

Strategies for Preserving Open Space

Issue: Calaveras County is blessed with an abundance of productive open space that efficiently provides food and fiber, wildlife habitat, watershed protection, recreation, and scenic vistas. This open space and its many benefits are threatened by sprawling development.

Constraint: The County's current land use map supports sprawl. The open space element does not provide for a comprehensive strategy to preserve these productive open space lands.

Opportunities: A comprehensive general plan would include an open space action plan that implements an integrated set of strategies to maintain productive open space lands. Many California counties have developed such open space action plans. (See OPR's 2007 Planners Book of Lists, pp. 58, et seq.) We encourage Calaveras County to follow their example.

necessary facilities and services such as roads and fire protection. In areas where residential development or communities already exist, the desirability of keeping new development in the vicinity of existing development may render the resource production in the area incompatible.

TABLE II-2 NATURAL RESOURCE/COMMUNITY DEVELOPMENT DISTRIBUTION			
LAND USE	ACREAGE	TOTALS	PERCENTAGE
NATURAL RESOURCE LAND		361,740	54.98
Wildlife, Botanical	72,540		11.02
Timber, Dam Area, MRA-2A	143,630		21.83
Agriculture Preserve, MRA-2B	122,450		18.61
	23,110		3.51
COMMUNITY DEVELOPMENT LAND		284,230	43.20
Future Single Family	184,120		28.01
> 50% Slope	10,940		1.66
Community Centers	3,600		0.54
Residential Centers	31,140		4.86
Industrial*			
Existing Zoning	8,200		
Prime Industrial	9,480		
Adopted Community Plans	28,340		4.30
Adopted Special Plans	25,000		3.79
Adopted Specific Plans	1,090		0.17
CITY OF ANGELS AND ITS SPHERE		11,950	1.82
TOTAL COUNTY		657,920	

Family cuts historic deal for ranch

Dana M. Nichols
Record Staff Writer

Published Wednesday, May 3, 2006

ORVIS RANCH - Millions of years ago, this land was under the ocean. Now it is four square miles of open, rolling pasture where Hereford cattle lounge and meadow foam blooms.

Under the progression that usually governs the evolution of California land, it most likely would transform over the next two decades into 10-, 20- and 40-acre ranchettes, an extension of California's smog-filled suburbs.

But the Orvis family didn't want that.

So instead, family members cut a historic deal with land conservationists and with the state and federal governments, selling all development rights on the ranch for \$2.71 million.

"Grandpa and dad would be pleased that the ranch will never be split up into 40-acre parcels," said Bruce Orvis, 78, a descendant from a line that has ranched the area for 132 years.

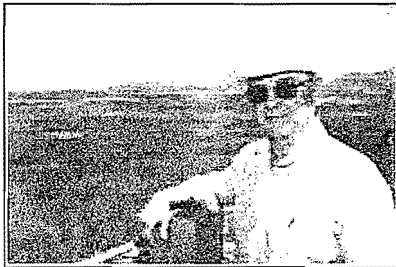
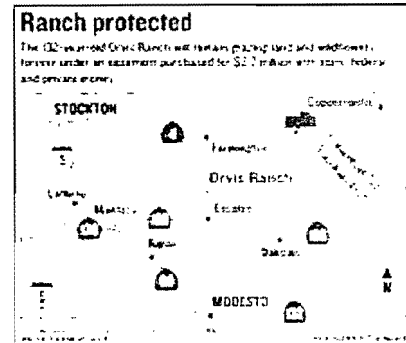
Orvis spoke to a crowd of 60 people gathered Tuesday for a celebration at the 2,563-acre ranch, which straddles the Calaveras/Stanslaus county line just north of Highway 4. State officials and land conservationists say the deal is the first intended specifically to protect agriculture in Calaveras County. (Previous easements all have been for wildlife habitat.)

The money - a little more than \$1,000 an acre - will go to install new fences and pay off loans, Orvis said.

The California Rangeland Trust will hold the easement, which allows the land visible along the north side of Highway 4 to be ranched forever but prevents any effort to subdivide it and build housing or other nonfarm buildings.

The money came from state and federal programs aimed at protecting farms and ranches from development, and from the private Great Valley Center.

Scientists who have studied the area say the ranch is home to rare soils and native plants.



Owner Bruce Orvis sold the development rights to his 2,563-acre ranch in Calaveras and Stanislaus counties in a deal with preservationists and state and federal agencies.

Credit: CRAIG SANDERS/The Record

Until recently, many Calaveras County property owners have been suspicious of any effort to preserve farms or habitat. The Orvis Ranch deal, however, has some leaders hopeful that more will follow to preserve at least a little of the county's landscape.

"There's a hue and cry for property rights, and this seems to satisfy both that and the need for open space," said Calaveras County Supervisor Bill Claudino, who represents the Valley Springs and San Andreas areas.

Supervisor Victoria Erickson, whose district includes the Calaveras part of Orvis Ranch, said she was very pleased to help the effort to put the easement in place but that she doesn't know of any other property owners in her district who want to make a similar deal to keep land in agricultural production.

She wants to see that the county's General Plan - which is soon to be updated - has provisions to support property owners who choose to preserve agricultural land through easements.

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One high-clay soil found just north of the ranch during a recent survey was new to science and was named McKeonhills, after the rancher who owns the land there, said Ed Burton, the U.S. Department of Agriculture conservationist assigned to California.

"It formed from old coral beds that developed when this was an inland sea," Burton said, adding that rock formations on the Orvis Ranch include rhyolite, like that from which the ancient Romans built the Colosseum.

Devere Dressler, a director of the California Rangeland Trust, thanked California voters for approving Proposition 40, the \$2.6 billion bond measure passed in 2002 that helped fund the Orvis Ranch easement purchase.

