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Via E-Mail and U.S. Mail

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Dennis Bunting
County Counsel
Solano County
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Re: Enforcement of Fairfield Measure L

Dear Mr. Stepanicich and Mr. Bunting:

Our firm represents the Solano County Orderly Growth Committee, a group of citizens committed to protecting the rural character of Solano County from sprawling urban development. The Committee is especially concerned with the enforcement of Measure L, a voter-approved amendment to the City of Fairfield's general plan reaffirming the City's urban limit line policies. These policies prohibit the City from providing municipal services to support urban development outside of the urban limit line.

In contradiction of these policies, plans for two residential subdivisions outside of the City's urban limit line propose to rely on City services. The Middle Green Valley Specific Plan proposes to obtain (1) surplus water from the City through a County Service Area formed for the development, or (2) Solano Irrigation District ("SID") surface water that would be treated by the City and then delivered to the project site through a hookup to the City's water system. The Woodcreek 66 project similarly proposes to obtain SID water treated by the City through a connection to the City's water system. It also proposes to connect to the City's sewer system.

We are concerned that County and the City staff may be under the mistaken impression that these proposals could be permitted under Measure L. In an October 27, 2014 letter regarding the Middle Green Valley project, the County Counsel's office suggests that Measure L could be invalid or inapplicable under various legal theories. Letter from Lee Axelrad to Michael Yankovich (Oct. 27, 2014), attached hereto as Exhibit A, at 5-6. The City's Public Works department has also stated that it could provide water services to the Middle Green Valley and Woodcreek 66 projects as proposed. Letter from George Hicks to Bill Emlen (Nov. 7, 2011); letter from George Hicks to Jim Leland (Aug. 12, 2013), attached hereto as Exhibits B and C.

We have reviewed the theories proffered in these letters and have determined that Measure L is valid and means exactly what it says: the City may not provide municipal services for residential developments outside of the urban limit line. Our detailed analysis is included below.

It is our hope that after considering this analysis, the City will clarify its previous letters by stating that that it will not provide water treatment or delivery services for the Middle Green Valley and Woodcreek 66 projects unless City voters approve an amendment to Measure L. *See* Measure L §1(B) (general plan provisions readopted by Measure L may only be amended by a vote of the people through December 31, 2020), attached hereto as Exhibit D. By clarifying its position, the City will signal to the voters that it will enforce Measure L as it must. It will also discourage developers from pursuing projects outside of the urban limit line that do not have a viable water supply.

Even absent a written clarification from the City, the County should inform developers that water treated by the City is—at best—an uncertain supply. The County already reached this conclusion for Middle Green Valley. *See* Exhibit A at 4. The County should similarly discourage developers from relying on connections to the City's water or sewer lines.

The City has not made any commitments that obligate it to provide or treat water for these projects. The City has issued water supply assessments and verifications of sufficient water supply for the Middle Green Valley subdivision. A water supply assessment, however, simply states that a city has sufficient water to serve a development *if* it becomes the supplier. Water Code §10910(b). A verification of sufficient water supply is simply a more detailed assessment; *by statute* it does not commit the City to provide any services. Gov. Code §66473.7(m) ("Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service."). Nor do the letters from the Public Works Director bind the City in any way. *See* Civ. Code §1550 (a mere promise is not enforceable without consideration); Gov.

Code §40602 (a municipal contract must be signed by the mayor). Accordingly, the City is free to decline any requests to facilitate the Middle Green Valley or Woodcreek 66 projects.

We ask that the City notify us if it is presented with any proposed agreement to treat SID water for one of these projects or any request to allow these projects to connect to its water or sewer lines. The City should not be considering any such requests. As discussed below, there is no basis to conclude that Measure L allows the City to support the Middle Green Valley or Woodcreek 66 projects with these services.

I. Measure L Reaffirms the City's Policies Prohibiting Services for Subdivisions Outside the Urban Limit Line.

In 2002, the Fairfield City Council approved a comprehensive amendment to the City's General Plan that tightened the City's urban limit line and included policies to prohibit urban development outside of this boundary. A group of citizens qualified an initiative measure readopting and reaffirming these policies to ensure that they would have long-term effect. After the City Council adopted the initiative, it was placed on the ballot as Measure L through a referendum petition.

City voters approved Measure L in November, 2003. Measure L readopted the following provisions of the City's General Plan Land Use Element:

> Objective LU 3: Establish an urban limit line that allows development to be satisfactorily planned before it occurs.
>
> Policy LU 3.1: What is urban shall be municipal, and what is rural shall be within the County. Any urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line established by the General Plan.

As the City's General Plan explains, these policies "direct that urban development be confined within this Urban Limit Line. The Urban Limit Line spells out a commitment on the part of the City of Fairfield to respect the integrity of the surrounding non-urban areas." General Plan at LU-25. In other words, to protect rural areas and manage growth, the City will not provide services for urban development outside of the City's urban limit line.

II. Measure L is a Valid Growth Control Measure.

Measure L follows a long line of local growth control measures consistently upheld by the courts. It is well settled that "[i]t is not against the law or public policy to use utilities as a tool to manage growth." *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 977. "Neither common law nor constitutional law inhibits the broad grant of power to local government to refuse to extend utility service." *Dateline Builders, Inc. v. City of Santa Rosa* (1983) 146 Cal.App.3d 520, 530. This includes the power to refuse to provide water service. *Kern-Tulare Water Dist. v. City of Bakersfield* (1987) 828 F.2d 514, 521. (finding no state laws "which derogate from a municipality's right to preserve water for present and future uses").

Moreover, any challenge to the validity of Measure L will face an uphill battle, as the courts generally defer to the initiative power:

> Declaring it the 'duty of the courts to jealously guard this right of the people,' the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process.' [I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserved power, courts will preserve it.

Rossi v. Brown (1995) 9 Cal.4th 688, 695 (citations omitted). None of the theories advanced by the County overcome this steep hurdle.

III. Measure L Is Not Preempted by the California Constitution or State Statutes.

County Counsel's letter suggests that Measure L is preempted by Article XI, Section 9 of the California Constitution, Water Code section 382(a), or Public Utilities Code section 10005. This is not the case. These laws simply provide cities with the authority to sell excess water outside of their municipal boundaries as follows:

- "A municipal corporation may establish, purchase and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It *may* furnish those services outside of its boundaries, except within another municipal corporation which furnishes the same services and does not consent." Cal. Const., art XI, § 9(a) (emphasis added).

- "Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency *may* sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following: (1) Water that is surplus to the needs of the water users of the agency. (2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency." Water Code § 382(a) (emphasis added).

- "Whenever, in the operation of a utility, a municipality develops an excess of water, light, heat, or power, over and above the amount which is necessary for the use of the municipality and its inhabitants, or such portion thereof as the legislative body of the municipality determines is to be supplied therewith, the municipality *may* sell, lease, or distribute the excess outside of its corporate limits." Pub. Util. Code § 10005 (emphasis added).

The California Constitution recognizes the authority of cities to make and enforce "all local police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const., art. XI, § 7. If a local law conflicts with state law, it is preempted. Presumably, the County suggests that Fairfield General Plan Policy LU 3.1, readopted by Measure L, is preempted because it prevents the City from providing water outside of its boundaries while state law allows the City to do so.

A local law is not contrary to state law, however, "unless the ordinance directly requires what the statute forbids or prohibits what the state enactment demands." *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc*. (2013) 56 Cal.4th 729, 743. Here, state law does not "demand" that the City provide extraterritorial water service. The laws cited by the County are permissive grants of power stating what the City "may" do if it chooses.

By adopting Policy LU 3.1, the City Council decided that it would not exercise its authority to provide water services outside of the urban limit line. This policy was then reaffirmed by City voters approving Measure L. Because state law does not *require* the City to provide water outside of its boundaries, it is possible for the City to simultaneously comply with both state law and Measure L. Accordingly, Measure L does not conflict with state law and is not preempted. *City of Riverside,* 56 Cal.4th at 754-55 (local law prohibiting activity permitted by state law is not preempted because it is possible to "simultaneously comply with both").

Because the above laws are permissive grants of authority, the courts have upheld local restrictions on extraterritorial water sales. For instance, in *County of Del*

Norte, the court upheld a city policy prohibiting new water connections outside city limits. 71 Cal.App.4th at 973- 76. It rejected a claim that Public Utility Code section 10005 prohibits the policy because that statute provides a city with the "discretion" to sell water outside of its limits, but does not mandate that it do so. *Id.* The courts have also held that a city may prohibit transferring water outside of its boundaries under Water Code section 382. *Kern-Tulare Water Dist. v. City of Bakersfield* (1987) 828 F.2d 514, 519; *see also Glenbrook Development Co. v. City of Brea* (1967) 253 Cal.App.2d 267, 274 ("the authority granted to a city under article XI, section 19 [now section 9] is a 'privileged power'; a city is not obligated to furnish water to its inhabitants and has no duty of supplying water").

This is not a situation where the *state* legislature enacts a law taking away the City's authority to provide municipal services outside of its boarders. *See City of Mill Valley v. Saxton* (1940) 41 Cal.App.2d 290, 294. Instead, the City has voluntarily decided not to exercise that discretionary power. Just as the City Council may decide not to provide water outside of its boundaries, so too may the voters stand in the City Council's shoes and adopt the same policy. *Devita v. County of Napa* (1995) 9 Cal.4th 763, 775 ("the local electorate's right to initiative and referendum . . . is generally co-extensive with the legislative power of the local governing body").

In any event, Measure L preserves much of the City's discretionary authority granted by state law. Measure L is not a complete ban on extraterritorial water service. It only prohibits water services for *urban* development located outside of the *urban limit line*. And it allows City voters to waive these restrictions. *See DeVita*, 9 Cal.4th at 792-93 (voters may amend policies adopted by initiative and courts presume they will approve any necessary amendments). Further, Measure L's voter-approval requirement is time limited—it expires on December 31, 2020.

IV. Measure L Does Not Interfere With an Essential Governmental Function.

The County's letter suggests that Measure L violates "the legal principle that an initiative may not interfere with the efficacy of an essential governmental power, including the power to manage fiscal affairs through administrative and executive acts . . . ." While an initiative may not impermissibly interfere with the essential governmental function of fiscal management, Measure L does no such thing.

An initiative is invalid under this doctrine only when "the inevitable effect would be *greatly to impair or wholly destroy* the efficacy of some other governmental power, the practical application of which is essential . . . ." *Simpson v. Hite* (1950) 36 Cal.2d 125, 134 (emphasis added); *see also Santa Clara County Local Transportation*

Authority v. Guardino (1995) 11 Cal.4th 220, 254. An initiative that eliminates no major sources of irreplaceable funding and has only a minor effect on future budgets does not constitute impermissible interference. *Rossi v. Brown* (1995) 9 Cal.4th 688, 710 (upholding initiative repealing City tax).

Measure L does not impair, much less greatly impair, the City's ability to manage its fiscal affairs. The County claims that Measure L interferes with the City's ability to "receiv[e] payment for the provision/sale of water or water treatment services." Exhibit A at 6. Measure L does not require the City to provide water services for free, however. It simply prevents the City from selling or treating water outside of the urban limit line. In doing so it does not eliminate any significant source of revenue and thus does not constitute impermissible interference.

Citizens for Jobs and the Economy v. County of Orange (2002) 94 Cal.App.4th 1311, cited by the County, does not apply. That case invalidated an initiative that arguably impaired existing County contracts and placed a number of procedural and spending restrictions on the County's ability to facilitate a development as mandated by a separate voter-approved land use policy. *Id.* at 1321, 1330. None of these circumstances are present here. Measure L does not impair any existing contracts or restrict the City's ability to comply with other voter-approved land use policies.

The *Citizens* court expressly recognized that land use policy initiatives are permissible where they "directly amend the general plan or provide other substantive policy" rather than merely "impose procedural hurdles upon the planning process." *Id.* at 1329. Measure L is just this type of permissible general plan amendment.

V. Measure L Applies to Water Treatment and Supply Services as Well as Sewage Transport Services.

The County's letter notes that Measure L does not expressly apply to water sales or treatment services and suggests that such services are therefore not covered by Measure L. This argument is untenable. Water supply and water treatment are clearly "basic municipal services" covered by Measure L.

The Solano County Superior Court has already found that Measure L applies to water services, ruling that Measure L "on its face restricts the ability of the City of Fairfield to provide water services beyond city limits." *Upper Green Valley Homeonwers Assoc. v. County of Solano*, County of Solano Superior Court No. FCS036446, Ruling After Writ of Mandate Hearing (Oct. 26, 2011) at 5, attached hereto as Exhibit E.

There is ample support for this ruling. The California Constitution recognizes water service as one of several basic municipal services. Cal. Const., art XI, § 9(a) ("A municipal corporation may establish, purchase and operate public works to furnish its inhabitants with light, *water*, power, heat, transportation, or means of communication.") (emphasis added). Further, state law recognizes that water service includes water treatment services for other public agencies. Water Code § 10912(c)(3) (defining public water system to include "[a]ny person who treats water on behalf of one or more public water systems for the purpose of rending it safe for human consumption"). Treating water to potable standards is a basic and necessary service for urban development and is therefore covered by Measure L.

Measure L would also apply to sewage transport services. We understand that the Woodcreek 66 project proposes to connect to the City's sanitary sewer line located in Suisun Valley Road and may be asking the City to maintain the sewer line extension into the development. Both of these sewage transport and maintenance services would be prohibited by Measure L as basic urban services. *See* Gov. Code § 66483 *et seq*. (local government may charge subdivisions for construction and operation of required sewer facilities).

Finally, as discussed in more detail below, Measure L was intended to prohibit the City from supporting residential subdivisions outside of the urban limit line. The County's cramped interpretation excluding water services would conflict with that clear intent.

VI. It Is Immaterial that City Services May Be Provided Through a Middleman Public Agency.

The County has argued that Measure L does not prohibit the City providing water services to *other* governmental entities that will then serve the proposed subdivisions directly. *See Upper Green Valley Homeowners Assoc.*, Respondents and Real Parties in Interest's Joint Opening Memorandum (Nov. 7, 2011), attached hereto as Exhibit F. The City's Director of Public Works also adopted this theory, stating that Measure L does not preclude the City from providing water services "to the Woodcreek Subdivision through a government entity agreement between the City and Solano County."[1] Exhibit C; *see also* Exhibit B (stating the City could provide water to Middle

[1] This letter states that the City currently provides water to other government agencies outside City limits, but it provides no examples of water services for *urban* developments that *postdate* Measure L. Moreover, it is the voters' intent that governs interpretation of Measure L, not the interpretation of City staff developed after litigation

Green Valley subdivisions as proposed because it "would not be providing the water directly to the end uses").

