



DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA

9

August 18, 2003

DIVISION OF
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PROTECTION

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Mr. Kyle Kollar, Director
City of Manteca
Community Development Department
1052 South Livermore Avenue
Manteca, CA 95337

Subject: City of Manteca General Plan 2023 Draft Environmental Impact
Report (DEIR), - SCH# 2002042088, San Joaquin County

Dear Mr. Kollar:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the DEIR for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following recommendations with respect to the project's impacts on agricultural land and resources.

Project Description

The proposed project is an update to the City of Manteca (City) 1988 General Plan (GP) to the year 2023. The City is located near the northern end of the San Joaquin Valley at the junction of State Routes 99 and 120 in San Joaquin County (County). The GP planned growth area contains 5,265 acres of Prime Farmland and 11,863 acres of Farmland of Statewide Importance. Build-out will convert 1,052 and 4,781 acres respectively. Williamson Act contracts cover 3,861 acres in the growth area. Converted acreage of Williamson Act land is not provided.

The DEIR has determined that project conversion of Prime and Important Farmland and conflicts with Williamson Act land are significant impacts. Proposed mitigation is to encourage continued agriculture pending GP development under a growth management system that avoids Prime Farmland where feasible and discourages premature development. In addition, the City will discourage cancellation of Williamson Act contracts outside the Primary Urban Services Boundary and within the GP growth area and support County agricultural zoning of designated agricultural

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land within the Area Plan. The DEIR has determined that the GP will have growth-inducing and cumulative impacts but has not proposed mitigation.

Williamson Act Lands

In the interest of more completely describing impacted contract land, the Department recommends that the Final EIR (FEIR) tabulate the contracted acreage planned for conversion at build-out of the GP and denote the amount that is prime and nonprime agricultural land according to definition in Government Code §51201(c). In addition, we recommend that the following information be provided in the FEIR:

- As a general rule, land can be withdrawn from Williamson Act contract only through the nine-year nonrenewal process. Immediate termination via cancellation is reserved for "extraordinary", unforeseen situations (See Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855). Furthermore, it has been held that "cancellation is inconsistent with the purposes of the (Williamson) Act if the objectives to be served by cancellation should have been predicted and served by nonrenewal at an earlier time, or if such objectives can be served by nonrenewal now" (Sierra Club v. City of Hayward).
- If cancellation is proposed, notification must be submitted to the Department prior to a board or council's consideration of a proposal for tentative cancellation (Government Code §51284.1). The board or council must consider the Department's comments prior to making a decision on the proposal. Required findings must be made by the board or council in order to approve tentative cancellation. Cancellation provisions involving Farmland Security Zone (FSZ) contracts include additional limitations. We recommend that the FEIR include discussion of how cancellations involved in this project would meet required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation. (The notice should be mailed to Darryl Young, Director, Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 13-71, Sacramento, CA 95814-3528.)
- Termination of a Williamson Act/FSZ contract by acquisition can only be accomplished by a public agency, having the power of eminent domain, for a public improvement. The Department must be notified in advance of any proposed public acquisition, and specific findings must be made (Government Code §51290 - 51292). The property must be acquired by eminent domain or in lieu of eminent domain in order to void the contract. The public agency must consider the Department's comments prior to taking action on the acquisition. School districts are precluded from acquiring land under FSZ contract. We recommend discussion in the FEIR of whether such action is envisioned by this project and how the acquisition will meet the required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation to the address noted above.

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- If land within an agricultural preserve is annexed, the City must succeed to the rights, duties, and powers of the County in administering the preserve and contracts, unless conditions specified in Government Code §51243.5 apply. The DEIR should explain how the City intends to meet its requirement. 4
- If any part of the site is to continue under contract or remain within an agricultural preserve after project completion, the FEIR should discuss the proposed uses for those lands. Uses of contracted and preserve land must meet compatibility standards identified in Government Code §51238 - 51238.3 and §51296.7. Otherwise, contract termination (see above) must occur prior to the initiation of the land use, or the preserve must be disestablished. 5
- An agricultural preserve is a zone authorized by the Williamson Act and established by the local government to designate land qualified to be placed under contract. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Therefore, the uses of agricultural preserve land must be restricted by zoning or other means so as not to be incompatible with the agricultural use of contracted land within the preserve (Government Code §51230). The FEIR should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the project. 6

Mitigation Measures

The Department supports the City's growth measures to encourage conservation of agricultural land. However, they do not appear to function as mitigation for the permanent loss of agricultural land as a result of GP build-out. Mitigation should be specific, measurable actions that allow monitoring to ensure their implementation and evaluation of success. A mitigation consisting only of a statement of intention or an unspecified future action may not be adequate pursuant to CEQA. In addition, all feasible mitigation should be considered. 7

The City has already committed to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), which offers proponents the option of contributing a fee or acreage under permanent easement to protect species habitat. Those not opting to participate in the SJMSCP must individually adhere to local, state and federal regulations requiring similar habitat mitigation. It is projected that preserve land under the SJMSCP will predominantly be agriculturally productive land that will be allowed to continue in agricultural use. Given this commitment, it appears feasible to propose a similar mitigation for projects implementing the GP's conversion of agricultural land. In some cases, the same land may function to compensate and protect species habitat and agricultural resources. The Department recommends, however, that this mitigation be required rather than voluntary for conversion of agricultural land. Projects that involve only the conversion of agricultural land and not also species habitat, for example, could avoid mitigation if participation is voluntary. We also recommend that the fee structure be revised for conversion of agricultural land 7

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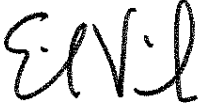
to be commensurate with land values in the area and that the acre-for-acre option include the requirement of equal quality of farmland.

Given the significance of agriculture to the County, the region and the State, the significance of farmland conversion by the GP and the impacts in terms of terminated Williamson Act contracts, coupled with the City's commitment to compensate the loss of important resources with permanent easements, such easement mitigation to protect agricultural resources appears warranted and feasible. The City of Lathrop has proposed similar mitigation in its DEIR for its water recycling plant expansion.

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Thank you for the opportunity to comment on this DEIR. Pursuant to Public Resources Code §21092.5(a), the Department looks forward to receiving your response and a copy of the FEIR. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Bob Blanford at 801 K Street, MS 13-71, Sacramento, California 95814; or, phone (916) 327-2145.

Sincerely,



Erik Vink
Assistant Director

cc: State Clearinghouse

San Joaquin County Resource Conservation District
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