"Keep voting in those bonds, and you'll have viewscapes like this," Dressler said, sweeping his arm toward hills where grass rippled in the breeze.

Such agricultural easements are much more common in places such as western Marin County, where a quarter of the remaining ranchland is protected by easements, said Eric Vink of the Trust for Public Lands, which led the effort to negotiate the Orvis Ranch deal.

Family ranch plan is lauded

Published: May 3, 2006

By CHRIS NICHOLS

Bruce Orvis realizes his four children may never run the sprawling cattle ranch he's managed for decades.

But that hasn't stopped the 78-year-old Orvis from forever protecting the ranch's low-lying, grass-covered hills from development.

More than four dozen ranchers, politicians and conservationists gathered yesterday at the Orvis Ranch west of Copperopolis to celebrate the family's decision to place the 2,563-acre property in a conservation easement.

With the 2005 agreement, the family received \$3 million from the Trust for Public Land, a national conservation group, but gave up rights to divide and sell the property to developers.

The deal is the first of its kind in Calaveras County.

"All I wanted was that the ranch would never be cut up into 20-acre parcels," said Orvis, a soft-spoken man with a firm handshake, during the midday event at the ranch.

The Orvis family has raised cattle on the property for more than 130 years. The picturesque ranch runs for several miles along Highway 4, crossing into Stanislaus County.

"This will hopefully give us a chance to pass on (the ranch) to the grandkids and the great grandkids," Orvis said, speaking to a crowd seated on hay bales outside the ranch's three-story homestead.

Bruce and Roma Orvis' four children have long left the ranch. But the easement allows the family to retain ownership and all ranching rights on the property.

If a child or grandchild wants to return to manage the property, he or she can, the Orvises said.

Bill Orvis, one of the couple's three sons, said he'll likely stay in his current line of work, as an engineer at Lawrence Livermore National Laboratory.

Still, he's glad the rolling hills he remembers from his youth will stay preserved.

"My number-one priority is that it stay a ranch," said the younger Orvis, 55. "Just walking in the field, I see things that are the same as when I was 10 years old. Nothing has changed."

"You get out here," he continued, "and you can remember being a kid and going out the back door and being able to dig a hole ... If I wanted to go hunting, I could do that."

Bill's brother, Bruce, added he's not likely to run the ranch any time soon, either.

But he's also happy his boyhood home will stay in the family. The elder Bruce Orvis said a partnership will be formed among himself, his wife and four children to keep management control of the land, even if no family members live there.

"I think it's wonderful," said the younger Bruce Orvis. "It keeps the ranch in one piece. It will be here for a long time."

The younger Bruce Orvis is the general manager for the Alpine Lake Water Company, which provides water service near Bear Valley.

The elder Bruce Orvis was the original owner and developer of what is now Bear Valley Mountain Resort.

Several other ranchers applauded the Orvis' decision to protect the land, but said they were undecided on whether they'd enter a similar agreement.

"I've got family to talk to, but if push came to shove, I would not want it to get cut up into 20-acre parcels," said David Zwald of his 1,550-acre ranch neighboring the Orvises'.

"I'm not for subdivisions," he added.

Calaveras County Supervisor Tom Tryon, who attended the event and whose family owns about 2,500 acres of ranch land near Angels Camp, said he supports the Orvis' decision but noted conservation easements aren't for all ranchers.

He said his family hasn't discussed whether to enter such an agreement.

Nadine McBee said she's clear on what she wants to do with her more than 8,000 acres near the Orvis Ranch.

"We're keeping it in ranches," said the 80-year-old McBee, adding she has no plans to sell or divide her land.

"No way, I hate developers," she said. "I know developers have to make a living, but I'm not for them."

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General Plan Tools



The most basic way to preserve open space is by using the General Plan land use map and policies.

An Open Space Element with an Open Space Plan is required of each city and county General Plan in California. However, there are no requirements as to what must be held in open space, rather, a plan for what the locality deems important is all that is called for.

A number of open space policies can be enacted through the General Plan and its Open Space Element.

ESTABLISH LOW RURAL DEVELOPMENT DENSITIES

The most basic way to retain open space is through use of low-density residential, agricultural, and resource-related land use designations. What is “low density” is a controversial question in many counties. Is it 5 acres, 10 acres, 20 acres, or more? In general, parcel sizes over 20 acres are recognized as having the greatest value for continued habitat value and wildlife migration corridors. However, in areas that are not critical for habitat, acreages as low as 5 and 10 acres can visually preserve open space, particularly in forests. To ensure land stays agricultural, consideration must be given to the type of agricultural activity. Often, counties use a 40-acre minimum density for agricultural lands to ensure that a variety of agricultural uses are possible. Yet commercially viable farming of crops such as grapes and cut flowers can be supported by much less acreage. In contrast, Sierra ranches often need a much higher minimum parcel size to remain viable — typically 160-acre minimums. Counties that are seeking to retain their working ranches may adopt the higher minimum parcel sizes for grazing land.