The County's interpretation is a transparent attempt to escape application of Measure L, and has already been rejected by the court as such. After considering the County's arguments and the Director's 2011 letter, the Solano County Superior Court ruled that "the very existence of this measure, and its clear restriction against providing basic municipal services beyond city boundaries without voter approval, creates significant legal uncertainty as to whether the City can, directly *or even indirectly*, supply water to the subject project." *Upper Green Valley Homeowners Assoc.*, Ruling Regarding Motion for Reconsideration (March 21, 2012) at 2 (emphasis added), attached hereto as Exhibit G.

As the Court's ruling reflects, Measure L is not somehow limited to the *direct* provision of services outside of the urban limit line. Policy LU 3.1 states that "[a]ny urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line . . . ." Which agency provides those services to the end user is immaterial; the City may not lend its support. Fairfield General Plan at LU-25 (the urban limit line "spells out a commitment on the part of the City of Fairfield to respect the integrity of the surrounding non-urban areas").

This interpretation is consistent with the stated purpose of Measure L, which is to "focus[] growth within the Urban Limit Line and protect[] agricultural areas outside of the Urban Limit Line." Exhibit D, § 1(B)(1). Its policies were adopted "[i]n the interest of promoting good land use planning, encouraging development in appropriate areas, and avoiding the traffic congestion, air pollution, and other problems associated with locating urban development in outlying areas with viable agricultural and open space uses . . . ." *Id.* § 1(B)(4).

Courts interpret initiatives broadly to effectuate the intent of the voters. *See Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th, 534, 550-51(interpreting initiative to apply retroactively despite absence of express language given "unmistakable" intent of the voters). To interpret Measure L to allow the City to support developments *indirectly* would defeat its stated purpose and the will of

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concerning Middle Green Valley was filed. *Hermosa Beach Stop Oil*, 86 Cal.App.4th at 550-51 (examining voter intent); *County of Sutter v. Board of Admin.* (1989) 215 Cal.App.3d 1288, 1295 (agency "litigation position" based on "the legal reasoning of staff counsel" not entitled to deference).

the voters. We would not expect the courts to countenance such arguments. *See Knowlton v. Hezmalhalch* (1939) 32 Cal.App.2d 419, 434 ("[t]he law will not allow a person to do indirectly that which he cannot do directly"). Indeed, the Superior Court has already stated it will not.

VII. The County's Measure T Cannot Limit the City's Measure L.

County General Plan Policy SS.I-1 provides that the County should "[a]ttempt to secure public water and wastewater service through a cooperative effort of property owners, residents, the County, and the City of Fairfield" for the Middle Green Valley Special Study Area. Claiming that voters "confirmed" Policy SS.I-1 though Solano County Measure T after Measure L was adopted, the County's letter suggests that the voters intended to allow City water to be supplied to the project. There are a number of flaws in this argument.

To begin with, Measure T did not adopt, confirm, or even reference Policy SS.I-1. *See* Measure T, attached hereto as Exhibit H. An initiative measure must include the full text of any general plan policies it is adopting "to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion." *Mervyns v. Reyes* (1998) 69 Cal.App.4th 93, 99. Because Measure T did not contain the text of Policy SS.I-1, it may not be interpreted as a voter confirmation of those policies.

Further, only City voters may amend the City's General Plan policies adopted by Measure L. County voters have no role in amending or interpreting that Measure. *See* Elec. Code § 2000(a) (only city residents may vote on city measures).

Finally, the County's argument that Measure T must be interpreted to be consistent with Measure L misses the mark. *See* Exhibit F at 9. State planning and zoning law requires only that a city or county general plan be *internally* consistent. Gov. Code § 65300.5. No law requires a city general plan to be consistent with the county general plan. Nor can county general plan policies nullify conflicting city general plan policies. A county may only enforce its laws within the limits its unincorporated territory. Cal. Const. art. XI, § 7. In short, Measure T has no impact on the effect or meaning of Measure L.

VIII. Conclusion

Measure L is a valid growth control measure that prohibits the City from directly or indirectly supporting residential subdivisions outside of its urban limit line.

The County has suggested that Measure L is invalid and does not apply to water supply or treatment services. As discussed above, we would not expect these arguments to succeed in a court of law.

On behalf of the Solano County Orderly Growth Committee, we respectfully request the City to refrain from taking any steps (1) to enter a water supply or treatment agreement with the County, SID, or a newly formed CSA, or (2) to permit any water or sewer connection, for the proposed Middle Green Valley or Woodcreek 66 projects. The City and County should also discourage developers from pursuing residential subdivision projects outside of the urban limit line that propose to rely on City services, either directly or indirectly. Measure L was adopted to prevent these sprawling developments and the Committee is prepared to enforce its provisions as previously stated. *See* letter from Duane Kromm to Solano County Board of Supervisors (Nov. 25, 2014), attached hereto as Exhibit I.

Please do not hesitate to contact me if you would like to discuss these issues or if we can provide any additional information.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Heather M. Minner

cc: David White, City Manager
Birgitta Corsello, County Administrator
Lee Axelrad, Deputy County Counsel
Duane Kromm, Solano County Orderly Growth Committee
Jack Batson, Solano County Orderly Growth Committee

EXHIBIT A

OFFICE OF THE COUNTY COUNSEL
SOLANO COUNTY
675 TEXAS STREET, SUITE 6600
FAIRFIELD, CA 94533

Confidential/Attorney-Client Privileged

MEMORANDUM

TO: Michael Yankovich

FROM: Lee Axelrad, Deputy County Counsel LA

DATE: October 27, 2014

RE: Middle Green Valley Specific Plan – Measure L

The County has received a number of public comments regarding the relationship between the City of Fairfield's *Measure L* and the County's *Revised Recirculated Draft Environmental Impact Report for the Middle Green Valley Specific Plan* ("RRDEIR").

The gist of those comments is that Measure L imposes a limitation on the availability of potable water from the City.

At the present stage of environmental review of the Project, there is no reason for Measure L to be a further topic of comment or discussion. Comments concerning Measure L are no longer relevant to environmental review of the Project for several reasons, discussed below.

Comment 01-6

The comment says that "Per the Court's Ruling, the City of Fairfield's Measure L restricts the sale of the City's water to the Project on its face."

First, the sufficiency of the RRDEIR does not depend upon water being supplied by the City. The RRDEIR's analysis of water supply Option B points to a sufficient supply of groundwater. Option B does not involve the City of Fairfield. Comments concerning Measure L, therefore, could not undermine the RRDEIR's overall conclusion that a sufficient supply of water has been identified and analyzed. Even if Options A and C were somehow flawed due to Measure L, the viability of Option B would remain unaffected.

Second, although considerations concerning Measure L did have implications for the water supply analysis, those implications have already been addressed. Uncertainty associated with Measure L resulted in a need for the RRDEIR to analyze *one* alternative to water supply Option A, because Measure L raises questions about whether the City could legally supply water under Option A. But the RRDEIR not only analyzes one additional water supply alternative, it analyzes *two* more, for a total of three—Options A, B, and C. Further discussion and comment concerning Measure L at the present time would not somehow generate a still greater legal obligation for the RRDEIR to analyze four or more water supply options.

Third, the present comments regarding Measure L do not relate to an environmental issue. The RRDEIR is a document fulfilling legal requirements under the *California Environmental Quality Act* ("CEQA") and the water supply portion of the document is not required to focus on non-environmental issues such as the potential legal ramifications of Measure L.

Consequently, the comments received concerning Measure L no longer have any bearing on the required scope or overall sufficiency of the RRDEIR's water supply analysis.

Previously, Measure L was relevant, as it was discussed in the litigation concerning the EIR that was certified in July 2010.

In *Upper Green Valley Homeowners Association v. County of Solano* [Super. Ct. Solano County, 2011, No. FCS036446], the County's EIR for the Middle Green Valley Specific Plan was challenged on the ground that it had violated CEQA. Among other things, CEQA requires that the EIR, and now the RRDEIR, analyze the environmental effects of supplying water to the Project. The July 2010 EIR had analyzed only two options: groundwater (Option B) and City of Fairfield surface water (Option A). After hearing the case, the Court determined that the County's water supply analysis was legally inadequate.

In a ruling issued by the Superior Court on October 25, 2011, the County was directed to remedy the water supply analysis in the EIR. The Court's ruling pointed out that, under CEQA, "[w]here it is impossible to confidently determine that an anticipated water source will be available, an EIR must inform decision-makers, at least in general terms, of possible replacement sources and the consequences of using those replacement sources." (Ruling, at p. 4, citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430-32.) The Court's ruling indicated that under this principle in some cases there may be a need for "finding of uncertainty[] and analysis of an alternative water supply," although the Court also emphasized that such a finding would not be needed concerning every type or degree of uncertainty. (Ruling, at p. 4.)

In the present case, with respect to Option A, the Court found that there was sufficient uncertainty to warrant a determination of uncertainty. More narrowly, although a sufficient quantity of water exists under Option A, the Court expressed concern regarding "legal uncertainty as to the ultimate availability of that water," due to Measure L. The Court's ruling stated that "While this Court offers no determination as to whether a legal challenge to such a sale of City of Fairfield water would be successful, the presence of Measure L creates such legal uncertainty as to the ultimate availability of that water that significant environmental review of an alternative water supply is required." (Ruling, at p. 5.) The Court thus ruled that "significant environmental review" of some water supply other than Option A is required to be included in the EIR.

The only other water supply option then appearing in the EIR, at the time of the Court's 2011 Ruling, was Option B (groundwater). The Court ruled that the analysis of groundwater that then appeared in the EIR was insufficient. The Court therefore ordered that a writ be issued directing the County set aside its approval of the EIR together with related approvals.

Following the Court's Ruling, the County then undertook significant revisions and improvements to the EIR's analysis of Option B (groundwater) and added a significant analysis of Option C (SID Surface Water), such that the EIR now provides significant environmental review of three water supply options, including two alternatives to Option A.

Measure L, therefore, was previously relevant as the consideration which led to at least one additional alternative source of water supply being analyzed. Now that two additional water supplies have *already* been analyzed in the RRDEIR, further discussion of Measure L at this time can have no meaningful purpose.

Accordingly, since the RRDEIR already provides significant environmental review of two alternatives to Option A, the comment has no bearing on the adequacy of the RRDEIR under

CEQA when the comment states that "Per the Court's Ruling, the City of Fairfield's Measure L restricts the sale of the City's water to the Project on its face."

Additionally, because the groundwater option (Option B) does not involve the City of Fairfield, Measure L would not represent an obstacle to supplying the Project with water, even if Measure L restricted the sale of City of Fairfield water to the Project. If it ultimately turned out later that there were some barrier to involving the City of Fairfield, due to Measure L or otherwise, the Project could pursue the groundwater option analyzed in the RRDEIR.

The RRDEIR discloses Measure L and its potential relationship to the Project. For example, the RRDEIR discloses Measure L, its effectiveness until 2020, the fact that the Urban Limit Line established under Measure L "can only be amended by the voters of the City of Fairfield or by the City Council under certain exceptions for open space land and provisions relating to Travis Air Force Base," the fact that portions of the Specific Plan Area to be developed are outside Fairfield's Urban Limit Line, and the fact that Measure L states that urban development requiring basic municipal services shall occur within the Urban Limit Line. (RRDEIR, § 16.1.2, at p. 16-24.)

The comment, however, suggests that the RRDEIR's disclosure concerning Measure L is faulty because, according to the comment, "the ultimate decision-makers regarding whether water supply Option A is possible for the City are the City's electorate." The comment is there objecting to a passage in the RRDEIR which states that "City of Fairfield decision-makers will ultimately determine whether water supply Option A is possible for the City." The comment suggests that the phrase "City of Fairfield decision-makers" is not accurate.

But the comment simply assumes, incorrectly, that the phrase "City of Fairfield decision-makers" necessarily excludes the electorate. However, in the same section on the same page that the phrase "City of Fairfield decision-makers" appears, the RRDEIR states that "[t]he Urban Limit Line can only be amended by the voters of the City of Fairfield or by the City Council under certain exceptions for open space land and provisions relating to Travis Air Force Base." Both considered alone and read in the context of the remainder of the section, therefore, the phrase "City of Fairfield decision-makers" does not misstate Measure L's status as a voter-approved initiative requiring a vote of the electorate of the City of Fairfield to change its express terms.

Moreover, the RRDEIR does not misstate who the ultimate "decision-makers" are, because the RRDEIR takes no position on that issue. Instead, the phrase "City of Fairfield decision-makers" is broad, and may encompass any person(s) with authority to "determine whether Option A is possible for the City." CEQA does not require that the RRDEIR specify in greater detail who "City of Fairfield decision-makers" are or may be, and the phrase itself is not inaccurate in any way. The RRDEIR merely emphasizes that "Both the City's initiative measures and the City's general plan are matters for implementation by the City." The RRDEIR, therefore, is not inaccurate.

The comment suggests that the RRDEIR fails to disclose that Measure L potentially restricts Options C1 and C2 because the City's treatment of water is a "municipal service" within the meaning of Measure L.

The RRDEIR states that "The policy [i.e., Measure L] may pertain to Specific Plan water supply Option A, connection to the Fairfield municipal water supply, and the existence of the policy reduces the ability of the County to confidently determine that water supply Option A can occur (i.e., it creates uncertainty)." (RRDEIR, § 16.1.2, subd. (p), at p. 16-24.)

That disclosure's reference to Option A (City of Fairfield water) directly encompasses and applies to Option C2 as well. Option C2 merely combines SID surface water (Option C) for some units with City of Fairfield water (Option A) for other units. Therefore, as to Option C2, the comment is based on a mischaracterization of the RRDEIR.

