



October 24, 2008

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

Re: East Cypress Corridor Specific Plan Draft Supplemental EIR

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

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-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

INFO@GREENBELT.ORG • WWW.GREENBELT.ORG

located adjacent to the farm edge of the new project. Yolo County requires 1 acre of agricultural 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

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 "C. Wong". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

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 Transferable 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	<p>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.</p> <p>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</p>	

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	<p>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.</p> <p>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.</p>

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>	