APPENDIX A

LAFCO

Local Agency Formation Commission of Santa Clara County

LAFCO Meeting Date:	May 30, 2007
TO:	LAFCO
FROM:	Neelima Palacherla, Executive Officer Dunia Noel, Analyst
SUBJECT:	**Clarification of Agricultural Use** **Agenda Item # 10**

STAFF RECOMMENDATION

Discuss and accept clarification of term "agricultural use".

BACKGROUND

At the April 4, 2007 LAFCO meeting, LAFCO unanimously adopted Agricultural Mitigation Policies (see Attachment A), including the word-for-word definition of "prime agricultural land" as found in Government Code section 56064 of the Cortese Knox Hertzberg Act.

LAFCO also directed staff to provide a clarification of the term "agricultural use" at the May 30, 2007 LAFCO meeting.

AGRICULTURAL USE

The term "agricultural use" is not defined within the Cortese Knox Hertzberg Act. LAFCO will interpret the term "agricultural use" very broadly. The term, when used by LAFCO and as part of LAFCO's definition of "prime agricultural land," will mean uses that currently or at any point in time relate to producing crops, growing fruit/nut trees, grazing cattle, supporting an agricultural industry or other uses that would not exclude the use of the land for agriculture and that would be compatible with agriculture, including land left undeveloped or fallow.

ATTACHMENT

Attachment A: LAFCO's Agricultural Mitigation Policies as adopted on April 4, 2007

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AGRICULTURAL MITIGATION POLICIES

Background

LAFCO's mission is to encourage orderly growth and development, discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies. LAFCO will consider impacts to agricultural lands along with other factors in its evaluation of proposals. LAFCO's Urban Service Area (USA) Amendment Policies discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's USA Amendment Policies require an explanation of why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

Purpose of Policies

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

General Policies

1. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #6. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.
2. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural mitigation policies and programs that are consistent with these policies.
3. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with these policies.
4. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

5. LAFCO will review and revise these policies as necessary.

Definition of Prime Agricultural Lands

6. "Prime agricultural land" as defined in the Cortese Knox Hertzberg Act means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

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

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

    c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.

    d. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars ($400) per acre.

    e. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars ($400) per acre for three of the previous five calendar years.

Mitigation Recommendations

7. Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands:

    a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.

    b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.

c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund*:

1. The cost of acquisition of agricultural lands or agricultural conservation easements for permanent protection, and

2. The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of maintaining agriculture on the mitigation lands.

* with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment

8. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.

9. The agricultural mitigation should result in preservation of land that would be:

a. Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and

b. Located within cities' spheres of influence in an area planned/envisioned for agriculture, and

c. That would preferably promote the definition and creation of a permanent urban/agricultural edge.

10. Because urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Examples of such measures include, but are not limited to:

a. Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.

b. Adoption of protections such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.

c. Development of programs to promote the continued viability of surrounding agricultural land.

Agricultural Conservation Entity Qualifications

11. The agricultural conservation entity should be a city or a public or non-profit agency. LAFCO encourages consideration of agricultural conservation entities that:

    a. Are committed to preserving local agriculture and have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,

    b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and

c. Have adopted written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and are operating in compliance with those standards.

Timing and Fulfillment of Mitigation

12. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) should be fulfilled no later than at the time of city's approval of the final map, or issuance of a grading permit or building permit, whichever occurs first.

13. Cities should provide LAFCO with information on how the city will ensure that the agricultural mitigation is provided at the appropriate time.

14. Cities should provide LAFCO with a report on the status of agricultural mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation commitments are fulfilled.

15. The agricultural conservation entity should report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.

Plan for Mitigation

16. A plan for agricultural mitigation that is consistent with these policies should be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The plan for mitigation should include all of the following:

    a. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation. Upon LAFCO approval of the proposal, the agreement should be recorded with

the County Recorder's office against the property to be developed. The agreement should specify:

1. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
2. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
3. The acreage that would be preserved through mitigation and /or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment) along with the methodology adopted by the entity for calculating the in-lieu fees.
4. The location of the mitigation lands, when possible.
5. Information on the specific measures adopted by the city as encouraged in Policy #10 (mitigation for impacts to adjacent agricultural lands)
6. The time-frame within which the mitigation will be fulfilled, which should be no later than at the time of city's approval of the final map, or issuance of the grading permit or building permit, whichever occurs first.
7. The mitigation agreement is to be contingent on LAFCO approval of the proposal.

b. Applicant should provide all other supporting documents and information to demonstrate compliance with these policies.