The RRDEIR also discloses Measure L and its potential relationship to water supply for the project, including the fact that Measure L states that urban development requiring "basic municipal services" shall occur within the Urban Limit Line. (RRDEIR, § 16.1.2, at p. 16-24.) Therefore, Measure L and its relationship to the Project and the Project's water supply is adequately disclosed in a manner sufficient to facilitate meaningful review and public comment as required by CEQA, including comment as to whether there may be a potential relationship between Measure L and any water option involving the City, including both Options C1 and C2.

As with Option A, if Measure L did restrict Options C1 and C2, the result would be that, in addition to Options C1 and C2, the EIR would be required to analyze one additional source of water as an alternative or replacement source. The RRDEIR already goes further than that, however, and analyzes two additional sources of water: groundwater and City of Fairfield water. Because the RRDEIR analyzes three sources of water, and because groundwater does not involve the City of Fairfield in any way, the comment has no bearing on the adequacy of the RRDEIR under CEQA.

Having analyzed three water supply options, the RRDEIR could delete all mention of Measure L and would nonetheless comply with CEQA. As the Court pointed out earlier, the consequence of ignoring legal uncertainties in an EIR's analysis of one water supply source would be that the EIR "must provide a reasonable environmental analysis of a water supply alternative." (Ruling Regarding Motion for Reconsideration, at p. 3, citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.) The RRDEIR already meets and exceeds that legal standard, having provided a reasonable environmental analysis of three water supply options.

Nonetheless, it may be further responsive to the comment for the passage on page 16-24 of the RRDEIR to being amended as follows:

- "The policy may pertain to Specific Plan water supply Option A, connection to the Fairfield municipal water supply, <u>or the Option C options in which the City of Fairfield would treat SID water,</u> and the existence of the policy reduces the ability of the County to confidently determine that water supply Option A <u>or those Option C options</u> can occur (i.e., it creates uncertainty)."

The comment states further that the County previously made certain arguments to the Court and suggests that the County is bound by "the law of the case." The doctrine of "law of the case" does not apply to the present situation, as there has been no appellate court decision concerning the Project, and "law of the case" only deals with the effect of an appellate court decision on a subsequent retrial or appeal. (9 Witkin, Cal. Procedure (5th Ed. 2008) Law of the Case, § 459, p. 515.) The principle of "law of the case" is a legal doctrine that applies when an appellate court issues an opinion in a case and states in its appellate opinion some principle of law that is necessary to that appellate decision, thereby rendering that legal principle "law of the case" which must be adhered to in all subsequent court proceedings, such as if the case is sent back to the trial court for further proceedings. The prior litigation in *Upper Green Valley Homeowners Association v. County of Solano* [Super. Ct. Solano County, 2011, No. FCS036446] resulted in a Ruling by the *Superior Court*, not by the Court of Appeal, and therefore does implicate the legal doctrine of "law of the case."

Moreover, even if the doctrine of "law of the case" were to apply, the Court's Ruling in the prior litigation expressed no view regarding arguments that the County had made there as to Measure L's constitutionality. The Court emphasized instead that "While this Court offers no determination as to whether a legal challenge to such a sale of City of Fairfield water would be successful, the presence of Measure L creates such legal uncertainty as to the ultimate availability of that water that significant environmental review of an alternative water supply is required." (Ruling, at p. 5.) Later, after hearing a Motion for Reconsideration, the Court further emphasized that "this Court again confirms its intention not to rule on the constitutionality of Measure L." (Ruling Regarding Motion for Reconsideration, at p. 2.)

The comment observes that the Court's Ruling says that Measure L restricts the sale of the City's water to the Project "on its face." And the Court did say that Measure L "on its face restricts the ability of the City of Fairfield to provide water services beyond city limits." (Ruling, at p. 5.) The Court's Ruling, however, in no way prohibits the RRDEIR from analyzing the availability of water supply under options that involve the City of Fairfield. On the contrary, the Court's Ruling required that the EIR *add* analysis of another option (not delete options involving the City). And the Court also emphasized that "this Court offers no determination as to whether a legal challenge to such a sale of City of Fairfield water would be successful . . . ." (Ruling, at p. 5.)

Comment 01-7

The comment states that Measure L is constitutional and that the City Fairfield must enforce Measure L unless the Court of Appeal rules that Measure L is unconstitutional.

The comment is not presently germane to any issue presented by environmental review of the Project under CEQA. Certification of the RRDEIR is an affirmation of the RRDEIR's sufficiency under CEQA, not the unconstitutionality of Measure L. CEQA does not require that the RRDEIR express a view as to the constitutionality of Measure L, one way or the other, and it does not express any view on that point.

It is true, as the comment alludes, that the County made constitutional arguments about Measure L in litigation before the Superior Court, in the prior litigation concerning this Project, but those arguments have not been restated in the RRDEIR. Neither the EIR nor the RRDEIR takes a position concerning the constitutionality of Measure L.

The comment states "The County's constitutional argument is misplaced in this setting." The comment is not apt, since the County has made no constitutional argument "in this setting," which is the consideration in the RRDEIR of an analysis of the Project's environmental impacts under CEQA.

Although the County is silent in the RRDEIR on the constitutionality and legality of Measure L, that does not preclude the County from formulating and expressing a view at some future time as to the legality, constitutionality, or applicability of Measure L to the supply of water to the Project.

At such hypothetical future time, a discussion of Measure L might include a range of issues, which might include, for example, reference to: (i) Article XI, Section 9, of the California Constitution, which is a constitutional provision that cannot be removed by voter initiative, and which says that a municipal corporation may establish and operate public works to furnish its inhabitants with water and "may furnish those services outside its boundaries"; (ii) California Water Code section 382, subdivision (a), which says that "Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or

entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, . . . (1) Water that is surplus to the needs of the water users of the agency. (2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency"; (iii) California Public Utilities Code section 1005, which says that "Whenever, in the operation of a utility, a municipality develops an excess of water . . ., over and above the amount which is necessary for the use of the municipality and its inhabitants, or such portion thereof as the legislative body of the municipality determines is to be supplied therewith, the municipality may sell, lease, or distribute the excess outside of its corporate limits."

Other issues might include: (iv) the legal principle that an initiative may not interfere with the efficacy of an essential governmental power, including the power to manage fiscal affairs through administrative and executive acts (such as a city receiving payment for the provision/sale of water or water treatment services) a principle articulated in *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311 and other cases; (v) the fact that Section SS.I-1 of the County General Plan, which voters confirmed through Measure T five years after voters adopted Measure L, states that the Middle Green Valley Specific Plan was to attempt to secure public water service "through a cooperative effort of property owners, residents, the County, and the City of Fairfield"; (vi) the fact that Measure L does not say that it applies to water sales or water treatment; and/or (vii) other arguments.

The comment refers to California Constitution Article 3, section 3.5, which provides that an administrative agency cannot declare a statute unconstitutional unless an appellate court has done so. That provision has no bearing on the certification of the RRDEIR because the certification of the RRDEIR is in no way an act of declaring Measure L unconstitutional or unenforceable. Also, in the case cited in the comment, *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, the Supreme Court said that the prohibition against administrative agencies declaring a statute unconstitutional may not apply in cases where the unconstitutionality of a statute is patent or clearly established, such as by prior judicial determinations in similar cases (an exception which may apply here). (*Id.* at p. 1102.) Additionally, the *Lockyer* case relates to local officials declaring state statutes unconstitutional, and the case may not address scenarios wherein local officials make determinations on the constitutionality of local ordinances in their own jurisdictions.

In any event, Article 3, section 3.5, does not prohibit a local official from considering whether a local ordinance would fail to comply with important general laws of the state that are statutory rather than constitutional. And, as indicated above, if the issue of Measure L became relevant later, there are numerous potential grounds other than constitutional grounds bearing on whether Measure L could be deemed to *not* limit City of Fairfield involvement in water supply for the Project, either based on Measure L's express language or notwithstanding its express language.

The comment suggests that Option C is legally similar to Option A, and that Measure L restricts both. For the reasons explained above, the question of whether Measure L restricts any of the water supply options is not an issue that is presently relevant to the environmental review of the Project, because the RRDEIR now provides significant environmental review of three options for supplying water to the Project.

The comment suggests that Measure L is constitutional. For the reasons explained above, the constitutionality or unconstitutionality of Measure L is not an issue that is presently relevant to the environmental review of the Project, because the RRDEIR now provides significant environmental review of three options for supplying water to the Project.

EXHIBIT B

CITY OF FAIRFIELD

Founded 1856 — Incorporated December 12, 1903

PUBLIC WORKS DEPARTMENT

November 7, 2011

Mr. Bill Emlen
Solano County Director of Resource Management
675 Texas Street, Suite 5500
Fairfield, California 94533

Re: Middle Green Valley Project

Dear Bill:

As you are aware, the City of Fairfield ("City") has had on-going discussions with Solano County ("County") about the provision of or treatment of water to the County. The City would provide this water to the County, government entity to government entity. The City would not be providing this water directly to the end uses. The County will provide the water to the end user, through a community services district or other mechanism. The City previously provided the County with a water service assessment memorandum, dated September 18, 2009 that demonstrates that the City has adequate capacity to provide or treat water for the County for the proposed project.

The City provides water to other government agencies, and others, outside of the city limits. A number of these agreements have been entered after the adoption of Measure L. The most recent example is the provision of City water to the State of California for the relocation of the truck scales. It is our conclusion that Measure L does not preclude the City from providing or treating water for the County as proposed.

Sincerely,

GEORGE R. HICKS, P.E.
Director of Public Works

cc: Greg Stepanicich, City Attorney
Sean Quinn, City Manager
Erin Beaver, Community Development Director
County Counsel

EXHIBIT C

CITY OF FAIRFIELD

Founded 1856 — Incorporated December 12, 1903

Public Works Department

August 12, 2013

Mr. Jim Leland
Solano County Department of Resource Management
675 Texas Street, Suite 5500
Fairfield, CA 94533

Subject: Water Service Request for Woodcreek Subdivision

Dear Mr. Leland,

The City of Fairfield ("City") would be willing to provide water service to the Woodcreek Subdivision through a government entity to government entity arrangement between the City and Solano County. The County would then provide the water to the end user through a community services district or other mechanism.

The City currently provides water to other government agencies, and others, outside of the city limits under similar agreements. A number of these agreements have been entered into after the adoption of Measure L. It is our conclusion that Measure L does not preclude the City from providing or treating water for the County as proposed.

If you have any questions, please feel free to contact me at (707) 428-7493.

Sincerely,

for GEORGE R. HICKS, P.E.
Director of Public Works

cc: Erin Beavers, Community Development Director
Steve Hartwig, Assistant Director of Public Works/City Engineer
Felix Riesenberg, Assistant Director of Public Works/Utilities

EXHIBIT D

MEASURE L
CITY OF FAIRFIELD ORDINANCE NO. 2003-10
AN INITIATIVE MEASURE REQUIRING THAT CERTAIN PROVISIONS OF THE GENERAL PLAN RELATING TO THE TRAVIS RESERVE, THE URBAN LIMIT LINE AND AIRPORT NOISE STANDARDS CAN ONLY BE AMENDED BY THE VOTERS

The people of the City of Fairfield do hereby ordain as follows:

Section 1. Purpose and Findings.

A. **Purpose.** The purpose of this Initiative is to protect and support the existing and future missions and operations of Travis Air Force Base and to affirm the existing Urban Limit Line, for the benefit of the people of Fairfield and the surrounding region. This Initiative protects the lands around Travis Air Force Base from inappropriate uses that could conflict with future operations at the Base. This Initiative provides Travis Air Force Base with the flexibility to meet the unknown demands of future missions by reaffirming and readopting the General Plan Land Use Diagram designations and policies creating the Travis Reserve and Urban Limit Line together with General Plan policies directing residential development away from areas affected by aircraft noise. Any change to these policies through December 31, 2020 would require voter approval except in certain limited circumstances.

B. **Findings.** The people of the City of Fairfield find that the existing General Plan Land Use Diagram designations and policies creating the Travis Reserve and the Urban Limit Line, together with existing General Plan policies directing residential development away from areas affected by aircraft noise, promote the health, safety, welfare, and quality of life of the residents of Fairfield, based upon the following:

1. **Protecting the Unique Character of Fairfield.** In June 2002, the City of Fairfield adopted a set of comprehensive General Plan amendments designed to protect the unique character of Fairfield. The General Plan, which emphasizes the concept of maintaining a "livable city," focuses growth within the Urban Limit Line and protects agricultural areas outside the Urban Limit Line. The amended General Plan protects Travis Air Force Base by use of the Urban Limit Line, the Travis Reserve, and policies directing residential development away from areas where aircraft noise from Travis Air Force Base is greater than 60 dB CNEL.

2. **Recognizing The Importance of Travis Air Force Base.**
   a. Travis Air Force Base is the largest transport air base in the world and is vitally important to our nation's defense and role in world affairs.
   b. Travis Air Force Base is the single largest employer in Solano County, providing jobs for approximately 16,400 persons, both military and civilian.
   c. Travis Air Force Base provides a total direct economic benefit of over $1,08',000,000 per year (FY2001).

3. **Protecting Travis Air Force Base and the City's Future.** For more than 50 years, Travis Air Force Base has been the major factor in the economic life of the City of Fairfield and central Solano County. Continuing urban development in the vicinity of Travis Air Force Base could limit the operational flexibility of the Base to fully respond to possible future mission requirements. This Initiative reaffirms and readopts the City's Travis Reserve designation in the General Plan to ensure that urban development does not conflict with future national security missions of the Base. The Travis Reserve sets aside land for the future expansion of the base, and allows continued agricultural and grazing uses within the Travis Reserve until such expansion

4. **Protecting Fairfield's Quality of Life.** In the interest of promoting good land use planning, encouraging development in appropriate urban areas, and avoiding the traffic congestion, air pollution, and other problems associated with scaling urban development in outlying areas with viable agricultural and open space uses, the City Council in June 2002 adopted an Urban Limit Line. To maintain and advance these values, this Initiative reaffirms and readopts that Urban Limit Line. This Initiative will:
   a. Allow Travis Air Force Base expansion while protecting more valuable agricultural lands;
   b. Protect our school districts from rapid overcrowding;
   c. Promote efficient use of land and resources by encouraging development in areas that are already served by existing municipal infrastructure and services; and
   d. Encourage efficient growth patterns consistent with the availability of infrastructure and services.