USE OPEN SPACE DESIGNATION

One way for the County to increase the preservation of open space would be to place additional lands in the Open Space designation. These could include critical features such as ridgelines, wetlands, visual backdrops of communities, historic features, and so forth. In order to ensure that individual property

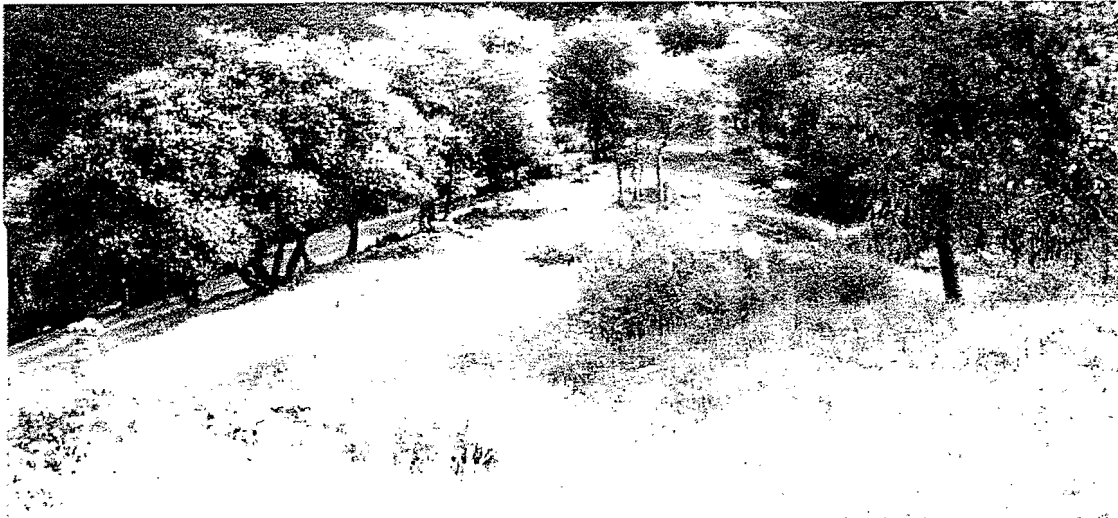
owners do not lose potential development rights on these lands, various tools can be used in compensation, including allowing the owner to cluster development density on less-sensitive portions of the site.

DIRECT GROWTH TO URBAN AREAS AND CITIES

General Plans serve the most important role in preserving open space by directing growth to urban areas and incorporated cities, which promotes compact development. Such policies can be backed by city-county agreements on revenue sharing so that counties do not have a disincentive to refer commercial development to cities. Often, policies ensuring that development proposed in unincorporated areas is referred to cities for review and annexation are also included to ensure implementation of this goal. (Amador County uses a similar policy.)

The Nevada County General Plan is a good example. A series of goals and policies in that Plan create “Community Regions” around each of the cities and more developed areas of the county. The more intense urban uses such as high density residential and industrial uses are only allowed in these areas. “Rural Places” are also established, creating a smaller boundary around small communities that exist in the county. Uses appropriate to these rural communities are allowed, such as neighborhood commercial, office professional, and multi-family residential — but on a much smaller scale than in the Community Regions, recognizing the desire to keep these communities small and retain their historic identity. The highest residential density allowed outside the Community Regions and Rural Centers is 5-acre parcels, allowing for suburbanization of some areas, mainly surrounding the Community Regions. Some counties with a greater agricultural emphasis use a larger parcel size outside the identified urban areas.

Directing growth to cities takes the county out of the urban development business and saves costs on infrastructure and services while protecting open space.



REQUIRE VOTER APPROVAL OF MAJOR GENERAL PLAN AMENDMENTS

Another approach is to require that any General Plan amendments which would result in increased density be voted on by the people. This is essentially the approach being used in Davis (though it applies only to agricultural land). This can be a very effective tool to ensure that desired low-density or agricultural designations are retained. To be effective, the vote requirement should be both for county and city actions. That way, if an increase in density is requested in a city annexation area, a vote would be required and if the applicant wanted to get around this requirement, he or she could not simply apply to the county instead.

The requirement of a vote of the people ensures that these General Plan amendments will not be taken lightly.

REDUCE AG/URBAN CONFLICTS

Land use conflicts between agricultural uses such as ranching and housing subdivisions can increase costs to farmers and ranchers and increase pressure to convert to urban uses. Using agricultural buffers in General Plans to separate new development on the fringe of urban areas from agricultural areas can be effective in reducing these conflicts.

In addition, most counties, including Amador County, already have adopted Right to Farm ordinances. These essentially notify nearby urban resi-

dents that agricultural operations have a right to conduct normal operations that include equipment noise, pesticides, and so forth.

USE "LAND EVALUATION AND SITE ASSESSMENT" — LESA

The General Plan can reduce the loss of important agricultural land by requiring the use of the LESA system prior to granting conversions from agricultural uses to urban uses (for instance, if a General Plan amendment is being proposed). This system applies a system of ratings to different characteristics of a parcel of land — soil quality, productivity, proximity to urban areas, water availability, location in an agricultural preserve, etc. — to determine its agricultural value. This system, however, does not take into consideration local importance or other open space values.



ANALYSIS

PROS: Using the General Plan to protect open space is a well accepted practice. It can protect vast areas of open space.

CONS: The General Plan can be changed up to 5 times per year by a majority vote of the board of supervisors or city council and can be subject to comprehensive update every 5 to 10 years. Property rights advocates often oppose regulatory methods of open space protection.

Zoning

June

The Zoning Ordinance can implement the policies of the General Plan calling for protection of resources and open space through a number of methods explained below.

RESOURCE PROTECTION STANDARDS

The County Zoning Ordinance can require retention of specific resource areas such as stream zones, steep slopes, ridge lines, historic areas, wetlands, key view areas, etc. These standards can apply in any zoning district where development is proposed. Mapping of these resources, impact studies, and management plans can be required as part of the project-approval process. A good example of resource protection standards can be found in the Nevada County Zoning Ordinance.

Mitigation fees, which can be used to purchase land off site, can also be assessed of individual projects to mitigate for loss of resources.

SETBACKS FROM SENSITIVE AREAS

Setback requirements are common in Zoning Ordinances. For instance, in urban and suburban areas 50- to 100-foot development setbacks from perennial streams or edges of riparian vegetation and 25- to 50-foot development setbacks from seasonal streams are common. These setbacks should be greater in timber production zones, steep slope areas, or areas of special habitat or other resource value since greater impacts could result from nearby land disturbance.

