of agriculture to the County and the region. The DEIR should outline possible areas of conflict and incorporate appropriate mitigation measures to ensure that agriculture can remain viable on the designated sites.

Water:

The waters of the Delta adjoin the project site on two sides. The waters of the Delta are critical for aquatic habitat, agriculture, water-contact recreation, drinking water, and other beneficial uses. The proposed project has the potential to adversely impact quality of the Delta waterways.

Comment: The DEIR should describe the uses of the Delta waterways and incorporate appropriate mitigation measures to ensure that the water quality is protected from adverse impacts associated with the proposed project.

Recreation and Access:

The Commission's land use plan supports the construction of commercial and public recreation facilities which allow safe, supervised access to and along the Delta waterways such as pedestrian and bike trails, launch ramps including small boat launch ramps, windsurfing access, overlooks, nature observations areas, interpretive sites, fishing access, picnic areas, etc. The proposed project map does not indicate that proposed parks will take advantage of the Delta's natural resources at the water's edge. The proposed project site appears to include several existing marina facilities.

Comment: The DEIR should delineate all existing and proposed parks, paths, trails, and public access areas and identify appropriate locations for new parks and public access areas that link these existing sites and, where possible, take advantage of the unique Delta location of the proposed project.

Comment: The DEIR should inventory the location and support facilities in any existing marinas in the project area. The DEIR should identify means of ensuring that any existing or proposed marinas minimize toxic discharges and prohibit discharge of untreated sewage.

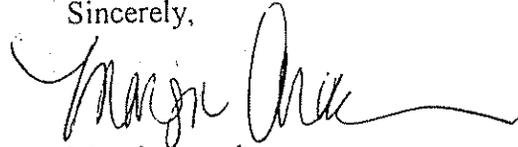
Levees:

The proposed project is located on a tract that is protected from flooding by a levee maintained by RD 799. The levee was constructed originally to provide protection for agricultural lands which is a lower level of flood protection that that required for urban development. Much of the tract is below sea level.

Comment: The DEIR should clearly and precisely describe the existing levee and its physical dimensions and characteristics, and should include mitigation measures to ensure that the existing levee can be enlarged if necessary, such as requiring a setback area of perhaps 200 feet, so that adequate levee maintenance can and will be provided by the RD. In addition, there should be evacuation plans developed and adopted for the area in case of a levee failure.

I look forward to reviewing the DEIR. Please feel free to call if you have any questions regarding these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Margit Aramburu", with a long horizontal flourish extending to the right.

Margit Aramburu
Executive Director

Summary of comment 9-1. The commenter notes the project site is located within the Secondary Zone of the Legal Delta; therefore, the project approval process is not subject to the Commission. The commenter also states the EIR should address potential impacts to Primary Zone resources resulting from activities in the Secondary Zone.

Summary of comment 9-2. The commenter makes reference to two Delta Commission policies, Policy 6 and Policy 7. These policies address agricultural lands and agricultural conservation.

Summary of comment 9-3. The commenter makes reference to two Delta Commission policies, Policy 2 and Policy 8. Policy 2 suggests that local government general plans and zoning codes shall strongly promote agriculture as the primary land use in the Primary Zone along with promoting open space and recreational uses that do not conflict with agricultural land uses. Policy 8 suggests that local government policies for the mitigation of adverse environmental impacts under CEQA may allow mitigation beyond county boundaries such as mitigation banks.

Response: The comment letter for the Delta Protection Commission suggests that the CEQA analysis of the proposed project should address potential impacts to the primary zone of the Delta resulting from activities in the Secondary Zone. The letter describes certain policies of the Delta Protection Commission's Land Use and Resource Plan for the Primary Zone. However, as the Commission's letter acknowledges, the Specific Plan Area is in the Secondary Zone, rather than the Primary Zone. As a result, the cited policies do not apply to the Specific Plan. Without explanation, the Commission also attaches to its letter comments dated February 2, 2006 and October 13, 2005. However, these comment letters were addressed in the ECCSP Final EIR in responses 50-1 to 50-2.

Letter 10: State of California Governor's Office of Planning and Research, State Clearinghouse and Planning Unit



STATE OF CALIFORNIA

GOVERNOR'S OFFICE of PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT



ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR

October 28, 2008

RECEIVED

OCT 30 2008

CITY OF OAKLEY

Rebecca Willis
City of Oakley
3231 Main Street
Oakley, CA 94561

Letter 10

Subject: East Cypress Corridor Specific Plan
SCH#: 2004092011

Dear Rebecca Willis:

The enclosed comment (s) on your Supplemental EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on October 24, 2008. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2004092011) when contacting this office.

10-1

Sincerely,

Terry Roberts
Senior Planner, State Clearinghouse

Enclosures
cc: Resources Agency

Summary of comment 10-1. The State Clearinghouse forwarded to the City of Oakley comments on the Draft SEIR they received from selected state agencies.

Response: The City acknowledges receipt of the forwarded comments and has provided written responses in the Final SEIR to the extent such responses raise new issues within the scope of the SEIR.