5. **Protecting Areas Outside the Urban Limit Line.** In 2001, agriculture added approximately $1.5 billion to Solano County's economy. Agricultural production in Suisun and Green Valleys is a significant contributor to that performance. As urban pressures grow, agricultural land is increasingly converted to development, creating urban sprawl. This process robs the community of valuable cropland and threatens its historic character. This Initiative affirms the City's Urban Limit Line boundary and thus promotes future development within the Urban Limit Line.

6. **Protecting Residents from Harmful Aircraft Noise and Travis Air Force Base from Incompatible Encroaching Uses.** This Initiative reaffirms and readopts certain provisions in the General Plan designed to protect the citizens of Fairfield from the harmful and annoying effects of aircraft noise, and protect Fairfield's economic base by preventing incompatible uses from encroaching on Travis Air Force Base. Aircraft noise is commonly measured in terms of a standard known as the Community Noise Equivalent Level, or "CNEL." The areas for which the CNEL exceeds certain levels are currently mapped out for the Travis area in the 1995 Air Installation Compatibility Use Zone ("AICUZ"). The policy and program reaffirmed and readopted by this Initiative do not allow new residential zoning where outdoor noise levels exceed 60 dB CNEL as shown on the 1995 AICUZ or a more recent mission contour map for Travis Air Force Base.

7. **Maintaining an Adequate Housing Supply.** The City of Fairfield General Plan existing on October 11, 2002 provides for adequate housing as required by state law. This initiative will allow the City to continue to meet its reasonable housing needs for all economic segments of the population by directing the development of housing into areas where services and infrastructure are more efficiently available.

This Initiative achieves the foregoing objectives by reaffirming and readopting certain provisions of the General Plan and by adopting a new General Plan policy governing subsequent amendments to these provisions. This Initiative amends the General Plan so that the reaffirmed and readopted components of the General Plan may, with certain exceptions, be amended only by a vote of the people through December 31, 2020.

C. **Exhibits.** This Initiative includes exhibits, which are attached and made a part of this Initiative. Exhibit A is a copy of the General Plan Land Use Diagram and illustrates the location of the Travis Reserve and the Urban Limit Line as reaffirmed and readopted by this Initiative; no other portion of the General Plan Land Use Diagram is reaffirmed or

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readopted by this Initiative. Exhibit B contains various General Plan policies that are referenced in policies reaffirmed and readopted by this Initiative. The policies listed in Exhibit B are provided for informational purposes only and are not reaffirmed or readopted by this Initiative. Exhibit C is a map showing the location of North Gate Road/Burgan Boulevard (North Gate Road becomes Burgan Boulevard when it reaches Travis Air Force Base) and Air Base Parkway/Travis Avenue (Air Base Parkway becomes Travis Avenue when it reaches Travis Air Force Base), which roads are referenced in this Initiative. Exhibit C is provided for informational purposes only and is not adopted by this Initiative as part of the General Plan.

Section 2. General Plan Amendments.

The City of Fairfield General Plan, as it exists on October 11, 2002 (hereinafter "General Plan"), is hereby amended as follows:

A. **Travis Reserve Reaffirmed and Readopted:**

1. **General Plan Land Use Element Text.** The General Plan text describing the Travis Reserve Land Use Designation at page LU – 31 (all page references are to pages in the General Plan), as set forth below, is hereby reaffirmed and reacopted:

   Travis Reserve

   This designation applies to certain unincorporated land located north and east of Travis Air Force Base. Land in the Travis Reserve is set aside for future expansion of Travis Air Force Base only. If the status of the base changes, the construction of a non-military airport and support uses may be permitted in the Travis Reserve. No residential uses will be permitted in the Travis Reserve. Until a military or airport use is proposed for land with the Travis Reserve designation, the City supports its continued use for agriculture and grazing.

2. **General Plan Land Use Diagram.** The boundaries of the Travis Reserve land use designation shown on the General Plan Land Use Diagram, as those boundaries exist on October 11, 2002 are hereby reaffirmed and readopted. A reduced copy of the General Plan Land Use Diagram showing the Travis Reserve is attached as Exhibit A.

B. **Urban Limit Line Reaffirmed and Readopted.**

1. **General Plan Land Use Element Text.** General Plan Objective LU 3 at page LU – 3, Policy LU 3.1 at pages LU –3 to LU – 4, and Policy LU 3.2 at page LU – 4, as set forth below, are hereby reaffirmed and readopted (The full text of the policy cross-referenced parenthetically in Policy LU 3.1 is included in Exhibit B.):

   Objective LU 3
   Establish an urban limit line that allows development to be satisfactorily planned before it occurs.

   Policy LU 3.1
   What is urban shall be municipal, and what is rural shall be within the County. Any urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line established by the General Plan. (See Policy OS 1.6)

   Policy LU 3.2
   Where the urban limit line encompasses a master plan area, it may include land which will not ultimately be developed with urban uses. Once areawide plans are adopted for master plan areas, the urban limit line may be amended to exclude open space areas.

2. **General Plan Land Use Diagram.** The Urban Limit Line shown on the General Plan Land Use Diagram as it exists on October 11, 2002, is hereby reaffirmed and readopted. A reduced copy of the General Plan Land Use Diagram is attached as Exhibit A.

C. **Health and Safety Policies Regarding Airport Noise Reaffirmed and Readopted.**

General Plan Health and Safety Element Text. General Plan Policy HS 9.2 and Program HS 9.2 A at page HS – 11, as set forth below, are hereby reaffirmed and readopted (The full text of the policy cross-referenced parenthetically in Policy HS 9.2 is included in Exhibit B.):

Policy HS 9.2
Aircraft noise: All new land use proposals shall comply with the land use policies of the Comprehensive Airport Land Use Plan for Travis Air Force Base (ALUP) and the Land Use Compatibility Plan for Travis Aero Club for aircraft-generated community noise. (See Policy LU 13.3)

Program HS 9.2 A
New residential zoning will not be applied on land where outdoor noise levels are greater than 60 dB CNEL maximum mission contour as indicated in the 1995 AICUZ for Travis AFB.

D. **New Policy Adopted By Initiative.**

General Plan Land Use Element Text. General Plan Land Use Policy LU 3.3 is hereby adopted by inserting the following text into the General Plan immediately following the text of Policy LU 3.2 at page LU – 4 (The location of the roads referenced in subparagraph 2, below, is shown on Exhibit C.):

Policy LU 3.3
A voter initiative reaffirmed and readopted (1) the "Travis Reserve" and use designation and the boundaries of the Travis Reserve shown on the General Plan Land Use Diagram, (2) the Urban Limit Line shown on the General Plan Land Use Diagram, (3) the General Plan text describing the uses permitted in the Travis Reserve land use designation, and (4) General Plan Objective LU 3, Policies LU 3.1, LU 3.2, and HS 9.2 and Program HS 9.2A, in effect as of October 11, 2002. These components of the General Plan are collectively referred to as the Travis Air Force Base and Fairfield Urban Boundary Policies and through December 31, 2020, may be amended only by a vote of the people or as follows:

1. The City Council may amend the boundaries of the Urban Limit Line to exclude open space areas, provided that the amended boundaries are within or coextensive with the limits of the Urban Limit Line in effect as of October 11, 2002.
2. The City Council may redesignate to a different land use designation that portion of the land currently designated as Travis Reserve that lies west of North Gate Road/Burgan Boulevard and north of Air Base Parkway/Travis Avenue
3. The City Council may amend Program HS 9.2A to refer to a new 60 dB CNEL maximum mission contour for Travis Air Force Base ("New Contour") adopted in either an Air Installation Compatibility Use Zone ("AICUZ") or an Airport Land Use plan for Travis Air Force Base, provided that the amendment specifies that in the event that the New Contour is set aside or otherwise ceases to be in effect, the 60 dB CNEL maximum mission contour established in the 1995 AICUZ for Travis Air Force Base shall apply for the purposes of Program HS 9.2A until such time as the New Contour is reinstated or the City Council amends Program HS 9.2A to refer to a different 60 dB CNEL maximum mission contour for Travis Air Force Base adopted in either an AICUZ or an Airport Land Use Plan for Travis Air Force Base.

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4. The City Council may amend the Travis Air Force Base and Fairfield Urban Boundary Policies if it does so pursuant to a finding, based on substantial evidence, that the application of such policies to any specific property for which a development application has been submitted constitutes an unconstitutional taking of the landowners property; however, any such amendment shall be made only to the extent necessary to avoid such an unconstitutional taking.

5. The City Council may reorganize, renumber, or reorder the Travis Air Force Base and Fairfield Urban Boundary Policies, provided that the Travis Air Force Base and Fairfield Urban Boundary Policies remain in the General Plan.

Section 3. Implementation.

A. **Effective Date.** Upon the effective date of this Initiative, the City of Fairfield General Plan is hereby amended as set forth in Section 2 of this Initiative, except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been utilized in the year in which the Initiative becomes effective, this General Plan amendment shall be the first amendment inserted into the Fairfield General Plan on January 1 of the following year. Upon the effective date of this Initiative, any provisions of the City of Fairfield Zoning Ordinance, as reflected in the ordinance text itself or in the City of Fairfield Zoning Map, inconsistent with this General Plan amendment shall not be enforced.

B. **Interim Amendments.** The City of Fairfield General Plan in effect at the time the Notice of Intention to circulate this Initiative measure was submitted to the City of Fairfield Election Official on October 11 2002 and that General Plan as amended by this Initiative measure, comprise an integrated, internally consistent and compatible statement of policies for the City of Fairfield. In order to ensure that the City of Fairfield General Plan remains an integrated internally consistent and compatible statement of policies for Fairfield as required by state law, and to ensure that the actions of the voters in enacting this Initiative are given effect, any provision of the General Plan that is acopted between October 11, 2002 and the date that the General Plan is amended by this measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions reaffirmed and readopted by this Initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions reaffirmed and readopted by this Initiative and other elements of the City of Fairfield's General Plan.

C. **Project Approvals.** Upon the effective date of this initiative, the City of Fairfield and its departments, boards, commissions, officers, and employees shall not grant, or by inaction allow to be approved by operation of law, any general plan amendment, rezoning, specific plan, tentative subdivision map, conditional use permit, or any other discretionary entitlement that is inconsistent with this Initiative.

Section 4. Vested Rights.

This Initiative shall not apply to any project that has obtained as of the effective date of this Initiative a vested right pursuant to state or local law.

Section 5. Severability and Interpretation.

This Initiative shall be broadly construed in order to achieve the purposes stated in the Initiative. This Initiative shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Initiative. The voters hereby declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Initiative that can be given effect without the invalid application.

Section 6. Amendment.

Except as provided herein, this Initiative may be amended or repealed only by the voters of the City of Fairfield.

Exhibit List:

Exhibit A	General Plan Land Use Diagram
Exhibit B	Policies Referenced in Initiative
Exhibit C	Map Showing North Gate Road/Burgan Boulevard and Air Base Parkway/Travis Avenue

PASSED AND ADOPTED pursuant to California Elections Code Section 9215(a) this 20th day of May, 2003, by the following vote:

AYES: COUNCILMEMBERS Batson, Farley, Price, MacMillan

NOES: COUNCILMEMBERS None

ABSENT: COUNCILMEMBERS English

ABSTAIN: COUNCILMEMBERS None

S/Karin MacMillan
Mayor

S/Nancy Beckham, Deputy
City Clerk

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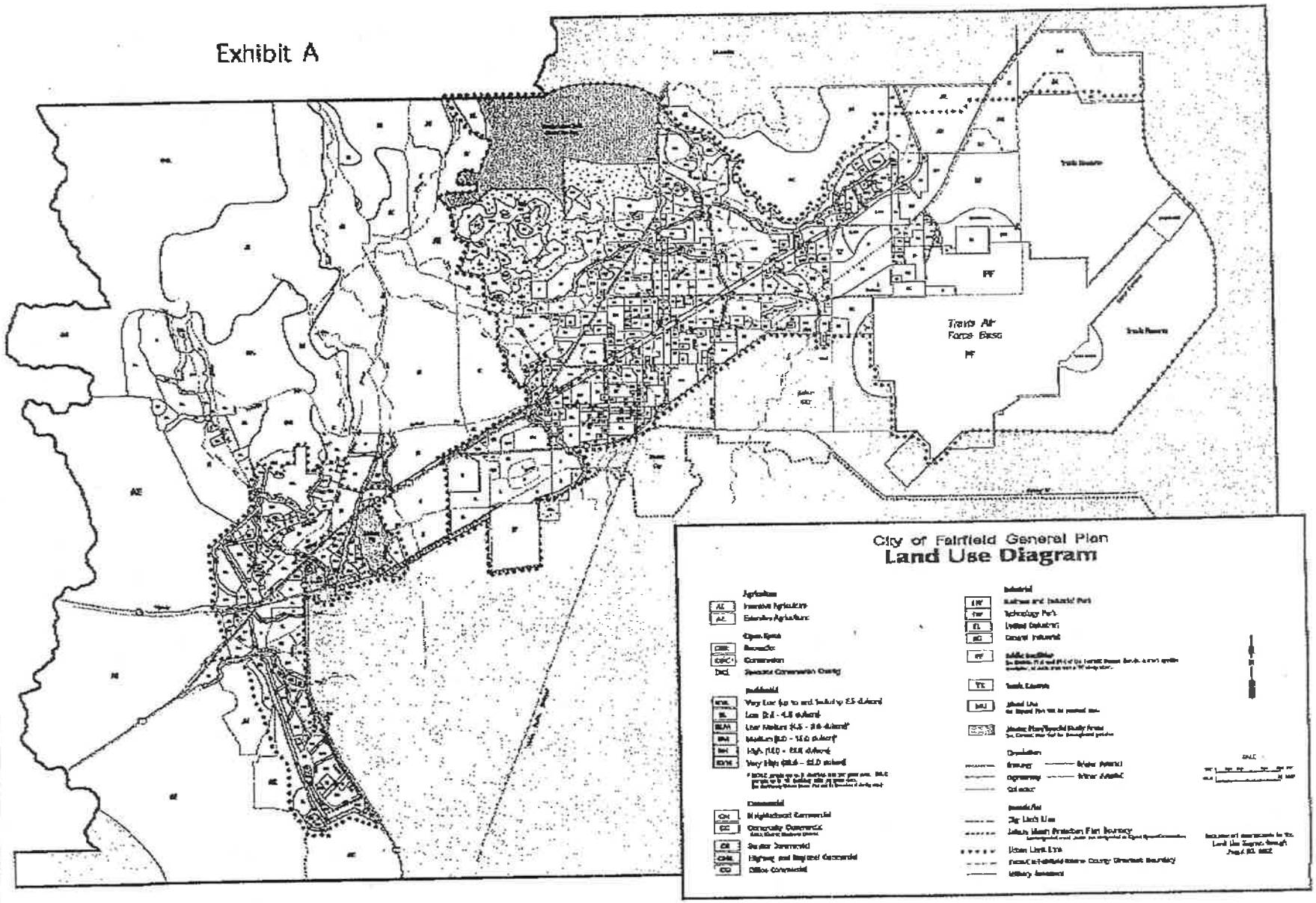
Exhibit A



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MEASURE L CONTINUED

EXHIBIT B

Policies Referenced in the Initiative

The following are policies from the Fairfield General Plan that are referenced in the General Plan policies reaffirmed and readopted by the attached Initiative. These policies are provided for informational purposes only. The Initiative does not amend, reaffirm, or readopt these policies.

