



BEST BEST & KRIEGER
ATTORNEYS AT LAW

BENCHMARK
RESOURCES

BRIDGING THE GAP BETWEEN ECONOMIC DEVELOPMENT AND PROTECTING FARMLAND

*BEST PRACTICES FOR ADDRESSING IMPACTS TO FARMLAND
UNDER CEQA*

PRESENTED BY:

ANDREW SKANCHY, BEST BEST & KRIEGER

BRUCE STEUBING, BENCHMARK RESOURCES

PRESENTATION OVERVIEW

- CEQA & Agriculture
- Key Legal Decisions
- Mitigation Requirements and Options
- Case Study: The Carmelita Project
- Case Study: Adams Subdivision
- Best Practices
- Lead Agency Perspective
- Conclusion and Questions

WHY DO WE CARE ABOUT AGRICULTURE?

- “[T]he preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.” (Gov. Code, 51220(a).)
- “Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage. ... Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities.” (Pub. Resources Code, 10201(c).)
- CEQA is intended to effectuate these policies.

APPENDIX G QUESTIONS

- **II. AGRICULTURE AND FORESTRY RESOURCES.** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:
 - Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

APPENDIX G QUESTIONS *(CONTINUED)*

- Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?
- Result in the loss of forest land or conversion of forest land to non-forest use?
- Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?

KEY LEGAL DECISIONS

- 7 Published Decisions
- All but one of the CEQA documents determined that farmland impacts were significant and unavoidable
- Primary issues in the six cases was whether adopted mitigation options were feasible

CASE LAW SUMMARIES

- *Defend the Bay v. City of Irvine* (2004) 190 Cal.App.4th 316, 348-53.
- *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010)
- *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 301, 320-24.
- *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238.
- *Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105
- *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.
- *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526.

MITIGATION REQUIREMENTS

- “[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects” Public Resources Code, 21002.

Mitigation Includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.” (CEQA Guidelines, 15370.)

MITIGATION OPTIONS

- **Mitigation Options**

- Theme 1: Converting off site non-farmland to farmland
- Theme 2: Preserving Existing On-site Farmland
- Theme 3: Reclaiming On-Site Farmland

MITIGATION OPTIONS *(CONTINUED)*

Theme 1: Convert off-site, non-farmland to farmland.

- **Replacement:** Purchase land that is not currently being used as farmland and convert it to farmland.
 - *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 544-46 (Upholding infeasibility determination because mitigation would be cost prohibitive and converting land to farmland would result in its own set of environmental impacts.)
- **Right to Farm Ordinance:** Enact and rely on an ordinance that permits conversion of current non-agricultural land to agricultural land.
 - *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 544-46 (Upholding infeasibility because it would cause additional environmental impacts and it requires a willing party that wants to convert non-farmland to farmland.)

MITIGATION OPTIONS *(CONTINUED)*

Theme 2: Ensure existing, off-site farmland be preserved as farmland.

- **Conservation Easement:** Place a perpetual easement on existing farmland that requires the land to remain farmland.
 - *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1269-70. (Upholding lead agency's determination that conservation easement was economically infeasible.)
 - *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 348-53. (Upholding lead agency's finding that conservation easement was economically infeasible.)
 - *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 301, 320-24. (Upholding city's determination that there were no feasible mitigation measures to reduce impacts from permanent conversion of farmland to a less than significant level, even though city required 1:1 conservation easements to reduce impact.)

MITIGATION OPTIONS *(CONTINUED)*

■ ***Conservation Easement Continued***

- *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238. (Rejected lead agency claim that conservation easements were “legally infeasible.” Easements “may appropriately mitigate the direct loss of farmland when a project converts agricultural land to a nonagricultural use.”)
- *Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 126. (Declining to hold that County was required to adopt conservation easements as a mitigation measure)
- *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 544-46. (Upholding determination that conservation easement was infeasible because it was cost prohibitive and easement would not “replace” lost farmland.)

