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

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.)
MUTIGATION 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
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.)
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.)
  
  
  - *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.)
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.)
**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.


- *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.)
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.)
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
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.
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
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 resources are present or have a high likelihood of being present.
Adopted in Fresno County General Plan.
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 of diversions from Kings River...
Main concept: Turning challenging farmland to better farmland and areas lost will be used for water supply.
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 (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.
**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:

<table>
<thead>
<tr>
<th>Impact Level</th>
<th>Mitigation Considered</th>
<th>Impact Considered</th>
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<tr>
<td>No Impact</td>
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- a) Convert Prime Farmland, Unique Farmland, or Farmland of Ecological 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?
- b) Convert with existing zoning for agricultural use; or a Williamson Act contract?
- c) Conflict with existing zoning for, or cause conversion of, Forest land (as defined in Public Resources Code section 12230(g)), timberland (as defined by Public Resources Code section 4520), or timberland and non-timberland Production (as defined by Government Code section 59161.40)?
- d) Result in the loss of forest land or conversion of Forest land to non-forest use?
- e) Involve other changes in the existing environment which, due to their character or extent, could result in conversion of Farmland, to non-agricultural use or conversion of Forest land to non-forest use?
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
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.
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

### California Cities and Counties with Existing Agricultural Land Mitigation Programs

<table>
<thead>
<tr>
<th>City or County</th>
<th>Year Adopted</th>
<th>Mitigation Ratio</th>
<th>Land Dedication</th>
<th>Ag. Conserv. Easement</th>
<th>In Lieu Fees</th>
<th>Mit. Land Banking</th>
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<tbody>
<tr>
<td>City of Brentwood</td>
<td>2002, 2010</td>
<td>1:1</td>
<td>X</td>
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<tr>
<td>City of Devils</td>
<td>1995; 2007</td>
<td>2:1</td>
<td>X</td>
<td>X</td>
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<tr>
<td>City of Gilroy</td>
<td>2004 (est.)</td>
<td>1:1</td>
<td>X</td>
<td>X</td>
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<tr>
<td>City of Hughson</td>
<td>2013</td>
<td>2:1</td>
<td>X</td>
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<tr>
<td>Cities of Lathrop,</td>
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<td>Manteca and Tracy</td>
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<tr>
<td>City of Livermore</td>
<td>2004 (est.)</td>
<td>1:1*</td>
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<tr>
<td>City of Stockton</td>
<td>2006</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>San Joaquin County</td>
<td>2006</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>Stanislaus County</td>
<td>2007</td>
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<td>Yolo County</td>
<td>2008</td>
<td>1:1</td>
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</tbody>
</table>

Source: County of Yolo Agricultural Mitigation Program Policy Options for Increased Mitigation Ratios
2015 California Mitigation Summit, March 5, 2015 (Havrath 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