Policy LU 13.3 *(referenced in Policy HS 9.2)*: "Proposed land uses shall be consistent with the land use compatibility guidelines of the Airport Land Use Plan for Travis Air Force Base and the Land Use Compatibility Plan for the Travis Aero club incorporated into this General Plan. (See Objective HS 5, Policies HS 5.1, HS 5.2, HS 5.3, HS 9.2 and ED 1.9)"

Policy OS 1.6 *(referenced in Policy LU 3.1)*: "What is urban shall be municipal, and what is rural shall be within the County. Any urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line established by the General Plan. (See Objective LU 3, AG 1.6 and Policy LU 3.1)"

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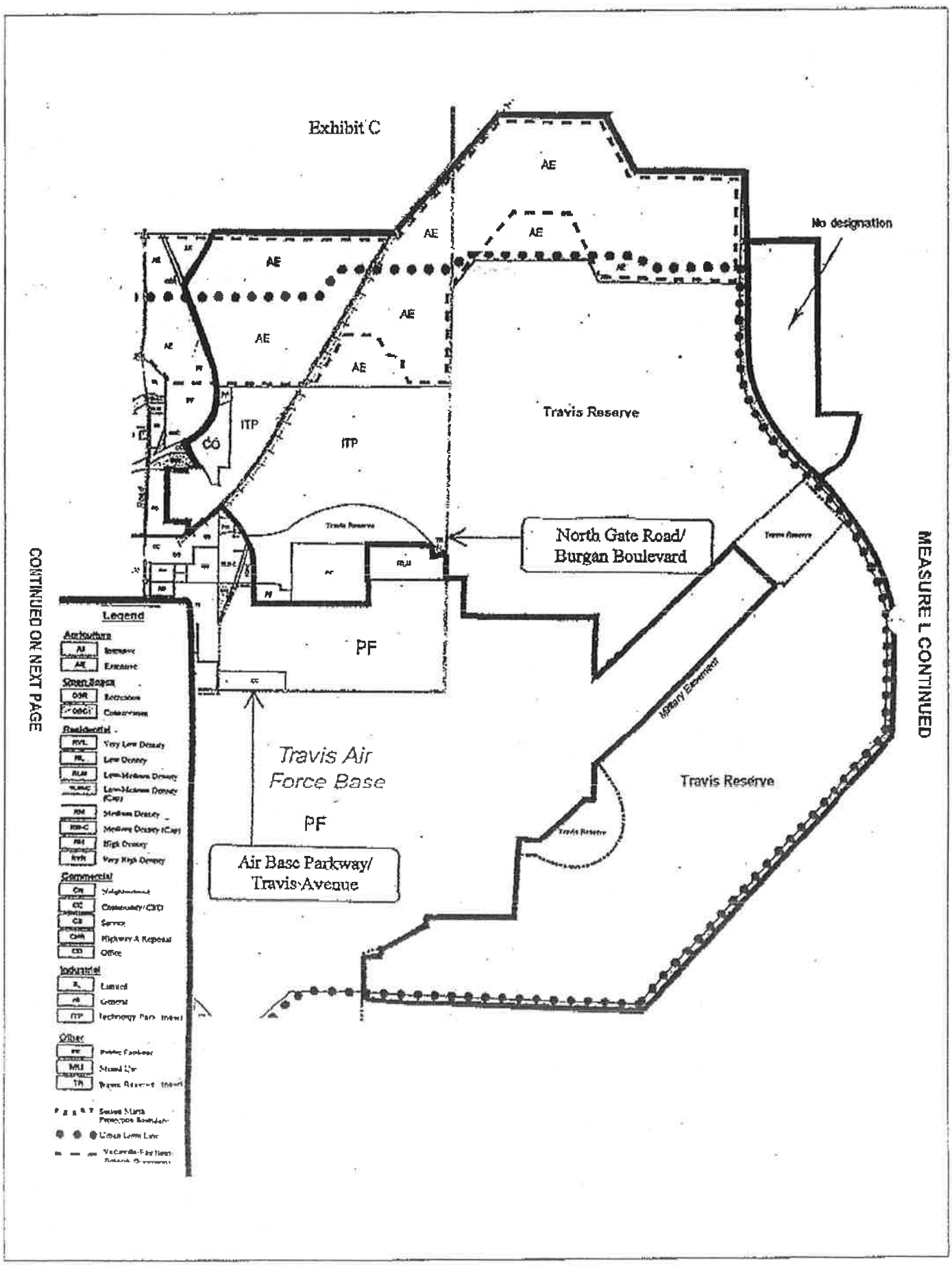

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MEASURE L CONTINUED

EXHIBIT E

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

DEPARTMENT ONE

UPPER GREEN VALLEY HOMEOWNERS ASSOCIATION, etc.,

Petitioner,

vs.

COUNTY OF SOLANO, etc., et al.,

Respondents. /

KAREN YARBROUGH-WALLER, et al.,

Real Parties in Interest. /

NO. FCS036446

RULING AFTER WRIT OF MANDATE HEARING

The above-entitled matter came on for hearing of the Writ of Mandate on July 28, 2011 before the Honorable Paul L. Beeman. Amber L. Kemble, Esq., Donald B. Mooney, Esq., and Dana L. Dean, Esq., appeared on behalf of Petitioner. Lee Axelrad, Esq., appeared on behalf of Respondent. Sharon Little, Esq., and Amanda J. Monchamp, Esq., appeared on behalf of Real Parties in Interest. The Court heard the argument of counsel, and the matter was submitted for decision. Now, therefore, based on the pleadings and records on file and good cause, the Court enters the following ruling.

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The writ will be granted in part, and denied in part.

Of the various challenges raised in the writ, the three main challenges concerned (1) the COUNTY's finding of infeasibility of the 200 primary unit, 200 secondary unit project alternative; (2) the COUNTY's finding that the presence of Chinook salmon in the project area was "unlikely"; and (3) the COUNTY's analysis of the water supply.

An EIR must consider a reasonable range of alternatives to the project, and must determine if an alternative is both feasible and would offer substantial environment advantages as compared to the project. Sequoyah Hills Homeowners Assn. v. City of Oakland (1993) 23 Cal.App.4th 704, 713.

Even if an alternative has some environmental advantages over the proposed project, the public entity can still choose the project, so long as it justifies the choice based on social or economic conditions. California Native Plant Society v. City of Santa Cruz (2009) 177 Cal.App.4th 957, 978.

COUNTY relied upon estimates from an economic study (the May 2009 Middle Green Valley Specific Plan Financial Model, prepared by Economic Planning & Systems), analyzing costs and benefits at the 200 primary unit phase buildout, to analyze the economic and social costs and benefits of the 200 primary unit/200 secondary unit project alternative. That study provides substantial evidence that a project of only 200 primary units would not produce sufficient net revenues to fund the agricultural endowment component of this project.

Petitioner's arguments regarding the possible presence of Chinook salmon on the project site also fail.

A project has a significant effect on the environment "if the project has the potential to reduce the number or restrict the range of an endangered, rare or threatened species". Napa Citizens for Honest Government v. Napa County Bd. of

Supervisors (2001) 91 Cal.App.4th 342, 384 [citing CEQA Guidelines, section 15065(a)].

Any factual determination, including whether a project involves an endangered, rare or threatened species, is subject to review under the substantial evidence standard. As long as there is evidence sufficient to make a fair argument in support of the factual conclusion reached by the public agency, even if there is also evidence against that conclusion, it will be upheld. Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1197-1198.

The burden falls on the petitioner challenging approval of an EIR to show there was no substantial evidence in the record to support the public agency's finding. The petitioner must do more than to point to the evidence in the administrative record which favors its position; it must instead set forth all evidence material to the public agency's finding, and then show that this evidence could not reasonably support its finding. California Native Plant Society v. City of Rancho Cordova (2009) 172 Cal.App.4th 603, 626.

COUNTY relied primarily on a report by Robert Leidy, of the EPA, who conducted a series of fish surveys in the mid to late 1990s of Bay Area Stream fishes. The evidence cited by Petitioner on this issue is either undated, or anecdotal in nature, and does not rise to the amount and quality of evidence sufficient to establish that COUNTY's finding is unsupported by substantial evidence.

The court therefore finds substantial evidence in the administrative record to support COUNTY's finding that the presence of Chinook salmon in the project area is "unlikely".

It is only as to the water supply issue that the court finds that Petitioner has met its burden of showing COUNTY acted without substantial evidence of its compliance with the requirements of CEQA.

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One of the issues an EIR for a specific plan must address is the water supply for the project and what environmental impacts would be caused by obtaining the water from the identified source(s). Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 429 [quoting *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App.4th 182, 206].

The California Supreme Court has identified 4 key points for water supply analysis:

1. An EIR cannot simply ignore the impacts of providing water to a project or assume a solution.
2. A project which uses a tiered or phased approach must analyze the water supply for the entire project.
3. An EIR must address the impacts of likely water sources and include a reasoned analysis of the likelihood of the water source's availability.
4. Where it is impossible to confidently determine that an anticipated water source will be available, an EIR must inform decision-makers, at least in general terms, of possible replacement sources and the consequences of using those replacement sources. Id. at 430-432.

The EIR contains discussion of 2 alternative water source options. One of those options is water supplied by the City of Fairfield. The other option calls for the use of groundwater wells.

At this early stage of planning, in any situation in which water held by a different public entity is potentially available, there are inherent uncertainties as to whether the necessary but relatively routine procedural steps will later be completed to result in the use of that water. This court does not read Vineyard to require those types of procedural steps to necessitate a finding of uncertainty, and analysis of an alternative water supply.

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Petitioner identified and asked the court to take judicial notice of Measure L, which on its face restricts the ability of the City of Fairfield to provide water services beyond city limits.

COUNTY at hearing attempted to present hearsay evidence that the City of Fairfield has in the past sold water to other projects and/or entities, for use beyond city limits. However, insofar as such evidence does not appear within the administrative record, this court cannot consider it. Schaeffer Land Trust v. San Jose City Council (1989) 215 Cal.App.3d 612, 624 n.9 [court unable to consider declaration by city to explain claimed inaccuracies in a table prepared by city's planning department which detailed traffic analysis; court would consider table as it appeared in the record]. The importance of the EIR and the public hearing process as conduits of information to the public and government decisionmakers during the decisionmaking process precludes the amplification of that evidence at hearing on the CEQA petition.

> The audience to whom an EIR must communicate is not the reviewing court but the public and the government officials deciding on the project. That a party's briefs to the court may explain or supplement matters that are obscure or incomplete in the EIR, for example, is irrelevant, because the public and decision makers did not have the briefs available at the time the project was reviewed and approved. The question is therefore not whether the project's significant environmental effects *can* be clearly explained, but whether they *were*. Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 443.

Furthermore, even if the court could consider such evidence, it does not establish that such sales do not violate Measure L.

While this court offers no determination as to whether a legal challenge to such a sale of City of Fairfield water would be successful, the presence of Measure L creates such legal uncertainty as to the ultimate availability of that water that significant environmental review of an alternative water supply is required.

The court finds COUNTY's analysis of the groundwater wells alternative water supply, and its environmental effects, is insufficient. COUNTY relied upon outdated

and incomplete data, which identified concerns regarding water quality and other environmental issues which were not adequately discussed and analyzed in the EIR.

Based upon these findings, the court therefore will issue a writ to COUNTY to vacate and set aside its July 27, 2010 adoption of the Middle Green Valley Specific Plan and associated certification of the EIR.

Petitioner is to prepare the writ for issuance, providing it to COUNTY and Real Party in Interest for approval as to form.

IT IS SO ORDERED.

DATED: October 25, 2011

PAUL L. BEEMAN
Judge of the Superior Court

SOLANO COUNTY COURTS
STATE OF CALIFORNIA
321 Tuolumne Street, Vallejo, CA 94590

CERTIFICATE AND AFFIDAVIT OF MAILING NO. FCS036446

I, Donna Callison, certify under penalty of perjury that I am a Judicial Assistant of the above-entitled Court and not a party to the within action; that I served the attached by causing to be placed a true copy thereof in an envelope which was then sealed and postage fully prepaid on the date shown below; that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; that this document was deposited in the United States Postal Service on the date indicated. Said envelopes were addressed to the attorneys/parties and any other interested party as indicated below.

Document Served: Ruling After Writ of Mandate Hearing

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I declare under penalty of perjury that the foregoing is true and correct and that this certificate was executed on October 26, 2011 at Vallejo, California.

Donna Callison

EXHIBIT F

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

UPPER GREEN VALLEY HOMEOWNERS
Petitioners,

v.

COUNTY OF SOLANO AND THE SOLANO COUNTY BOARD OF SUPERVISORS, ET AL.