MITIGATION OPTIONS *(CONTINUED)*

- **Restrictive Covenant:** Restrict use of existing farmland to remain farmland via a Williamson Act contract, deed or condition of approval for a duration of time, but less than perpetual.
 - *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 348-53. (Upholding lead agency's finding that purchasing offsite lands for long-term agricultural use was infeasible.)
 - *Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 122-23. (Mitigation measure required non-impacted farmland on project site to be kept in agricultural use for 100 years (duration of the project) at approximately a 1:1 ratio (impacted land : restricted land))

MITIGATION OPTIONS *(CONTINUED)*

- **In Lieu Fees:** Pay a fee for lead agency or other designated agency or mitigation bank to acquire mitigation property
 - *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 348-53. (Upholding lead agency's finding that payment of impact fees to purchase offsite farmland was infeasible.)
- **Transfer of Development Rights:** An owner that has entitlement to develop farmland trades that right, or parts of that right, to someone who wants to develop another property.
 - *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 544-46. (Upholding infeasibility because it requires a common authority that provides for the transfer and a party willing to exchange the development rights.)

MITIGATION OPTIONS *(CONTINUED)*

Theme 3: Reclaim on-site farmland at the end of the project's life.

- **Reclamation:** Reclaim farmland that has been impacted by project back to farmland after project is terminated.
 - *Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105, 122. (Mitigation measure required all impacted prime farmland to be reclaimed to prime farmland after extraction of minerals.)

CASE STUDY: CARMELITA MINING PROJECT



I worked with Andrew on the Project that was decided in the Friends of the Kings River case

The Carmelita Project involving the biggest peach, plum, nectarine and table grape farmer in California

The proposed project was located on a peach, plum and nectarine farm about 20 miles southeast of Fresno

Cobbling soil made it difficult to farm and the tree's life was about half as much as trees grown west of Fresno is less rocky soil

CASE STUDY: CARMELITA MINING PROJECT *(CONTINUED)*



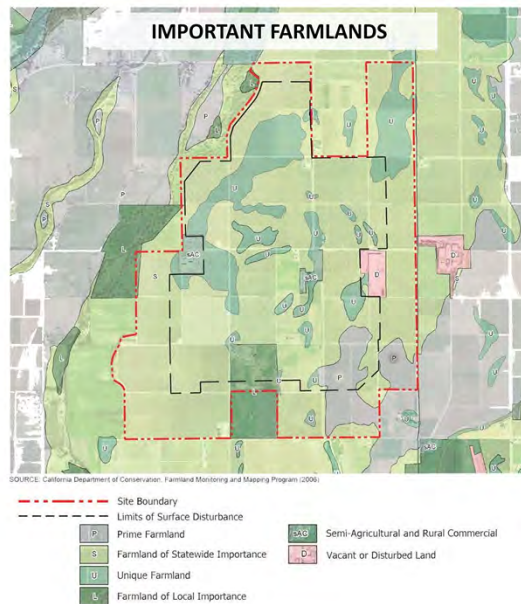
The cobbles in the soil caused damage and disease to trees and roots

Cobbles also disrupted water

Cobbles also damaged farming equipment

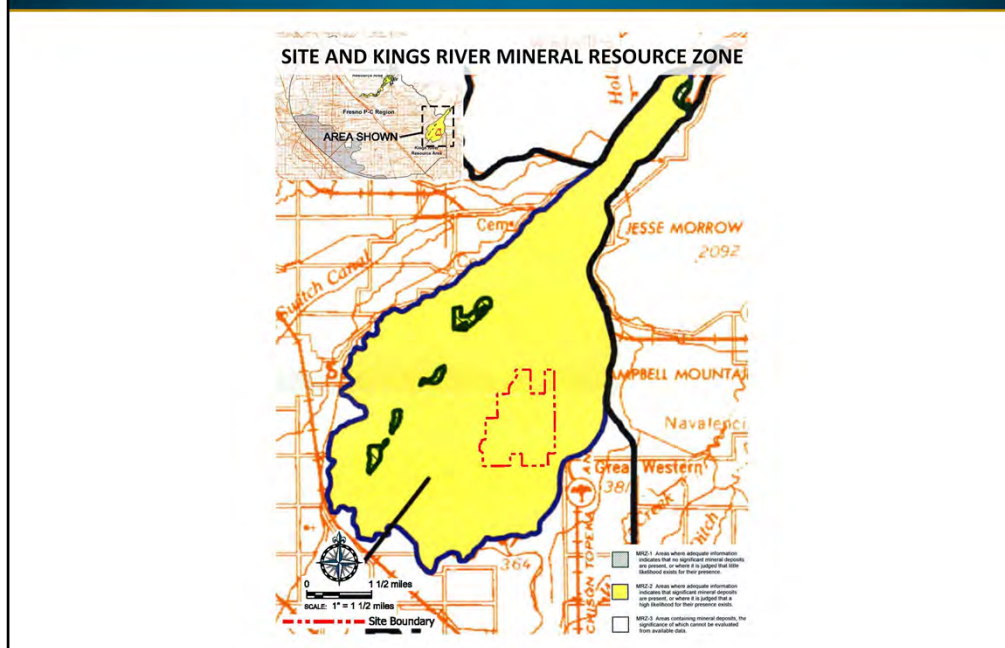
Pictures tell a thousand words.....better to mine than farm....at least until cobbles are removed.