Amador County's Zoning Ordinance requires no setbacks for streams or riparian areas. However, a standard mitigation measure for riparian areas is applied to all projects subject to California Environmental Quality Act (CEQA) review. The measure requires a 50-foot setback from intermittent stream centerlines and 100-foot setback from perennial stream centerlines. Additional site-development standards, including



setbacks similar to those described above for environmental protection, would be effective in preserving open space resources. This would ensure that the setbacks would be applied even in projects not subject to CEQA such as individual, single-family homes.

CLUSTERING

Clustering is a term used for grouping homes and other permitted development in close proximity rather than scattered across a piece of property, usually to retain open space. There is no overall density increase. For example, rather than creating four 5-acre lots on a 20-acre parcel, the four homes would be clustered together on the least environmentally sensitive portion of the property. Each home could include a 5-acre lot with building permitted only in the defined cluster area or alternately, a small lot with a remaining commonly owned open space.

Mandatory clustering of development in environmentally sensitive areas is a common tool. Most zoning ordinances allow clustering of farm homes on agricultural lands so that farmers and ranching families are not required to scatter family homes based on the minimum parcel size (often 40- to 160+-acre minimums). However, clustering can also be required of residential, commercial, and recreational developments. Development on certain parcel sizes can be required to cluster or specific areas can be selected and a zoning map, planned development-type overlay used. Examples of good clustering ordinances are numerous.

Amador County does not require clustering in any residential zones, though it would be allowed if requested. It would be appropriate to encourage or require clustering in any locations with sensitive features which are zoned for residential or other suburban or urban uses.

SUBDIVISION- OR DEVELOPMENT PROJECT-REQUIRED OPEN SPACE DEDICATIONS

Each county and city is required to adopt a subdivision ordinance and ordinances guiding other types of development. Open space dedication can be required in any of these ordinances for required open space, landscaping, or recreation area.

Amador County does not require open space dedication within its subdivision ordinance. It would be appropriate to include this requirement for large subdivisions.

HOLDING ZONES/OVERLAY ZONES

Holding zones or zoning overlays can require that certain findings are made before density increases are allowed or before the underlying density allowed is permitted to go forward. A holding zone is sometimes referred to as a development reserve and would generally allow very low densities so that future planning options are not precluded. Zoning overlays are usually added to the base zoning to add regulation over special concerns such as design control or historic preservation. However, these overlays can also be used to require that special studies be prepared, or that thresholds such as population, demonstrated need, etc. are met, or that detailed master plans are prepared before development can go forward. Any requirement can be added to these overlay zones.



ANALYSIS

- PROS: Zoning ordinance standards tend to be quantified, objective, and clear.
- CONS: Adoption can be a hurdle and zoning standards can be changed at any time by a majority vote of the elected body. Variances can be granted. Property rights advocates often oppose regulatory methods of open space protection.

Density Transfers



Density transfers are not commonly used in California, but they have been used in some areas. Under a density-transfer system, density can be transferred from more-sensitive areas (transfer area) to less-sensitive parcels (receiving area). Density credits can actually be purchased from the transfer area or from a “density credits bank” set up by the jurisdiction or a land trust. This can be achieved on a case-by-case basis or the transfer and receiving areas can actually be mapped. For instance, areas ranked as high sensitivity in a Habitat Management Plan (see page 14) could be designated as transfer areas; density could be purchased from these areas by developers desiring more density in unconstrained areas. Another option would be to require successful general plan amendment applicants to purchase density credits from sensitive transfer areas in return for receiving the increased density on their own parcels.



ANALYSIS

- PROS:** Density transfer systems can fix past mistakes where inappropriate zoning density was applied to sensitive areas, but where there is not political will to reduce density.
- CONS:** Legal arrangements are required and the system can be complicated. County and city attorneys often prefer to avoid this system because of the complex work involved.

SAN LUIS OBISPO COUNTY TRANSFER OF DEVELOPMENT CREDIT PROGRAM

San Luis Obispo County has successfully used a Transfer of Development Credit Program for many years. The program is voluntary, incentive-based, and market-driven by willing sellers and buyers. The program is part of the County’s Zoning Ordinance. Sending sites must meet certain criteria to receive the designation: they must be agricultural; in valuable natural resource, open space, or viewshed areas; or in antiquated subdivisions. They receive credits through an evaluation process based on their development potential and can receive bonus credits if they are particularly sensitive. Sending site owners then sell their credits to receiving site owners or to a land trust. Receiving sites must receive environmental review to determine that significant environmental impacts will not result from the increased density and they must not be in agricultural preserves, amongst other criteria.

Urban Growth Boundaries (UGBs)

Green line or urban growth boundary (UGB) proposals have been very popular in urbanizing areas in recent years. The intent is generally to create a line around urban areas beyond which only relatively low-intensity land uses will be allowed, such as agriculture, very low-density residential, resource extraction, and so forth. Generally, a time limit is placed on the line after which it will be reconsidered.

UGBs have been created by voter initiative and by the elected body. In some instances the elected body has adopted a UGB and placed it on the ballot for ratification (as in Napa County and Novato). When a UGB is voted on by the people, it cannot be altered without another vote.

Based on the success rate of UGBs which have been voted on by the electorate, it appears that they are less controversial than other open space protection tools, possibly because they involve no expenditures or increased taxes and still permit growth, though not sprawl, into rural areas. Communities that have voted on and passed UGBs include Petaluma, Milpitas, Ventura County (see SOAR discussion next page), Novato, Sebastopol, Windsor, Livermore, Cotati, Marin County, Pleasanton, Healdsburg, and Davis.



Urban Growth Boundaries (UGBs), continued

ANALYSIS

PROS: Urban Growth Boundaries give very clear direction relative to where urban uses will be allowed. No interpretation is required.