Respondents;

Karen Yarbrough-Waller; Louise Yarbrough and Debra Yarbrough Russo, trustees of the Green Valley Grantor Retained Annuity Trust, dated September 24, 2008; Louise Yarbrough and Debra Yarbrough Russo, trustees of the Yarbrough Family Trust under declaration of trust, dated July 23, 1992; Louise Yarbrough, trustee of the Louise Yarbrough Trust; Debra Yarbrough Russo as trustee of the Debra Yarbrough Russo Trust; Anthony S. Russo and Debra A. Russo; Ridley F. Taylor and Geraldine M. Taylor; Arthur J. Engell and Virginia L. Engell, trustees of the Engell

Case No. FCS036446

RESPONDENT'S AND REAL PARTIES IN INTEREST'S JOINT OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

Hearing Date:
Time:
Dept.: One
Honorable Paul L. Beeman

Family Trust, established May 16, 1991; Robert Hager Jr., Camino Diablo Associates, a California General Partnership; C. Roy Mason and Elizabeth G. Mason, trustees of the C. Roy Mason and Elizabeth Garben Mason Family Trust, dated June 16, 1993; C. Roy Mason and Elizabeth G. Mason; Sarah D. and Frank Lindemann; and Sarah D. Lindemann; John N. Lawton, Jr., trustee of the Lawton Living Trust, dated June 11, 2008; Billy C. and Betty L. Maher, trustees of the Billy C. and Betty L. Maher Trust; Billy C. and Betty L. Maher, trustees of the Maher Family Trust of 1988; Billy C. and Betty L. Maher; Jimmie Gerald Easter and Jeananne Easter, trustees of the Easter Revocable Family Trust, dated May 15, 2009; Baylink Fuel Services, Inc., a California corporation; Beverly and Jerry LeMasters; Pasquale B. Parenti and Judith L. Parenti, trustees of the Parenti Family Revocable Trust Agreement, dated April 27, 1995; Pasquale B. Parenti and Judith L. Parenti; Ragsdale Family Partnership, a California limited partnership; Virgil E. Ragsdale; Margaret M. Ragsdale; James Peter Siebe, trustee of the James Peter Siebe Trust; James Peter Siebe, trustee of the Vivian L. Siebe Trust, dated May 6, 1994; Jean L. Siebe, trustee of the Jeane L. Siebe Trust; Jean L. Siebe, trustee of the Residential Trust of Martin and Jean Siebe Trust UTA, dated November 21, 2000; Alfred E. Zutz and Marian K. Zutz, trustees of the Zutz Family Trust UTA, trustees of the Zutz Family Trust UTA, dated June 5, 2008; Benjamin A. Volkhardt III and Phyllis J. Volkhardt, trustees of the Benjamin A. Volkhardt III and Phyllis J. Volkhardt Trust, dated February 23, 2005; James W. Wiley, trustee for the James W. Wiley Revocable Trust, dated August 25, 2008; Lilian Wirth; Lilian Wirth, trustee for the Lilian Wirth Trust; Lilian Wirth, trustee for the Howard Wirth and Lilian Wirth Family Trust/Marital Trust UTA, dated June 28, 1990; Julie M. Wirth; Steven R. Wirth, custodian for Michael H. Wirth; Steven R. Wirth, custodian for Chelsey M. Wirth; Mark Howard Wirth; Sally Sears; Steven Raleigh Wirth; and Laurie Pearsons; and DOES 11-100

Real Parties in Interest.

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TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	THE CITY OF FAIRFIELD HAS PROVIDED THE COUNTY WITH A LETTER REGARDING WATER SUPPLY AND MEASURE L THAT CONSTITUTES NEW FACTS UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1008(A).	1
	A. The Court Inquired About Measure L at the July 28, 2011 Writ of Mandate Hearing.	1
	B. The Effect of Measure L on the City's Authority to Sell Water to the County Is Not Ripe for Judicial Review.	2
	C. In the City's Letter, the City Confirmed that the City Can Sell Water to the County for the Project.	2
	D. The City's Letter Is a New Fact Regarding the City's Legal Authority to Sell Water to the County.	3
III.	THE CITY'S LETTER AFFECTS THE COURT'S LEGAL ANALYSIS OF RESPONDENTS' WATER SUPPLY ANALYSIS.	5
	A. Measure L Does Not Expressly Bar the Sale of Water to the County Nor Require a Vote of the City Electorate.	5
	B. The City Does Not Interpret Policy LU 3.1 or Measure L as a Bar to Sell Surplus Water to the County for the Project	6
	C. Policy LU 3.1 and Measure L Should Not Be Construed in a Manner that Renders Them Unconstitutional Since There is an Alternative Interpretation.	6
	D. After the Passage of Measure L, Voters Overwhelmingly To Approve Measure T Expressly Supporting Development of Middle Green Valley.	9
	E. The EIR complies with CEQA	10
IV.	CONCLUSION	10

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TABLE OF AUTHORITIES

Page(s)

CASES

Chevron U.S.A. v. Natural Res. Def. Council
(1984) 467 U.S. 837 3

Citizens for Jobs and the Economy v. County of Orange
(2002) 94 Cal.App.4th 1311 8

City of Atascadero v. Daly
(1982) 135 Cal.App.3d 466 8

City of Mill Valley v. Saxton
(1940) 41 Cal.App.2d 290 ..... 7, 8

City of North Sacramento v. Citizens Utilities Co.
(1961) 192 Cal.App.2d 482 7

Clare v. State Bd. of Accountancy
(1992) 10 Cal.App.4th 294 6

Durant v. City of Beverly Hills
(1940) 39 Cal.App.2d 133 7

E Bay Mun. Util. Dist. v. Cal. Dep't of Forestry & Fire Prot.
(1996) 43 Cal. App. 4th 1113 4

Galvin v. Bd. of Supervisors of Contra Costa County (1925) 195 Cal. 686 7

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(1977) 73 Cal.App.3d 1009 ("*Hawn*") 6, 7

Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach
(2001) 86 Cal.App.4th 534 ("*Hermosa Beach*") 7, 8

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(1999) 21 Cal.4th 585 ("*Hotel Employees*") 6, 8

Le Francois v. Goel
(2005) 35 Cal.4th 1094 1

Legislature v. Deukmejian
(1983) 34 Cal.3d 658 ("*Deukmejian*") 6, 7

Mounts v. Uyeda
(1991) 227 Cal. App.3d 111 7

Newsom v. Bd. of Supervisors
(1928) 205 Cal. 262 8

Pacific Legal Found. v. California Coastal Comm'n
(1982) 2

Running Fence Corp. v. Superior Court
(1975) 51 Cal.App.3d 400 4

Sawyer v. City of San Diego
(1956) 138 Cal.App.2d 652 7

Simpson v. Hite
(1950) 36 Cal.2d 125 8

SMUD v. PG&E
(1946) 72 Cal.App.2d 638 [power] 7, 8

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova
(2007) 40 Cal.4th 412 9

Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.
(1989) 49 C.3d 408 9

Western States Petroleum Assn. v. Superior Court
(1995) 9 Cal. 4th 559 3

STATUTES

Cal. Code of Civ. Proc.
§ 1008 1
§§ 1008(a) 1
§§ 1008, subd. (a) 1
§ 1008(a) 1

Cal. Pub. Util. Code
§ 10005 7

Cal. Water Code
§ 382 5

OTHER AUTHORITIES

Cal. Const. Article XI, § 7 7

Article XI § 9(a) of the California Constitution 7, 8, 9

County of Solano
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I. INTRODUCTION

On October 26, 2011, the Court issued a Ruling After Writ of Mandate Hearing ("Ruling") where it found that Respondents' EIR did not comply with CEQA in terms of its analysis of water supply. The Court found that "the presence of Measure L creates such legal uncertainty as to the ultimate availability of that water that significant environmental review of an alternative water supply is required." Ruling at p. 5. Pursuant to Code of Civil Procedure section 1008(a), Respondents and Real Parties respectfully request that this Court reconsider its Ruling in light of a letter the City of Fairfield submitted to the County after the Court's Ruling and in light of binding constitutional authority. This letter makes it plain that Measure L does not create any legal uncertainty as to the water supply for the Middle Green Valley Specific Plan Area. A motion for reconsideration can be filed based on "new or different facts, circumstances, or law." Code Civ. Proc., §1008, subd. (a). A Court can also reconsider its own order under its inherent powers to do so, in order to correct its own order, without limitation by the detailed requirements of Code of Civil Procedure section 1008. *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107. Under both of these authorities, reconsideration is proper in this matter.

II. THE CITY HAS PROVIDED THE COUNTY WITH A LETTER REGARDING WATER SUPPLY AND MEASURE L THAT CONSTITUTES NEW FACTS UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1008(A).

A. The Court Inquired About Measure L at the July 28, 2011 Writ of Mandate Hearing.

During the July 28, 2011 Writ of Mandate hearing ("Hearing"), the Court requested information regarding Measure L. It specifically asked whether the City of Fairfield (the "City") believes that it can provide water to entities outside of its City limits and whether, if a legal challenge were brought concerning the City's ability to do so, the parties defending that provision of water believe they could prevail if a suit were brought on the basis of Measure L. Since the City is not a party to this lawsuit it was not present at the hearing to answer this inquiry,

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nonetheless, everything in the Administrative Record indicates the City believes it can provide water to Middle Green Valley.[1]

At the Hearing, the Court also asked whether, since the passage of Measure L, the City has entered into agreements to transfer water, and does in fact transfer such water, to entities outside of the City limits. In response to the Court's questions, counsel for the Real Party in Interest confirmed that this was true, and the Court indicated that it would not fault counsel for providing a response to the Court's inquiry.

B. The Effect of Measure L on the City's Authority to Sell Water to the County Is Not Ripe for Judicial Review.

As the Court has recognized, it cannot adjudicate the meaning of Measure L since there has been no legal challenge to the application of Measure L or to the City's authority to sell or serve water outside the City limits after the passage of Measure L. Ruling at p. 5. For an issue to be ripe for judicial review, there must be a definite and concrete controversy "touching the legal relations of parties having adverse legal interests" calling for specific relief. *Pacific Legal Found. v. California Coastal Comm'n* (1982) 33 C3d 158, 171. Courts should not render advisory opinions by resolving abstract or hypothetical differences about legal issues. *Ibid.* Consequently, the issue is not ripe for adjudication.

C. In the City's Letter, the City Confirmed that the City Can Sell Water to the County for the Project.

Even though (i) the Administrative Record indicates that the City can and will provide the required water, (ii) the legality of the City's sale of water to the County is not ripe for judicial review and (iii) counsel for Real Party in Interest confirmed in response to the Court's request for information that the City's actions post-Measure L include the sale of water outside of the City's boundaries, the Court nonetheless based its Ruling on the concern that "the presence of Measure

[1] The County worked extensively with the City in developing not only the Specific Plan but also the underlying County General Plan policies for Middle Green Valley. (A.R. 3265-66, 296, 827-829, 3408) As explained in the Joint Opposition Memorandum of Points and Authorities, everything in the Administrative Record indicates that the City believes that it can and will provide water to the Project. (*See* Joint Opposition Memorandum of Points and Authorities, page 33, ln 17 through page 34, ln 15.)

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L creates such legal uncertainty as to the ultimate availability of water that significant environmental review of an alternative water supply is required." Ruling at p. 5, lines 23-25. While abstaining from a declaration of the outcome of a hypothetical future lawsuit to determine the meaning of Measure L, the Ruling simultaneously stated that Measure L "on its face" restricts the ability of the City to provide water services beyond its limits. At the same time, Petitioners' have acknowledged that the "quantity" of available surface water is "certain." Petitioners' Reply Brief at p. 23.

The City is not present in the case to litigate the meaning of Measure L. The County cannot itself proclaim what Measure L allows or prohibits only the City can opine on its laws. *See, e.g., Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal. 4th 559, 572-73, quoting *Chevron U.S.A. v. Natural Res. Def. Council* (1984) 467 U.S. 837, 844-45 ["We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations 'has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations.'"].

Consequently, after the Court's Ruling, on November 7, 2011, George Hicks, the City's Director of Public Works, sent a letter to the Solano County Director of Resource Management confirming that since the passage of Measure L, the City has entered into agreements to provide, and does in fact provide, water to government agencies, and others, outside of the City limits (the "City's Letter"). Declaration of George R. Hicks filed herewith ("Hicks Decl."), Exh. A at p. 1. The City Director of Public Works concludes in the City's Letter that "Measure L does not preclude the City from providing or treating water for the County as proposed" for the Project. Hicks Decl., Exh. A at p. 1.

D. The City's Letter Is a New Fact Regarding the City's Legal Authority to Sell Water to the County.

The City's Letter is an essential new fact regarding Measure L for the Court to consider. The Court indicated that it accepted the County's word during the Hearing that the City has

transferred water outside of the City limits since the passage of Measure L and that the City does not believe that Measure L prevents such transfers of water. However, the Court's ruling does not accept such statements as sufficient. Consequently, the County is now providing the Court with written confirmation from the City that the County's statements during the Hearing were accurate and provides the Court with the information it requested concerning the City's interpretation of Measure L.

Moreover, it is appropriate for the Court to review and consider the City's Letter because the City's letter does not go to the merits of the County's certification of the EIR and its conclusion is consistent with the Administrative Record that was before the Board of Supervisors at the time it made its decision. *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400, 424; A.R. 3221, 3287. Rather, the letter simply clarifies the City's practice of selling water outside its boundaries after the approval of Measure L to address the Court's concerns raised during the Hearing and which form the basis for the Court's concern stated in the Ruling.

The Ruling's conclusions concerning what Measure L says on its face and the degree of legal uncertainty associated with it are, in effect, conclusions of law. Viewed in a practical light, what Petitioners have sought is to indirectly obtain declaratory relief concerning the meaning of Measure L, without undertaking the step of filing a proper lawsuit to attain that end. In a declaratory relief action, properly filed, the City's opinion on Measure L would be readily available because they would be party to the lawsuit. In fairness, the Petitioners' election to frame its pleading as writ of mandate, while in effect seeking declaratory relief, should not obstruct the admissibility of the City's letter under the circumstances of this case. "First, an action for declaratory relief is proper only when there is an actual, present controversy. *Wilson v. Transit Authority* (1962) 199 Cal. App. 2d 716, 724. While past agency decisions may be probative of current agency practice, they also may not be. The agency at least should be allowed to present evidence of what it is currently doing. Second, the very rationale for limiting the administrative mandamus record on review to that which was before the agency is lacking." *E. Bay Mun. Util. Dist. v. Cal. Dep't of Forestry & Fire Prot.* (1996) 43 Cal. App. 4th 1113, 1122-23.