CASE STUDY: CARMELITA MINING PROJECT (CONTINUED)



This graphics shows the 1,500 acre site in red
 Limits of disturbance was a little over 900 acres
 600 acres outside of disturbance area, but within the project site.
 Very little prime farmland was impacted within disturbance limit

CASE STUDY: CARMELITA MINING PROJECT (CONTINUED)



Site is located within the Kings River Mineral Resource Zone

This area is mapped by Department of Conservation as being an area where significant mineral resource are present or have a high likelihood of being present

Adopted in Fresno County General Plan

CASE STUDY: CARMELITA MINING PROJECT *(CONTINUED)*

Design Considerations:

- Williamson Act Compatibility
- Phased non-renewal of Williamson Act contracts to avoid need to cancel contracts
- Reclamation would enhance areas that are returned to agricultural use by removing cobbles from soil
- Reclaim prime areas that are disturbed back to prime farmland
- Water basins, while not trees, could be used for water supply instead of groundwater wells or Kings River water

DLRP interpretation of compatibility different than contract or County resolution

Most farm blocks had separate contracts, which allowed for phasing of non renewal to avoid cancellation/significant impacts

Reclaimed condition would actually enhance farmland quality

Water basins can be used to supply water in lieu of groundwater wells or diversions from Kings River...

Main concept: Turning challenging farmland to better farmland and areas lost will be used for water supply.

CASE STUDY: CARMELITA MINING PROJECT *(CONTINUED)*

Key Mitigation Measures

■ Mitigation Measure AG-1:

- Topsoil and vegetation removal shall not precede the initiation of surface mining activities in each Mine-Reclamation cell by more than 1 year.

■ Mitigation Measure AG-2:

- The Applicant shall ensure that the 602 acres within the Project Site, but outside the surface disturbance boundary, be maintained as an agricultural buffer zone, and remain in agricultural production for the life of the Conditional Use Permit, estimated at 100 years. (tenfold increase than would be realized under Williamson Act contract)

Main commitment: keep trees in production as long as possible

Farming expertise allows for systemic phasing and growing trees as long as possible

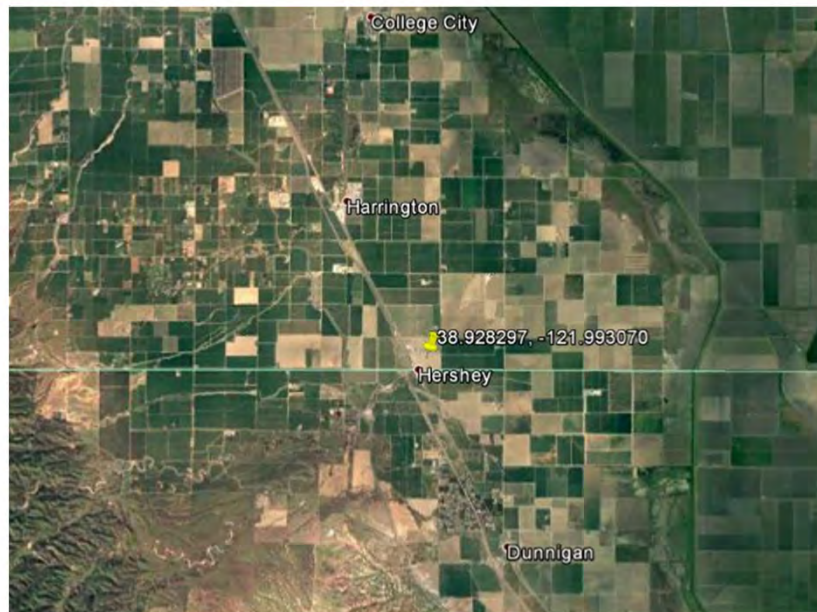
600-acre Super, super, super Williamson Act protection