CONS: Requires that the land use designations in place are satisfactory in their ability to retain open space, since existing land use designations in the ag/open space area are basically frozen. For instance, if spot zoning has been allowed in the past, creating areas with suburban or high-density residential designations within agricultural areas, the intent of creating an agricultural preserve may not be met. In these areas, a decision must be made to "clean up" these spot zones by reducing densities, or allowing sale or transfer of their development credits, or to allow these previously permitted densities to co-exist with the agricultural or open space zone, knowing that no additional intrusion will be allowed in the future.

SOAR

The most well known UGBs passed in recent years are the SOAR (Save Open Space and Agricultural Resources) initiatives passed in 1999 in Ventura County. The proponents (a group called SOAR) qualified the identical initiatives for the ballot in all six cities and the county area. They established a CURB (City Urban Restriction Boundary) around the cities which generally followed the adopted City Sphere of Influence line. Anything outside that line already designated Agriculture would remain so. No city services could be extended outside the CURB. And no zone changes, subdivision maps, etc. would be allowed inconsistent with the Initiative goals of preserving agriculture outside the CURB. The initiative built on the fact that the rural areas were designated in the County General Plan largely for agricultural uses. Five of the initiatives passed in 1999, the sixth was passed in November 2000.

The program is expanding into finding resources to purchase and accept donations of agricultural conservation easements so that the success of the agricultural zone will extend beyond the 20-year horizon before the CURB is reevaluated.

Williamson Act/Timber Preserve Zones/ Open Space Purchase/Conservation Easements

WILLIAMSON ACT

The California Land Conservation Act of 1965 (Williamson Act) was created to protect agricultural and open space land from urban development. Landowners enter into 10-year contracts with participating counties and cities, agreeing to restrict use of their land to agricultural or open space during this period in exchange for lower tax assessments.

Amador County currently has approximately 93,000 acres under Williamson Act contract with few acres up for non-renewal.

TIMBER PRODUCTION ZONE (TPZ)

The California Timberland Productivity Act allows counties to zone lands exclusively for timber production and related uses. Owners are able to apply for lower tax assessments in exchange. Amador County has approximately 30,000 acres zoned TPZ.

CONSERVATION EASEMENTS

Conservation easements can be purchased or donated to perpetually protect open space, agricultural lands, or historic sites, enabled by the Conservation Easement Act. The landowner and accepting agency or non-profit corporation agree on the types of uses that will be permitted and these are incorporated into

the easement. The landowner then may receive tax advantages including lower property tax assessments, charitable contribution income tax deductions, and lower land values for estate tax purposes. Advantages include the fact that the conservation easements are usually perpetual, the landowner retains ownership of the parcel, and the parcel's existing use is often continued.

The State of California offers yearly grants for the purchase of agricultural easements through the California Farmland Conservancy Program, which is administered by the California Department of Conservation.

ANALYSIS

Pros: These programs have had the greatest impact on preservation of open space in California. They are voluntary and reimburse land owners for preserving open space while keeping land in private ownership.

Cons: Williamson Act and TPZ designations are not permanent. Permanent conservation easements require legal and tax expertise to implement. Easement purchases can be costly.



Growth-Control Measures

A number of communities have enacted growth-control measures which ultimately may have the effect of preserving open space.

LEVEL OF SERVICE REQUIREMENTS — REQUIRE NEW DEVELOPMENT TO PAY ITS OWN WAY

Numerous measures have called for requiring that development not be allowed if critical public facility levels of service cannot be met. In Redlands, levels of service specified in the General Plan were turned into specific zoning standards. Numerous measures have also called for infrastructure concurrency. For example, off-site road improvements must be in place before construction occurs, rather than waiting for many years before mitigation fees from numerous projects can be collected to pay for needed road improvements. This is essentially what the successful El Dorado County initiative (Measure Y) required. Verified water supply prior to development approval was sought in El Dorado County, but narrowly failed.

Level of service requirements can be established in general plans, zoning ordinances, or by special ordinance and enacted by vote of the people or elected bodies.

NUMERICAL GROWTH CAPS

A variety of growth caps have been enacted or proposed in various cities and counties. This can be done by the General Plan, special ordinance, or vote of the people. They include:

- ☐ Restriction on rate of growth by building permit restrictions (examples: population growth rate of one percent in Half Moon Bay, three percent in Dixon).
- ☐ Commercial development cap (examples: passed in Seattle, narrowly failed in San Francisco).

- ☐ Maximum buildout number (examples: enacted in Morgan Hill, Pleasanton. Some communities have a buildout maximum in their general plan, passed by the elected body. Winters is an example with a maximum of 23,000).

JOBS:HOUSING BALANCE

One idea that may not have been used to date in California is a requirement that building permits be based on the number of jobs created annually or that building permits be based on the goal of achieving an appropriate jobs:housing balance. This could be effective in the foothills where residential development far outpaces job-creating development.

ANALYSIS

- PROS: Level of Service requirements are popular with voters, particularly related to traffic congestion. Growth caps are clear and let everyone know what has been agreed to relative to growth.
- CONS: Indirect way to protect open space. Invites conflict with development industry and property rights advocates.

