



# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY



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### Planning Department

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## MEMORANDUM

**DATE:** October 2, 2003

**TO:** Honorable Board of Supervisors

**FROM:** Robert C. Johnson, Planning Director

**RE:** Agricultural Mitigation Bank

### INTRODUCTION/SUMMARY

Development under the terms, land use designations and building intensities set forth in the proposed revised RCIP General Plan will result in the loss of over 60,000 acres of designated farmland. In order to mitigate this significant adverse impact pursuant to the California Environmental Quality Act ("CEQA"), the EIR proposes the creation of an Agricultural Land Mitigation Bank. Development applicants whose projects would convert substantial farmland acreage into non-agricultural uses would be required to purchase credits from the Bank, which would support the preservation of existing designated farmland acreage.<sup>1</sup>

A recent CEQA decision by the California Court of Appeal holds that a mitigation measure of this nature does not actually avoid or reduce the loss of farmland subject to development. (*Friends of the Kangaroo Rat v. California Department of Corrections* (August 18, 2003) Fifth Appellate District Number F040956.) As such, an Agricultural Land Mitigation Bank is not a valid form of mitigation for farmland conversion impacts. Accordingly, staff recommends that EIR Mitigation Measure 4.2.2 be deleted from the EIR.

### DISCUSSION

The Draft EIR for the RCIP General Plan states that the project will result in the conversion of prime farmlands, unique farmlands, farmland of statewide importance or land actively utilized for agricultural production to a variety of non-agricultural uses. In addition to identifying several General Plan policies that will reduce this potentially significant impact, the EIR proposes a mitigation measure that would establish an Agricultural Land Mitigation Bank. Mitigation Measure 4.2.2 is as follows:

"The County shall establish an Agricultural Land Mitigation Bank. The formation, authority, and operation shall be established by the County of Riverside and shall adhere to applicable

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<sup>1/</sup> "Designated farmland" refers to farmland of statewide importance, unique farmland, and prime farmland.

statutes of the State of California and Riverside County. The Agriculture Land Mitigation Bank shall be established no later than two years from the date of adoption of the *2002 Riverside County General Plan*.

“4.2.2B Subsequent to the establishment of an Agricultural Land Mitigation Bank, any development within any unincorporated area of the County resulting in the conversion of more than 80 acres of Prime, Unique, or Statewide Important farmland (designated farmland) as designated by the most recent version of the Important Farmland Map (as prepared by the California Department of Conservation, Farmland Mapping and Monitoring Program) shall purchase credits in the Agricultural Land Mitigation Bank at the rate of 1 acre (credit) for every four acres (or portion thereof) of designated farmland converted to non-agricultural uses. The 80-acre threshold shall be met by any combination of designated farmland. All designated farmland within a project site shall be included in the threshold computation, regardless of the size, location within the project site, or current status (fallow or farmed). Development applications received by the County prior to operational date of the Agricultural Land Mitigation Bank shall be exempt from the provisions of this mitigation.

“In determining the amount of farmland converted to non-agricultural use, the total effect of the development shall be considered, including the total amount of farmland within the limits of the project site and any off-site land directly required for the construction and operation of the proposed development.

“The project proponent shall submit evidence to the County that all appropriate credits have been purchased prior to the issuance of grading permits.

“4.2.2C Subsequent to the establishment of an Agricultural Land Mitigation Bank, any development within unincorporated Riverside County resulting in the conversion of more than 40 acres of land actively utilized for agricultural production (active farmland), shall purchase credits in the Agricultural Land Mitigation Bank at the rate of one acre (credit) for every acre (or portion thereof) of active farmland converted to non-agricultural uses. To be considered “active farmland,” land must have been utilized for agricultural production for two of the previous five years (prior to application). The 40-acre threshold shall be met only by the footprint of land on which crops are grown or livestock raised regardless of whether the land is State designated or not; and shall not include roadways, residential or production areas, equipment storage areas, or other non-production areas.”

Notwithstanding the proposal of Mitigation Measure 4.2.2, as well as the identification of several General Plan policies to off-set the loss of designated farmland, the EIR concludes the impact is significant and unavoidable.

Following the publication of the Fifth District Court of Appeal's decision in *Friends of the Kangaroo Rat v. California Department of Corrections, supra*, it is doubtful that the Agricultural Land Mitigation Bank is a valid mitigation measure for conversion of farmland. In that case, Petitioners sued the Department of Corrections ("CDC") under CEQA to stop the construction of a prison that would accommodate 5,160 inmates on a 480-acre parcel adjacent to the western corporate limits of the City of Delano. Construction of the prison would convert 480 acres of farmland to an "institutional use." Cumulative past, present and probable future projects would convert an additional 1,820 acres of farmland to non-agricultural use. The CDC concluded this impact could not be mitigated.

Petitioners commented, and later argued, that the CDC should have considered reducing the impact of farmland conversion by creating agricultural easements over designated farmland in the vicinity of the project site. In its responses to comments, the CDC asserted there is "no known mitigation" for the loss of designated farmland. The CDC further opined:

"[T]he suggestion that CDC purchase an easement over existing farmland is novel. [ ] No details are provided on how an easement would mitigate loss of farmland, how such an easement would be implemented, etc. As we can only infer the suggestion here, CDC would pay the owner of existing agricultural land to continue to farm the land. This would not mitigate the loss of farmland; it would not create new farmland or compensate for the loss of farmland that has already occurred."

The Court of Appeal agreed. It observed that once the project is constructed, "480 acres of farmland will be gone." It noted "[t]he only option for 'mitigating or avoiding the project's contribution to' loss of farmland would be to not build the prison," which in essence is the EIR's "No Project Alternative."

The Court disagreed that the creation of a conservation easement was valid mitigation under CEQA. "At best," the Court stated, "such an easement might prevent the future conversion of some as yet identified parcel of farmland to a nonagricultural use." But Petitioner's desired easement would not in any way avoid, reduce, rectify or minimize the impact to the specific 480-acre parcel under review. (See CEQA Guidelines, § 15370.) Nor would the easement "compensate for the impact by replacing or providing substitute resources or environments" because the easement would not create any new farmland where no farmland presently exists. (*Ibid.*) Accordingly, the Court rejected Petitioner's proposed mitigation.

In our case, the EIR proposes that future development applicants purchase credits in the Agricultural Land Mitigation Bank to preserve existing designated farmland. This measure is nearly identical to the measure rejected in *Friends of the Kangaroo Rat*. Payment of fees into a mitigation bank would not actually avoid or reduce the conversion of farmland resulting from development under the proposed General Plan. At best, the purchase of bank credits would simply mitigate the impacts of some future project at a different site. Assuming the Mitigation Bank would not fund the preservation of designated farmland which the General Plan slates for non-agricultural use, the mitigation measure would not mitigate farmland conversion resultant from land use designations in the proposed General Plan.<sup>2</sup>

In light of the *Friends of the Kangaroo Rat* decision, Planning staff recommend that EIR Mitigation Measure 4.2.2 be deleted. As a matter of law, it is not valid mitigation for the loss of farmland. In any event, the impact to farmland cannot be avoided, with or without the Mitigation Bank.

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<sup>2/</sup> The EIR concludes that the General Plan would slate 62,084 acres of designated farmland for non-agricultural uses. (See DEIR, pp. 4.2-12 and 4.2-17.) None of these 62,084 acres would be protected or preserved by operation of the Agricultural Land Mitigation Bank.