Aesthetic benefits/blossom trail/land use compatibility benefits, in addition to farmland

CASE STUDY: ADAMS SUBDIVISION



CASE STUDY: ADAMS SUBDIVISION *(CONTINUED)*



CASE STUDY: ADAMS SUBDIVISION *(CONTINUED)*

- The loss or conversion of agricultural land within Colusa County shall be determined to be significant if the following conditions are met:
 - The land is designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance **AND** is designated by the Colusa County General Plan OR Colusa County Zoning Ordinance as Agricultural land.
 - The land is under an active Williamson Act Contract.

THRESHOLDS...NOT “YES” OR “NO”

II. AGRICULTURE AND FORESTRY RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

BEST PRACTICES

- Recognize particulars of project site to fine tune and make mitigation measures specific to the actual impact
- Identify the reason for mitigation and specify both the mitigation ratio and required number of acres to be preserved.
- Use enforceable language.
- Specify that both farmland and related resources such as water necessary for agriculture be protected.
- Specify geographic area where mitigation is to be located. Consider use of performance criteria instead of distinct boundaries to avoid escalating market value of mitigation lands.
- If Stacked mitigation is proposed with multiple mitigation objectives (e.g. farmland and biological resources) , ensure that objectives are compatible and that the mitigation lands area will remain economically viable as farmland.
- Impacts of mitigation measure on water supply based on drought and Sustainable Groundwater Management Act

Good facts, make good law...use site-specific circumstances to help give public and decision makers an understanding of how the project bridges the gap between economic development and farmland projection

Explain rationale of mitigation and provide applicable ratio and acreage calculation....your job, as CEQA practitioner it to provide public rationale and explanation of balancing competing objectives and values and providing decision makers political cover and judges an analytical roadmap of why ratios and mitigation was selected.

Project may be implemented in near or not so near future...provide clear and enforceable language...do not give public, decision makers or judge a reason to complain about the clarity and enforceability of the language.

No water = no feasible agricultural land...must be part of the mitigation solution.

Feasibility: Either specific area if that will make mitigation acceptable and appropriate. If, however, limited area that will drive up costs and feasibility, then consider performance standards.

Stacked mitigation.....great to be able to serve multiple objectives with mitigation, but need to make sure that one objective is compatible with other objectives...

Cool Example: Sacramento River Ranch Wetlands Mitigation Bank:

Wildlands' Sacramento River Ranch mitigation complex in Yolo County, California is a prime example of farming and multi-use management. A wide variety of crops including small grains, forages and vegetable crops are planted on a sustainable, rotational basis. The ranch also contains nearly 700 acres of walnuts in addition to 640 acres of organic forage production. An on-site nursery for native plants such as elderberries, oaks, cottonwoods, wild rose, ash and willows is used in Wildlands' restoration efforts.

119 acres of wetlands at the southern end of River Ranch were created to be maintained as a wetlands bank, which filters irrigation water and provides wildlife habitat. Sacramento River Ranch

Swainson's Hawk Preserve: 838 acres of irrigated pasture and field crops on the property support foraging by Swainson's Hawk.

Sacramento River Ranch VELB Conservation Bank: The northern part of the property is managed as 234 acres of riparian habitat for the Valley Elderberry Longhorn Beetle.

Fremont Landing Conservation Bank: A two mile stretch (96 acres) of naturally occurring floodplain along the Sacramento River was established as the first federally approved conservation bank for endangered and threatened salmon and steelhead. - See more at: http://www.wildlandsinc.com/case_studies/sacramento-river-ranch-mitigation-complex/#sthash.aazHiWgJ.dpuf

Row crops are suitable mitigation and have benefit as foraging or cover for some species, e.g. swainson hawk....other crops...like vineyards, may be suitable for farmland, but not have similar biological benefits.

Need to be cognoscente of environmental impacts of ag mitigation...drought, SGMA....