Sphere of Influence Plans

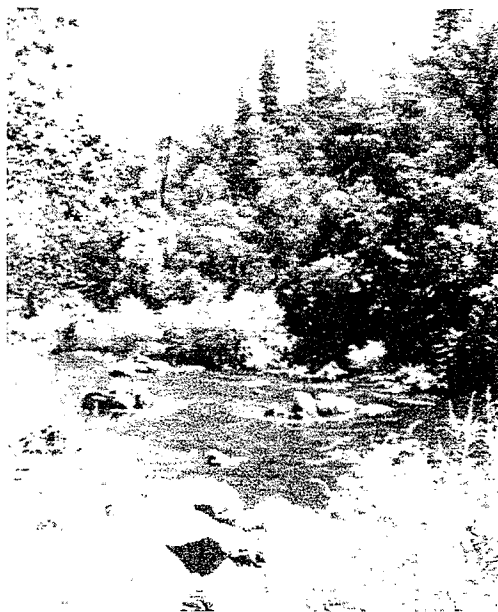
Each city is required to have an adopted Sphere of Influence approved by the Local Agency Formation Commission. LAFCOs also review individual annexation proposals. One of the state-mandated goals of LAFCOs is to preserve open space by ensuring that premature urban development and leap-frog development does not occur. The reality is that LAFCOs are manned by representatives of each local jurisdiction and the lofty state LAFCO goals tend to be ignored in favor of local pressures. However, limitations on the size of the Spheres of Influence and what will be required to annex these areas to incorporated cities (where presumably they will be allowed to develop at urban densities), as well as agricultural protection policies of individual LAFCOs, can be a powerful tool in protecting open space.

Individual cities must each adopt a Sphere of Influence Plan outlining the area they may attempt to annex in the next 20 years. Some LAFCOs require a phasing plan for this area which defines when each area will be considered for annexation (for example, 1-5 years, 6-10 years, 11-15 years from current date). A Plan for Services is also required of each city which shows how it will be able to provide public services to this potential annexation area. Local LAFCOs each have their own adopted policies and may require additional studies. Many cities have outdated Sphere of Influence Plans or Plans for Services. A moratorium on annexations could be imposed if this is the case. Most importantly, the Sphere of Influence Plan process, particularly when phasing plans are involved, can be used to create logical growth boundaries. In addition, some Sphere of Influence Plans absolutely prohibit extension of city services like sewer and water outside of city limits, a very strong growth management tool. Unfortunately, the cities' policies will have little effect unless accompanied by a county policy prohibiting package sewage treatment plants and septic systems on smaller parcels and limiting them in commercial and industrial parcels in unincorporated areas.

ANALYSIS

PROS: Sphere of Influence Plans can help determine the logical area needed for a city's growth expansion to help avoid sprawl, to ensure that public facilities for new growth areas can be funded, and to protect open space.

CONS: They are generally not used in this way. Rather, cities often view them as a procedural requirement and tend to place as much land as possible in their Sphere of Influence to maintain control versus county control. Their content is controlled by the elected bodies who often do not want to adequately fund their preparation. Also, often counties have designated the land within Spheres of Influence for substantial development which can go forward without annexation.



Purchasing, Accepting, and Holding Public Open Space and Easements

(Open Space Districts, Land Trusts, etc.)

A county or a city has numerous options available to purchase or receive open space land or conservation easements. In addition, any land received by a government agency can often be transferred to a private nonprofit land trust or other public agency with management capabilities. Some of the funding options include:

- Bond issues, sales tax, county service area fee, special district fee
- Grants
 - Federal (Land and Water Conservation Fund, ISTEPA Program — transportation-related)
 - State funds, such as
 - Environmental Enhancement and Mitigation Program
 - Environmental License Plate Fund
 - Prop. 70 funds
 - Prop. 12 funds
 - State Park purchase
- Private donations from individuals or groups. Donations of land or conservation easements to the county, cities, or the Land Trust are all options. Some agencies and land trusts actively seek donations, providing legal assistance for the transferees as well as tax advice. These donations are often provided for in wills of interested donors.
- Quimby Act mitigation fees assessed of new development to cover the need new development generates for parks and open space lands and facilities. This is the largest source of open space acquisition funds available to most counties. These fees are often lower than legally allowed which results in a missed opportunity to accrue funds as new development occurs.
- Mitigation fees from development projects

In order to conduct a vote for funds or to receive grants or donations, a special governmental agency such as an open space district is not required. But often it is a good idea to create an entity which can spend all of its time working on protection of open space, as well as ensuring that its funds will only be used for this purpose. Some of the possible organizational arrangements include:

Cooperative agreements with nonprofits

Nonprofit corporation with representatives of all user groups — like a Land Trust

Joint Powers Authority among the cities and the county. Needs no LAFCO approval. Can



transfer funds to a nonprofit corporation. Can include citizen members. Local governments would need to fund unless grants, bond, sales tax, or other funds received.

County Service Area. Can't purchase land. Can do operation and maintenance by parcel charge but fee needs to be approved by voters or Board of Supervisors annually per Prop. 218.

Special District — Open Space or Recreation District

This would function as an Independent Special District with its own Board of Directors. Special districts can cross city-county lines. If so, identical resolutions from the City and County are required. LAFCO must approve their formation. A district can be formed by the city council and/or board of supervisors without voter approval, but fees cannot be charged without voter approval. Sonoma County, Marin County, the East Bay, and Bay Area mid-peninsula counties all have successful Open Space Districts.

There are two options for forming and funding an Open Space District:

1. The District can be formed alone with no parcel charge vote and given seed money by the local government to get going. Then the District could create its own funding base through grants, donations, or voter approval. LAFCO might not approve its formation due to insufficient funding.
2. Formation of the District and authorization of funds can be put before the voters.

Two-thirds vote needed to authorize bond or overall parcel charge

A simple majority vote can be used if only property owners who will directly benefit are assessed and vote (per Prop. 218). As an example, 10,000 parcels with a \$20/year parcel charge could raise \$2-3 million (over 10 years) plus a small operations and maintenance budget, financed over 20 years. There are consulting firms that specialize in conducting this type of election (including an education campaign) with great success.