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III. THE CITY'S LETTER AFFECTS THE COURT'S LEGAL ANALYSIS OF RESPONDENTS' WATER SUPPLY ANALYSIS.

A. Measure L Does Not Expressly Bar the Sale of Water to the County Nor Require a Vote of the City Electorate.

In its Reply Brief, Petitioners contended for the first time that Measure L requires a vote of the electorate in order for the City to provide water to the County. Petitioners' Reply Brief at pp. 25-26. This is not expressly required by Measure L. Instead, Measure L simply states that it is "reaffirming and readopting the General Plan Land Use Diagram designation and policies creating the Travis Reserve and Urban Limit Line." Petitioners' Request for Judicial Notice ("RJN"), Exh. A, at p. 2, §1(A). It reaffirms and readopts certain objectives and policies from the City's General Plan. One such policy, Policy LU 3.1, states that "[w]hat is urban shall be municipal, and what is rural shall be within the County. Any urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line established by the General Plan." Petitioners' RJN, Exh. A, at p. 6, §2(B)(1) [underline added]. This policy, predating Measure L, was established to provide a growth limit on the expansion of the City's boundaries, as is clear from other provisions of the City's General Plan.[2]

Neither Policy LU 3.1, nor Measure L's reaffirmation of this policy for the "existing and future missions and operations of Travis Air Force Base and . . . . the existing Urban Limit Line," limit the City's authority to sell water, of which it has an undisputed great surplus, to other jurisdictions. Neither Policy LU 3.1 nor Measure L address or prohibit the sale of water to other jurisdictions outside the City limit; rather, they address the provision of "basic municipal services" to end users by the City. RJN, Exh. A, at p. 6 §2(B)(1). One would have to find that the sale of water to a jurisdiction outside the City limit would require an amendment to the language of Policy LU 3.1 to trigger a vote of the City electorate to authorize such amendment. Nothing in the express language of Policy LU 3.1 or any other provision of the General Plan

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[2] *See e.g.*, "The City's proposed ultimate boundary, which will include all urban development within the City of Fairfield and may include certain permanent open space areas over which the City wishes to exercise direct control" (General Plan, Definitions, Urban Limit Line) and "The Land Use Diagram includes an "Urban Limit Line" which represents the ultimate limit of the City. Policies in the Land Use Element direct that urban development be confined within this Urban Limit Line." General Plan, p. LU-25.

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referenced in Measure L contains such language. The Court's concern regarding the potential that the City may interpret Measure L as a complete bar on the sale of surplus water to other jurisdictions without a vote of the electorate is far broader than the plain language of the Policy LU 3.1 and Measure L, and contrary to the City's own interpretation and practice. See Hicks Decl., Exh. A at p.1.

B. The City Does Not Interpret Policy LU 3.1 or Measure L as a Bar to Sell Surplus Water to the County for the Project.

The City does not interpret Measure L to limit its ability to provide water to the County for the Middle Green Valley Specific Plan. Hicks Decl., Exh. A at p.1. In the City Letter, the City confirms "[i]t is our conclusion that Measure L does not preclude the City from providing or treating water for the County as proposed." *Ibid.* The City explains that selling water to the County for the Specific Plan Area is consistent with the City's practice of selling water to government agencies outside of its City limits. *Ibid.* The City confirms it has provided water to a number of governmental agencies after the passage of Measure L in 2003. *Ibid.* Most recently, the City has provided water to the State of California for the relocation of truck scales. *Ibid.* Furthermore, the City confirms that it would not provide water directly to the end users in the Specific Plan Area, but rather the City would sell excess water wholesale to the County, who would then provide the water service to the end user through a community services district. *Ibid.* Even if Measure L were read to bar the provision of water service by the City, which goes beyond the plain language of Measure L, the provision of water service to customers is a different function than the sale of whole sale water supplies, and is subject to different requirements. *See, e.g.,* Water Code § 382. Consequently, the City believes that it will not violate Policy LU 3.1 or Measure L by selling surplus water to the County for the Project as proposed in the EIR and Specific Plan.

C. Policy LU 3.1 and Measure L Should Not Be Construed in a Manner that Renders Them Unconstitutional Since There is an Alternative Interpretation.

The Court's construction of Measure L, and Policy LU 3.1 through its reference in Measure L, would mean that the City does not have the authority to sell water to the County for

the County to use to provide water service to the Project. Ruling at p. 5. This interpretation, however, is contrary to the California Constitution, and therefore this Court should not interpret Measure L, or Policy LU 3.1 by reference, in this manner.

An initiative ordinance is void if it violates the California or United States Constitutions. *Hotel Employees and Restaurant Employees Intern. Union v. Davis* (1999) 21 Cal.4th 585, 601-602 ("*Hotel Employees*"); *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675 ("*Deukmejian*"); *Hawn v. County of Ventura* (1977) 73 Cal.App.3d 1009, 1018 ("*Hawn*"). However, if possible, a court must adopt an interpretation that eliminates doubts as to the provision's constitutionality. *Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 303.[3] Consequently, this Court must construe Measure L in a manner that renders it constitutional, if at all possible.

Like statutes, initiatives are subject to state and federal constitutional limitations. The California Constitution prohibits cities from exercising their police power to enact ordinances that conflict with provisions of general state law. Cal. Const. Art. XI, §7 ["city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws"]. This limitation applies to measures adopted either by the city council or the voters directly. *Deukmejian, supra,* 34 Cal.3d at p. 675; *Galvin v. Bd. of Supervisors of Contra Costa County* (1925) 195 Cal. 686, 692. Consequently, local laws, including those adopted by voter initiative, cannot be inconsistent with the California Constitution. *Hawn, supra,* 73 Cal.App.3d at p. 1018. Voters may not enact a statute or ordinance that the legislative authority itself has no power to enact and measures adopted by the voters through the initiative process, moreover, are subject to the ordinary rules and canons of statutory construction. *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 549 ("*Hermosa Beach*").

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[3] "In determining a statute's constitutionality, we start from the premise that it is valid, we resolve all doubts in favor of its constitutionality, and we uphold it unless it is in clear and unquestionable conflict with the state or federal Constitutions. [Citation.] A challenge to a statute's constitutionality must demonstrate that its provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions. [Citation.] The corollary to the challenger's burden is that if the court can conceive of a situation in which the statute can be applied without entailing an inevitable collision with constitutional provisions, the statute will prevail." *Mounts v. Uyeda* (1991) 227 Cal. App.3d 111, 122.

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Here, the Court's interpretation of Measure L and underlying Policy LU 3.1 - that it prohibits the City's sale of water to the County to serve the Project - directly conflicts with the California Constitution. Article XI Section 9(a) of the California Constitution provides that a "municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent." See also Pub. Util. Code § 10005. This constitutional provision has been held to authorize municipal corporations, such as the City, to furnish utility services, including water, outside the municipality.[4] Pursuant to this provision, it is plain that the City can "furnish" (in this case sell) water to the County for the Project which is located outside its boundaries. It is possible that the Constitution bars limiting the City's ability to actually provide water service, but at minimum, it bars restricting what is proposed here - for the City to sell wholesale water supplies to the County.

Courts have held that Article XI Section 9(a) of the California Constitution is "self-executing" and that the "Legislature could not, even if it would, limit such authorization." *SMUD v. PG&E* (1946) 72 Cal.App.2d 638, 653. If the Legislature attempted by statutory enactment to deny or withhold that power, it would be "clearly unconstitutional." *City of Mill Valley v. Saxton* (1940) 41 Cal.App.2d 290, 294. As a result, were Measure L construed to bar the City's constitutionally-granted power to furnish water outside its jurisdiction it would be unconstitutional. *Hermosa Beach, supra,* 86 Cal.App.at p. 549; *Hotel Employees, supra,* 21 Cal.4th at pp. 601-602. This Court is obligated to construe Measure L in a manner that does not contradict the California Constitution.

Moreover, an initiative may not interfere with the efficacy of an essential governmental power. *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311

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[4] *See, e.g. City of North Sacramento v. Citizens Utilities Co.* (1961) 192 Cal.App.2d 482, 483-484 [water]; *Sawyer v. City of San Diego* (1956) 138 Cal.App.2d 652, 657 [water]; *SMUD v. PG&E* (1946) 72 Cal.App.2d 638, 653 [power]; *City of Mill Valley v. Saxton* (1940) 41 Cal.App.2d 290, 293 [transportation]; *Durant v. City of Beverly Hills* (1940) 39 Cal.App.2d 133, 137 [water].

[finding an initiative invalid because it impaired the Board of Supervisors' ability to manage its financial affairs and carry out certain public policies][5] In this instance, the Court and Petitioners' construction of Measure L would impede the City's ability to sell excess for value water, which is an essential function of government to manage its fiscal affairs.

D. After the Passage of Measure L, Voters Overwhelmingly To Approve Measure T Expressly Supporting Development of Middle Green Valley.

In November 2008, five years after the passage of Measure L, the voters passed Measure T approving the proposed General Plan Update that would convert a portion of the Project area from agricultural uses to residential uses. (A.R. 17148-17149; A.R. 13298-13307). The electorate supported Measure T by a 71% margin. (A.R. 8854-8855). Specifically, Measure T included County General Plan Policy SS.l-1 providing for the adoption of a plan governing development in Middle Green Valley. (A.R. 17148-17149; A.R. 13298-13307). Pursuant to County General Plan Policy SS.1-1, the County shall "[a]dopt a plan (either a specific plan or master plan to implement these policies for Middle Green Valley. That plan should specify: . . . the details of how the development would be served with water and wastewater service. Attempt to secure public water and wastewater service through a cooperative effort of property owners, residents, the County, and the City of Fairfield." (Solano County General Plan, p. LU-58).

Measure T can be and must be read to be consistent with Measure L and the City's General Plan. There is a strong presumption against implied repeal of conflicting laws. The laws "must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operations." *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 C.3d 408, 419. Measure T is entirely consistent with the earlier adopted Measure L, if Measure L is interpreted consistent with the City's Letter. Measure T simply builds upon

[5] See also *Newsom v. Bd. of Supervisors* (1928) 205 Cal. 262, 271-272 [holding an initiative cannot interfere with a City's power to grant a franchise]; *Simpson v. Hite* (1950) 36 Cal.2d 125, 134 [holding an initiative cannot interfere with a City's power to site a courthouse]; *City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466, 470 [holding that an initiative is invalid if it will impede a city's taxing power].

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Measure L by making it clear that the City may be a part of the long-planned solution for serving Middle Green Valley with pubic water.

E. The EIR complies with CEQA

As reflected in the language of Measure L, City General Plan Policy LU 3.1, the Administrative Record, Measure T, and the City's Letter, the City is legally authorized to sell surplus water to the County to allow the County, to service the Project. To construe Measure L otherwise would be inconsistent with its express language, inconsistent with Measure T, inconsistent with the City's own interpretation and practice, and inconsistent with the California Constitution Article XI Section9(a). As discussed in the Opposition Brief and in the Hearing, CEQA does not require absolute certainty in water supplies at the planning stages, such as the specific plan at issue, and the EIR provides a sufficient amount of certainty since it "bear[s] a likelihood of actually" being available. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 438 and 432.

IV. CONCLUSION

Therefore, the County requests that the Court reconsider its Ruling in light of the City's Letter and find that the EIR in its entirety, including the water supply section, comply with CEQA. The petition for writ should therefore be denied in full.

Dated: November 7, 2011

DENNIS BUNTING
County Counsel

By: _____
LEE AXELRAD
Deputy County Counsel

For: Attorney for Respondent, County of Solano and the Solano County Board of Supervisors

By: _____
TAMSEN PLUME

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For: Attorneys for Real Party in Interest, Karen Yarbrough Waller; Louise Yarbrough and Debra Yarbrough Russo, trustees of the Green Valley Grantor Retained Annuity Trust, dated September 24, 2008; Louise Yarbrough and Debra Yarbrough Russo, trustees of the Yarbrough Family Trust under declaration of trust, dated July 23, 1992; Louise Yarbrough, trustee of the Louise Yarbrough Trust; Debra Yarbrough Russo as trustee of the Debra Yarbrough Russo Trust; Anthony S. Russo and Debra A. Russo; Robert Hager Jr., Camino Diablo Associates, a California General Partnership; C. Roy Mason and Elizabeth G. Mason, trustees of the C. Roy Mason and Elizabeth Garben Mason Family Trust, dated June 16, 1993; C. Roy Mason and Elizabeth G. Mason; Sarah D. and Frank Lindemann; and Sarah D. Lindemann; John N. Lawton, Jr., trustee of the Lawton Living Trust, dated June 11, 2008; Billy C. and Betty L. Maher, trustees of the Billy C. and Betty L. Maher Trust; Billy C. and Betty L. Maher, trustees of the Maher Family Trust of 1988; Billy C. and Betty L. Maher; Beverly and Jerry LeMasters; Ragsdale Family Partnership, a California limited partnership; Virgil E. Ragsdale; Margaret M. Ragsdale; Benjamin A. Volkhardt III and Phyllis J. Volkhardt, trustees of the Benjamin A. Volkhardt III and Phyllis J. Volkhardt Trust, dated February 23, 2005; James W. Wiley, trustee for the James W. Wiley Revocable Trust, dated August 25, 2008

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Solano. I am over the age of eighteen years and not a party to the within above entitled action. My business address is the Office of the County Counsel, 675 Texas Street, Suite 6600, Fairfield, California, County of Solano.

I served the within a(n) **DECLARATION OF GEORGE R. HICKS; DECLARATION OF BILL F. EMLEN; DECLARATION OF LEE AXELRADin UPPER GREEN VALLEY HOMEOWNERS v. COUNTY OF SOLANO AND THE BOARD OF SUPERVISORS, Case Number(s) FCS036446,** on the attorney(s) and/or parties listed below by:

☒ Faxing to the phone numbers listed below and placing a true copy thereof, enclosed in a sealed envelope in the County Counsel's outgoing mailbox for collection by county mail carriers. Said envelope would be deposited in the U.S. Postal Service mailbox with postage thereon fully prepaid in the ordinary course of county business, to the following address:

Amanda J. Monchamp
Tamsen Plume
HOLLAND & KNIGHT LLP
50 California Street, Suite 2800
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Facsimile: (415) 743-6910

Amber L. Kemble
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Donald B. Mooney
LAW OFFICE OF DONALD B. MOONEY
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Facsimile: (530) 758-2377

Dana Dean, Esq.
LAW OFFICES OF DANA DEAN
835 1st Street
Benicia, CA 94510
Facsimile: (707) 747-5209

I declare under penalty of perjury that the foregoing is true and correct. Executed at Fairfield, California, on November 7, 2011.