BEST PRACTICES *(CONTINUED)*

- Safest Approach: Significant and Unavoidable
- Still Need to Consider All Feasible Mitigation Measure
- Lead Agency: Has Discretion to Craft Own Thresholds of Significance

LEAD AGENCY PERSPECTIVE

- Bridging Gap Between Economic Development and Protecting Farmland
- Using Legislative Powers and Lead Agency Discretion to Provide More Local Flexibility
- Right to Farm Ordinances
- Yolo County Agricultural Mitigation Ordinance
- General Plan Policies
- Mitigation Ratio Policies

Matt Treber was not able to make it, however, we wanted to review some of the tools that are in the lead agency's toolbox that are used to bridge the gap between economic development and protecting farmland

Andrew discussed some of the use of the legislative powers in adopting thresholds in the *Rominger* case, other tools including general policies and mitigation ratio ordinances that can be relied on as appropriate mitigation in the CEQA context.

LEAD AGENCY PERSPECTIVE (CONTINUED)

CALIFORNIA CITIES AND COUNTIES
WITH EXISTING AGRICULTURAL LAND MITIGATION PROGRAMS

City or County	Year Adopted	Mitigation Ratio	ALLOWED MITIGATION METHODS			
			Land Dedication	Ag. Conserv. Easement	In Lieu Fees	Mit. Land Banking
City of Brentwood	2002; 2010	1:1	X	X	X	
City of Davis	1995; 2007	2:1	X	X	X	
City of Gilroy	2004 (est.)	1:1	X	X	X	
City of Hughson	2013	2:1		X	X	X
Cities of Lathrop, Manteca and Tracy	2005	n/a			X	
City of Livermore	2004 (est.)	1:1+ ^a		X		
City of Stockton	2006	1:1		X	X	
San Joaquin County	2006	1:1		X	X	
Stanislaus County	2007	1:1		X	X	X
Yolo County	2008	1:1		X	X	

Source: County of Yolo Agricultural Mitigation Program Policy Options for Increased Mitigation Ratios
2015 California Mitigation Summit, March 5, 2015 (Hausrath Economics Group).

The next couple tables were presented at the 2015 California Mitigation Summit. Most of lead agencies have used a 1:1 ratio....some jurisdictions...like the City of Hughson in Stanislaus County have pushed the ratio to 2:1. Mitigation methods are the tools that Andrew talked about when he was reviewing case law:

- Land dedication
- Ag conservation easement
- In lieu fees
- Mitigation land banking

LEAD AGENCY PERSPECTIVE (CONTINUED)

CALIFORNIA CITIES AND COUNTIES WITH EXISTING AGRICULTURAL LAND MITIGATION POLICIES OR POLICIES UNDER CONSIDERATION

City or County	Year Policy Adopted	Proposed Mitigation Ratio	ALLOWED MITIGATION METHODS			
			Land Dedication	Ag. Conserv. Easement	In Lieu Fees	Mit. Land Banking/TDRs
City of Morgan Hill	In process	0:5 – 2:1	X	X		
Butte County	2010	TBD	TBD	TBD	TBD	TBD
El Dorado County	2004	1:1	X	X		
Merced County	In process	TBD	TBD	TBD	TBD	TBD
Sacramento County	2011	1:1	TBD	X	TBD	TBD
San Benito County	2013	1:1	TBD	TBD	TBD	TBD
Solano County	2008	1.5:1		X		X
Tehama County	2009	TBD	TBD	TBD	TBD	TBD

Source: County of Yolo Agricultural Mitigation Program Policy Options for Increased Mitigation Ratios
2015 California Mitigation Summit, March 5, 2015 (Hausrath Economics Group).

Do we have any local planners, elected or consultants that are grappling with these issues here today?

We have ___ left for our presentation, Andrew and I would like to open it to get first hand perspective from the trenches

Is there anything that we've missed, any issues you want to amplify or any questions or follow up on anything we've presented?

<http://toolkit.valleyblueprint.org/tool/agricultural-mitigation>

QUESTIONS?

- Presented by:

- Andrew Skanchy, Best Best & Krieger
Andrew.Skanchy@bbklaw.com
(916) 551-2854
- Bruce Steubing, Benchmark Resources
bsteubing@benchmarkresources.net
(916) 983-9193