ANALYSIS

: An active open space acquisition program or district can start small and build on its success. Interesting coalitions can be formed. Obviously, open space acquisition ensures protection in perpetuity. Can leverage local funds as match for foundation funds and government grants. Can use advantageous government financing mechanisms. Can rely on willing-seller, willing-buyer arrangements for land or easements.

: Creating an open space district or other mechanism to purchase and receive open space land or easements can be a difficult task, especially since an election is involved, usually requiring a two-thirds vote, hard to achieve in a fiscally conservative area. A sales tax for open space acquisition, which required only a simple-majority vote, failed dismally in Placer County in November 2000. It takes many years and lots of money to assemble meaningful acreage.

MID-PENINSULA REGIONAL OPEN SPACE DISTRICT

The Mid-Peninsula Regional Open Space District was formed by the voters of San Mateo and Santa Clara counties in 1972. The District is a special district with a publicly elected Board of Directors. In 1976 major funding was agreed to by the voters; a parcel charge of \$1.74 per \$100 of assessed value of land was enacted.

The District now has annual revenues of \$16.9 million, mostly from the parcel charge; approximately three percent of the revenues are from grant sources. Over the years, the District has purchased 46,000 acres of land. (Contact: 650-691-1200)

Habitat Management Plans/Regulations

Habitat Management Plans (deer herd migration corridors, critical species habitat, wetlands, oak woodland, etc.) can be addressed by Habitat Management Plans which outline specific development and nondevelopment areas, design criteria, and management techniques. These plans are often adopted by the county and guide development in the Plan area similar to a Specific Plan or even Zoning Ordinance. They are not required by state law and, as a result, can include whatever is appropriate to the area in question. Tuolumne County has had an adopted Habitat Management Plan in force for many years. It has resulted in the permanent zoning (though not public acquisition) of approximately 840 acres of habitat.

A Habitat Management Plan should not be confused with Habitat Conservation Plans, which are allowed under state and federal law and result in binding agreements between the various responsible agencies (such as federal and state resource agencies and the county) and property owners/developers. Many in the environmental community have concerns over this

type of agreement because they may not be based on complete scientific data, require negotiation which may result in loss of habitat, and are difficult to amend if new resources are discovered after the agreement is signed. HCPs tend to take away a degree of local control, but they do provide some certainty to developers.

ANALYSIS

- Pros:** Habitat Management Plans can provide excellent protection for certain kinds of open space.
- Cons:** Extensive study is normally needed to prepare a Plan, which can be costly and time consuming. These plans usually do not address the many other goals of open space protection such as recreation, growth management, aesthetics, and quality of life.



Unincorporated projects require builder easements

By Greg Kane

Record Staff Writer

November 15, 2006 6:00 AM

STOCKTON - Developers will be required to find and purchase easements to replace every acre of farmland used for houses, shopping malls and most other projects in unincorporated San Joaquin County, local lawmakers decided Tuesday.

The county's agricultural mitigation program initially was to require builders either to pay an \$8,675-per-acre fee or directly to purchase farm easements replacing lost farmland, depending on the size of the project. But the county Board of Supervisors practically eliminated the fee after a nearly four-hour hearing featuring testimony from farmers, environmentalists and the building community.

Farmers say charging a fee lets developers buy their way out of mitigation requirements. But John Beckman, a spokesman for the Building Industry Association of the Delta, said after the meeting that eliminating the fee for projects smaller than 40 acres gives developers the difficult task of finding landowners willing to sell the future development rights to their properties - something he doesn't believe many are willing to do.

The farmers "keep saying sellers are readily available," Beckman said. "If they are, why can't they find them?"

The county's program doesn't affect projects within Stockton and other cities, where 99 percent of development has occurred in the past decade. But several cities, including Stockton and Lodi, closely watched Tuesday's proceedings as they develop their own farmland mitigation plans, officials said.

Supervisor Jack Sieglock, who voted to approve the changes, questioned whether the stricter requirements would make it a more-difficult sell to the cities. But Joe Petersen, a farmer and chairman of the county's Agricultural Advisory Board, said the farm community plans to push Stockton, Lodi and other city governments to follow the precedent set by the county.

Petersen also challenged Beckman's claim that most farmers or property owners would not be willing to sell easements on their farms. He said the San Joaquin Farm Bureau and the Central Valley Farmland Trust, a nonprofit that specializes in buying agricultural easements, would create a bank of willing sellers, "kind of like a craigs-list," from which developers could choose when preparing a project.

The board's decision was a dramatic reversal from two weeks ago, when it agreed 4-1 to require acre-for-acre exchanges from developers only for projects of 40 acres or more.

Lodi witnessed one of the county's first acre-for-acre farm preservation deals last summer when developers of the Reynolds Ranch project agreed to preserve 200 acres of nearby farmland.

Officials in Stockton are developing a plan that, at \$9,600 an acre, could have collected as much as \$32million in mitigation fees if it had been in place during the past decade. But the city is not considering a requirement that forces builders to purchase their own easements, said Steve Escobar, a senior planner in charge of developing the city's plan.

Stockton is also unlikely to include the primary zone of the Delta in its program, Escobar said. Others have criticized the board for allowing farm easements to be purchased in the primary zone, arguing that it does not protect threatened land, because no development is allowed there.

Contact reporter Greg Kane at (209) 546-8276 or gkane@recordnet.com

Some builders' fees would skyrocket under county proposal

By Daniel Thigpen

Record Staff Writer

January 13, 2007 6:00 AM

Builders in San Joaquin County will have to pay cities nearly four times more in fees when they develop on lands that displace threatened animals, insects and plants under a potential fee increase proposed by the county agency that oversees habitat planning and preservation.

But the fee hike may not be opposed by most builders; in fact, a lobbyist for local developers helped formulate the new fees.

