



March 10, 2009

City of Oakley  
Ken Strelo  
Senior Planner  
3231 Main St.  
Oakley, CA 94561

Re: East Cypress Corridor Specific Plan Final Supplemental EIR State Clearinghouse  
#2004092011

Dear Mr. Strelo,

We have reviewed the Final Supplemental Environmental Impact Report (FEIR) prepared for the City of Oakley's (City) proposed East Cypress Corridor Specific Plan (Project). Greenbelt Alliance submits this letter and the attached supporting documents to express our concern that the FEIR does not adequately address Greenbelt Alliance's comment letter dated October 24, 2008 and does not adequately mitigate for significant impacts to agricultural resources.

Contrary to the City's response to our comment letter, requiring the purchase of conservation easements is mitigation under CEQA. Attached is an unpublished case from the Third District Court of Appeal, in which the court disagrees with the depublished *Friends of the Kangaroo Rat* case, and holds:

Under CEQA, mitigation is not limited to measures that would entirely avoid the environmental impacts of a project; rather, mitigation includes measures that would substantially lessen the significant environmental effects of the project. Obviously, when farmland is converted to urban use, a requirement that conservation easements be obtained on other land will not replace the converted land. However, conservation easements can diminish the development pressures created by the conversion of farmland and can provide important assistance to the public and private sectors in preserving other farmland against the danger of the domino effect created by the project. In this respect, conservation easements fall well within the concept of mitigation under CEQA.

*South County Citizens for Responsible Growth v. City of Elk Grove*, 2004 WL 219789, \*8. See attachment "South County Citizens Case."

As we noted in our previous comment letter, many jurisdictions require purchase of conservation easements as mitigation for the conversion of agricultural lands to urban uses. Attached are policies from the general plans and agricultural mitigation programs that prove that agricultural

MAIN OFFICE • 631 Howard Street, Suite 510, San Francisco, CA 94105 • (415) 543-6771 • Fax (415) 543-6781  
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 OFFICE • 555 5th Street, Suite 300B, Santa Rosa, CA 95401 • (707) 575-3661 • Fax (707) 575-4275  
MARIN OFFICE • 30 North San Pedro Road, Suite 285, San Rafael, CA 94903 • (415) 491-4993 • Fax (415) 491-4734

**INFO@GREENBELT.ORG • WWW.GREENBELT.ORG**

mitigation is feasible. Also, to provide you with more context for the policies we cited in our previous comment letter, we are attaching the full text of those policies in our letter as well. The general plans and agricultural mitigation programs attached are the following:

1. City of Brentwood Municipal Code Chapter 17.730
2. City of Davis Municipal Code Chapter 40A.03.0
3. City of Gilroy Agricultural Mitigation Policy
4. Santa Clara County Local Agency Formation Council Agricultural Mitigation Policies
5. City of Winters Habitat Mitigation Policy
6. Yolo County Code (excerpts of Title 8: Land Development and Zoning, Chapter 2: Zoning, Article 24: General Provisions)
7. Yolo County Local Agency Formation Commission Agricultural Conservation Policy
8. Stanislaus County Agricultural Element (excerpts)
9. Stanislaus County Agricultural Mitigation Program Guidelines
10. South Livermore Valley Area Plan (excerpts)
11. Napa County General Plan (excerpts)
12. Solano County General Plan (excerpts)
13. City of Stockton Public Facilities Fee Program (excerpts)

The Department of Conservation, the state agency responsible for preserving and protecting the state's farmland, supports the use of conservation easements as mitigation under CEQA as well. In a letter to Solano County in 2008 regarding that agency's General Plan Update, the Department of Conservation stated:

[T]he Department recommends the use of agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. If a Williamson Act contract is terminated, or if growth inducing or cumulative agricultural impacts are involved, the Department recommends that this ratio of conservation easements to lost agricultural land be increased. Conservation easements will protect a portion of those remaining land resources and lessen project impacts in accordance with CEQA Guideline [section] 15470. The Department highlights this measure because of its acceptance and use by lead agencies as an appropriate mitigation measure under CEQA and because it follows an established rationale similar to that of wildlife habitat mitigation.

Letter from Dennis J. O'Bryant to Jim Louie, Jan. 31, 2008, pp. 2-3, attached hereto as Attachment "Department of Conservation Letter." The Department goes on to suggest additional types of mitigation that may be appropriate to mitigate the loss of agricultural land, including the

payment of a fee to invest in supporting the commercial viability of the remaining agricultural land in the project area. *Id.* At 3. Moreover, the Department notes that it publishes a report containing approximately 30 “conservation tools” that have been used to conserve or mitigate project impacts on agricultural land. This report is available upon request. We urge the City to request a copy of the Department’s report to consider the full range of feasible mitigation measures for the loss of agricultural resources.

Even if the City were correct that conservation easements, by themselves, did not constitute adequate mitigation for conversion of agricultural land, the City would still be required to consider and adopt other measures that could mitigate these significant impacts. For example, the City could adopt mitigation requiring the enhancement of low-value agricultural land; the creation of new farmland by restoring land that is suitable for agriculture but is currently either vacant or used for urban purposes such as parking lots, or; the acquisition of water rights necessary to enable higher-value farming. Such measures—on their own or coupled with a conservation easement over the newly-created or -enhanced farmland—must be considered and adopted if feasible to reduce the Project’s admittedly significant impacts to agricultural resources. The attached Farmland Protection Action Guide (See attachment “Dept of Conserv Farmland Protection Action Guide”), prepared by the Institute for Local Self Government, provides many examples of measures to conserve farmland and mitigate for agricultural impacts.

### **Conclusion**

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

Sincerely,



Christina Wong  
East Bay-Solano Field Representative

CC:  
Bridgett Luther, Department of Conservation  
Kathryn Lyddan, Brentwood Agricultural Land Trust  
Ed Thompson, American Farmland Trust  
John Cain, Natural Heritage Institute  
Aram Hodess, Contra Costa Plumbers Local 159

Sixteen Attachments.

1. *South County Citizens for Responsible Growth v. City of Elk Grove*, 2004 WL 219789
2. Department of Conservation Letter regarding Solano County General Plan 2008
3. City of Brentwood Municipal Code Chapter 17.730
4. City of Davis Municipal Code Chapter 40A.03.0
5. City of Gilroy Agricultural Mitigation Policy
6. Santa Clara County Local Agency Formation Council Agricultural Mitigation Policies
7. City of Winters Habitat Mitigation Policy

8. Yolo County Code (excerpts of Title 8: Land Development and Zoning, Chapter 2: Zoning, Article 24: General Provisions)
9. Yolo County Local Agency Formation Commission Agricultural Conservation Policy
10. Stanislaus County Agricultural Element (excerpts)
11. Stanislaus County Agricultural Mitigation Program Guidelines
12. South Livermore Valley Area Plan (excerpts)
13. Napa County General Plan (excerpts)
14. Solano County General Plan (excerpts)
15. City of Stockton Public Facilities Fee Program (excerpts)
16. The Department of Conservation Farmland Protection Action Guide: 24 Strategies for California 2002