The money collected is used to purchase an equal amount of habitat elsewhere that will be preserved forever.

Under the proposal, the basic fee for converting farmland to new housing, for example, would spike from \$3,463 per acre to \$13,022. A 100-acre parcel that would have cost developers \$346,000 then would cost \$1.3 million.

Fees for other habitats such as wetlands or grasslands would also see large increases, but the amounts vary by the type of land. Planners say current fees aren't adequate for today's soaring land values and that the proposed increase will help them play catch-up.

"Truly, (the current fee) was falling well short," said Steve Mayo, senior regional planner for the San Joaquin Council of Governments, the agency proposing the hike. "It wasn't enough to keep up."

COG approved the fee increases in November. The county and its seven incorporated cities also must approve the fee hikes individually for them to become effective April 1. Manteca is among the cities slated to approve them next week, and others will likely pass the fee increases later this month, Mayo said.

The fee plan, called the San Joaquin Multi-Species Habitat Conservation and Open Space Plan, works like this: When a builder puts up new homes or

business on natural habitat, cities charge them the fees, which are then collected by COG. The agency then uses that money to pay landowners elsewhere to leave their property undeveloped.

The idea is to match land preserved acre for acre with the habitat lost to development. But, because property values have increased faster than the development fees, the county hasn't had enough money to purchase the land it needs over the past few years, officials say.

John Beckman was a lobbyist for the Building Industry Association of the Delta when he worked with COG and consultants to craft the proposed new fee structure last year.

Beckman, who now is the chief economic development officer in Lathrop, said most builders don't oppose the fee increase because COG's program helps make state and federal regulatory hurdles, which are aimed at habitat preservation, easier to clear. So developers are willing to pay what it takes to keep the county program a success.

In late 2005, COG approved a smaller spike in fees to near their current levels, but Mayo called the measure a "Band-Aid" until a more comprehensive restructuring of the fee system could be completed. The last time that happened was in 1996, he said.

Since the plan was established in 2001, the agency has preserved about 6,400 acres of habitat, Mayo said. But the goal is to secure another 2,500 acres by year's end, he said.

To do that, the agency would likely need to spend anywhere from \$16 million to \$20 million, Mayo said. Heading into 2007, COG has only about \$2.7 million available for land acquisition.

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Proposed per-acre fee increase

Habitat type current fee proposed fee

Open space \$1,731 \$6,511

Agricultural \$3,463 \$13,022

Grasslands \$10,565 \$34,958

Wetlands \$63,277 \$69,858

S.J. County to require builders to match farmland acre for acre

By Greg Kane
Record Staff Writer
November 20, 2006 6:00 AM

Forever is a long time.

It's a statement that comes up often when farmers, landowners and politicians get to talking about farm easements, where the future development rights to a property are sold to preserve it as agricultural space. Most easements are expected to last "in perpetuity," meaning once those rights are sold, the property is expected to remain a farm for centuries, if not longer.

That's not an easy sell for landowners believing one day a developer might pay a hefty sum for their property.

"It's difficult to convince a landowner to give up those rights," said Bill Martin, the executive director of the Central Valley Farmland Trust, a nonprofit that specializes in agricultural easements. "We don't want to take them down a road that they may regret."

San Joaquin County officials formally will adopt a program Tuesday requiring builders in unincorporated areas to match every acre of farmland lost to houses and other projects with an acre of preserved farmland. The program will affect projects only in the unincorporated area, where less than 1 percent of development has occurred since 1996, but the county's \$1.75 billion agricultural industry plans to lobby Stockton and other cities heavily to persuade them to adopt similar programs.

That means more county landowners are likely to be offered money for farm easements in the coming years than ever before. And some wonder whether the market will be there to match the county's pace of development.

"You're going to require (developers) to spend months out on the open market trying to find something that is not readily available," Building

Industry of the Delta spokesman John Beckman told county supervisors last week.

There is currently only one farm easement in San Joaquin County, spanning 927 acres in Lathrop, Martin said. Developers in Lodi have also reached two deals with an environmental group to preserve a total of nearly 600 acres for two large planned subdivisions.

San Joaquin County farmers have sold the development rights to their properties in the past. The San Joaquin Council of Governments oversees a habitat conservation program that watches over about 6,000 acres divided among 12 property owners, many of whom are farmers, said Steve Mayo, a senior planner.

Mark Connolly, an attorney whose family operates farms in south San Joaquin County, sold one of the county's first habitat easements in 1991 for around \$1,000 an acre. The 427-acre property is used as habitat for the kit fox, although operators are still allowed to raise livestock on the land.

Connolly believes farmers and landowners will be even more interested in farm easements, because they have fewer restrictions than those used for habitat. He said easements typically cover 70 percent to 90 percent of the property's value, giving owners a nice windfall while allowing them to maintain title to their properties.

Martin, whose agency holds 12,000 acres of farm easement across four Central Valley counties, said easement values run closer to 30 percent to 50 percent of a property's full market value. That means a farmer with 100 acres of orchards worth \$10,000 an acre would receive between \$300,000 and \$500,000 to sell the development rights.

Still, the concept of "forever" looms large with landowners considering easements, Martin said. More willing sellers may be found in the eastern parts of the county and in the Delta, where development is either too far away for speculation or outlawed entirely, he said.

Then there's the question of who owns the land. Many farmers lease the properties on which they raise cattle and crops from investors or other

absentee landlords who might not be as likely to declare their land a permanent farm, observers say.

Manteca resident Hiram Sibley owns 100 acres near Tracy, 10 of which are leased to a dairy farmer. Sibley said Thursday that he and many other landowners view their properties as investments and aren't likely to give up potentially big dollars from development down the line.

"There might be people out on the periphery of the county that would be willing," Sibley said. "But I wouldn't give up my development rights for that."

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