Roselle A. Tamoro
Legal Secretary
Office of the County Counsel

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Solano. I am over the age of eighteen years and not a party to the within above entitled action. My business address is the Office of the County Counsel, 675 Texas Street, Suite 6600, Fairfield, California, County of Solano.

I served the within a(n) **NOTICE OF MOTION AND MOTION FOR RECONSIDERATION**in **UPPER GREEN VALLEY HOMEOWNERS v. COUNTY OF SOLANO AND THE BOARD OF SUPERVISORS, Case Number(s) FCS036446,** on the attorney(s) and/or parties listed below by:

☒ Faxing to the phone numbers listed below and placing a true copy thereof, enclosed in a sealed envelope in the County Counsel's outgoing mailbox for collection by county mail carriers. Said envelope would be deposited in the U.S. Postal Service mailbox with postage thereon fully prepaid in the ordinary course of county business, to the following address:

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Roselle A. Tamoro
Legal Secretary
Office of the County Counsel

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Solano. I am over the age of eighteen years and not a party to the within above entitled action. My business address is the Office of the County Counsel, 675 Texas Street, Suite 6600, Fairfield, California, County of Solano.

I served the within a(n) **RESPONDENT'S AND REAL PARTIES IN INTEREST'S JOINT OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION**in **UPPER GREEN VALLEY HOMEOWNERS v. COUNTY OF SOLANO AND THE BOARD OF SUPERVISORS, Case Number(s) FCS036446,** on the attorney(s) and/or parties listed below by:

☒ Faxing to the phone numbers listed below and placing a true copy thereof, enclosed in a sealed envelope in the County Counsel's outgoing mailbox for collection by county mail carriers. Said envelope would be deposited in the U.S. Postal Service mailbox with postage thereon fully prepaid in the ordinary course of county business, to the following address:

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I declare under penalty of perjury that the foregoing is true and correct. Executed at Fairfield, California, on November 7, 2011.

Roselle A. Tamoro
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EXHIBIT G

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

DEPARTMENT ONE

UPPER GREEN VALLEY HOMEOWNERS ASSOCIATION, etc.,

Petitioner,

vs.

COUNTY OF SOLANO, etc., et al.,

Respondents. /

KAREN YARBROUGH-WALLER, et al.,

Real Parties in Interest. /

NO. FCS036446

RULING REGARDING MOTION FOR RECONSIDERATION

The above-entitled matter came on for hearing on January 11, 2012 before the Honorable Paul L. Beeman regarding the motion for reconsideration filed on November 7, 2011. Amber L. Kemble, Esq., and Dana L. Dean, Esq., appeared on behalf of Petitioner. Lee Axelrad, Esq., appeared on behalf of Respondents. Amanda J. Monchamp, Esq., appeared on behalf of Real Parties in Interest. The Court heard the arguments of counsel, and the matter was submitted for decision. Now, therefore, based on the pleadings and records on file and good cause, the Court enters the following ruling.

//

Insofar as COUNTY and Real Parties in Interest submitted "new evidence" in the form of identical letters dated November 3 and November 7, 2011 from the City of Fairfield's Director of Public Works, George Hicks, to the Solano County Director of Resource Management, the Court sustains Petitioner's objection to those letters and the accompanying declarations as to the content and consequences of those letters. Letters from a city employee are not matters of which the Court can take judicial notice. Evidence Code §452(c); Marino v. City of Los Angeles (1973) 34 Cal.App.3d 461, 465. These letters, drafted long after the certification of the EIR by COUNTY, expressing Hicks' opinions as to the interpretation and applicability of Measure L, also fail to qualify under the business records exception to the hearsay rule, which apply only to writings made contemporaneously, of facts, in the regular course of business, in a manner suggestive of trustworthiness. Evidence Code §1271; Zanone v. City of Whittier (2008) 162 Cal.App.4th 174, 191; Taggart v. Super Seer Corp. (1995) 33 Cal.App.4th 1697, 1708. Most importantly, though, these letters were not part of the administrative record for the environmental impact report certification, nor are they particularly relevant to the interpretation of Measure L.

Even absent "new evidence," on the Court's own motion, it can reconsider its rulings. This Court, after advising the parties at hearing that it would give this matter reconsideration, hereby confirms its earlier ruling.

In doing so, this Court again confirms its intention not to rule on the constitutionality of Measure L. However, the very existence of this measure, and its clear restriction against providing basic municipal services beyond city boundaries without voter approval, creates significant legal uncertainty as to whether the City can, directly or even indirectly, supply water to the subject project.

There are some general legal uncertainties inherent in any project's identified water supply, such as the requirement of later approvals anticipated in the development process. Still other legal uncertainties may exist, specific to the

circumstances of the case. If the EIR acknowledges the extent of the latter type of uncertainties, and provides a reasoned analysis explaining why those uncertainties do not rise to a level of significance, the Court could determine that no alternative water supply analysis should be required. Santa Clarita Organization for Planning the Environment v. County of Los Angeles (2007) 157 Cal.App.4th 149. Conversely, an EIR which ignores or otherwise fails to provide a reasoned analysis of those more specific legal uncertainties, or whose reasoned analysis fails to explain why those uncertainties do not rise to a level of significance, must provide a reasonable environmental analysis of a water supply alternative. Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412. The subject EIR fails to meet those requirements.

The Court, therefore, denies the reconsideration motion, and affirms its previously announced ruling on the writ petition.

The Court will concurrently issue the writ and judgment to confirm its ruling on the writ petition.

IT IS SO ORDERED.

DATED: Mar. 21 2012

PAUL L. BEEMAN
Judge of the Superior Court

SOLANO COUNTY COURTS
STATE OF CALIFORNIA
600 Union Avenue, Fairfield, California

CERTIFICATE AND AFFIDAVIT OF MAILING NO. FCS036446

I, Donna Callison, certify under penalty of perjury that I am a Judicial Assistant of the above-entitled Court and not a party to the within action; that I served the attached by causing to be placed a true copy thereof in an envelope which was then sealed and postage fully prepaid on the date shown below; that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; that this document was deposited in the United States Postal Service on the date indicated. Said envelopes were addressed to the attorneys/parties and any other interested party as indicated below.

Document Served: Ruling Regarding Motion for Reconsideration

Amber L. Kemble, Esq. LAW OFFICE AMBER KEMBLE 4160 Suisun Valley Road, Suite E444 Fairfield, CA 94534	Donald B. Mooney, Esq. LAW OFFICE DONALD MOONEY 129 C Street, Suite 2 Davis, CA 95616
Dana L. Dean, Esq. LAW OFFICE DANA DEAN 835 1st Street Benicia, CA 94510	Lee Axelrad, Esq. Deputy County Counsel 675 Texas Street, Suite 6600 Fairfield (via inter-County mail)
Sharon Little, Esq. Amanda J. Monchamp, Esq. HOLLAND & KNIGHT 50 California Street, Suite 2800 San Francisco, CA 94111	

I declare under penalty of perjury that the foregoing is true and correct and that this certificate was executed on March 21, 2012 at Fairfield, California.

Donna Callison

SOLANO COUNTY COURTS
STATE OF CALIFORNIA
600 Union Avenue, Fairfield, California

CERTIFICATE AND AFFIDAVIT OF MAILING NO. FCS036446

I, Donna Callison, certify under penalty of perjury that I am a Judicial Assistant of the above-entitled Court and not a party to the within action; that I served the attached by causing to be placed a true copy thereof in an envelope which was then sealed and postage fully prepaid on the date shown below; that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; that this document was deposited in the United States Postal Service on the date indicated. Said envelopes were addressed to the attorneys/parties and any other interested party as indicated below.

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Sharon Little, Esq. Amanda J. Monchamp, Esq. HOLLAND & KNIGHT 50 California Street, Suite 2800 San Francisco, CA 94111	

I declare under penalty of perjury that the foregoing is true and correct and that this certificate was executed on March 21, 2012 at Fairfield, California.

Donna Callison

EXHIBIT H

ADOPTION OF AMENDMENT
TO THE 1994 ORDERLY GROWTH INITIATIVE
MEASURE T

Shall Ordinance No. 2008-01 to amend the 1994 Orderly Growth Initiative to reflect agriculture and open space policies, land use designations, and the Land Use Diagram in the 2008 Solano County General Plan and to extend the amended Initiative until December 31, 2028 be adopted?

MEASURE "T" (ORDINANCE 2008-01)
IMPARTIAL ANALYSIS OF COUNTY COUNSEL

Measure T asks voters whether to adopt Ordinance No. 2008-01, amending the 1994 Orderly Growth Initiative and implementing the 2008 Solano County General Plan.

A YES vote is a vote to adopt the ordinance, to amend the 1994 Orderly Growth Initiative's growth control policies and map designations and to implement the 2008 General Plan.

A NO vote is a vote not to adopt the ordinance, not to amend the 1994 Orderly Growth Initiative's growth control policies and map designations and not to implement the 2008 General Plan.

State law requires each county to adopt a general plan. A general plan controls the development permitted in the unincorporated areas of a county, which includes lands that are not part of a city.

State law permits a board of supervisors to amend a general plan, but only four times each year. No other limitation exists.

In 1994, the Solano County Board of Supervisors adopted the Orderly Growth Initiative that limits the right of the Board to amend the General Plan provisions relating to the designation of the properties currently designated "Agriculture" or "Open Space." Only a majority vote of the people can amend or repeal these provisions. The 1994 Orderly Growth Initiative ("Initiative") expires on December 31, 2010.

In August 2008, the Board of Supervisors conditionally adopted the 2008 Solano County General Plan, which is a comprehensive update of the existing General Plan, except for certain specified elements. The 2008 General Plan will only become operative if the voters approve the amendments to the Initiative, by adopting Ordinance 2008-01. The proposed amendments to the Initiative allow the Board to implement the 2008 General Plan.

Measure T readopts the following provisions of the Initiative:

a. Continues the current development strategy of city centered growth and the cornerstone principle that "what is urban shall be municipal" by directing most residential and other non-agricultural related development to occur within the boundaries of a city in Solano County and not in the unincorporated areas of the County; and

b. Maintains the policies that strictly limit the Board of Supervisors' ability to change the designation of "Agriculture" or "Open Space" lands as currently shown on the Solano County Land Use and Circulation Diagram ("Land Use Diagram") until December 31, 2028.

Measure T amends the following policies of the Initiative:

a. Re-designates certain agricultural uses to residential, commercial and industrial uses as shown on the Land Use Diagram and described in the policies and programs in the Land Use chapter;

b. Modifies agricultural policies to define ten geographic regions, specify minimum lot sizes by region, and allow limited processing and support services within areas designated for agriculture, as described in the Agriculture chapter; and

c. Updates the density standards for development of "Agriculture" or "Open Space" lands and extends the effect of those density standards until December 31, 2028.

Measure T extends the Initiative's growth control provisions until December 31, 2028. Only the voters of Solano County may amend or repeal these provisions.

S/ Dennis Bunting
Solano County Counsel

EC § 9160

ARGUMENT IN FAVOR OF MEASURE T

Ask a Farmer. Measure T protects farming in Solano County for another generation, and protects the open space and hillsides that make Solano County unique.

Voting "Yes on T" protects family farms and protects our quality of life. It prevents sprawl.

A Citizens' Advisory Committee has worked to create this new plan that gives farmers flexibility to keep farming, and creates new jobs instead of new commuters. It requires urban growth to continue to be directed into Solano County's cities.

Measure T is the Citizens' plan. More than 800 residents, including 450 farmers, created this in more than 100 public meetings. It lets farmers process vegetables, fruits and nuts locally, and sell directly to consumers. It allows wineries and small bed and breakfasts to attract tourist's tax dollars – like Napa Valley. It strengthens protections of Travis Air Force Base. It opens up more opportunities to attract good-paying local jobs, reducing traffic congestion.

Voting "Yes on T" will lock in smart, new farmland protections for 20 years, and will require a vote of the people to convert farmland to housing in unincorporated Solano County.

Measure T promotes green energy in Solano County, making affordable and renewable energy more accessible.

Voting "Yes on T" will create small, centrally located rural residential options and prevent large subdivisions from being planted in the middle of our best farmland.

Voting "Yes on T" will ensure that more than 90% of unincorporated Solano County will remain in farming or open space.

Measure T is supported by the Solano County Farm Bureau, the Fairfield-Suisun and Vacaville Chambers of Commerce, Orderly Growth Groups, Travis Regional Armed Forces Committee, and hundreds of hard-working family farmers.

Ask a Farmer. Please Vote "Yes on T."

S/ Jim Spering
Solano County Supervisor

S/ Osby Davis
Mayor, City of Vallejo

Solano County Farm Bureau
S/ Joseph R. Martinez, President

Greenbelt Alliance
S/ Nicole Byrd, Solano-Napa Field Representative

Vacaville Chamber of Commerce
S/ Gary Tatum, President

NO ARGUMENT AGAINST MEASURE T WAS FILED

FULL TEXT OF MEASURE T

ORDINANCE NO. 2008-01

AN ORDINANCE OF THE PEOPLE OF THE COUNTY OF SOLANO, ADOPTING AN AMENDMENT TO THE 1994 ORDERLY GROWTH INITIATIVE TO UPDATE CERTAIN PROVISIONS OF THE GENERAL PLAN LAND USE AND CIRCULATION ELEMENT RELATING TO AGRICULTURE OR OPEN SPACE POLICIES AND LAND USE DESIGNATIONS, AND TO EXTEND THE AMENDED INITIATIVE, INCLUDING THE VOTER APPROVAL REQUIREMENT, UNTIL DECEMBER 31, 2028

The people of the County of Solano ordain as follows:

Section 1. Purposes and Findings

A. In December 1980, the Solano County Board of Supervisors adopted a General Plan Land Use and Circulation Element that established a development policy of city-centered growth. Under the 1980 General Plan, urban development was to be confined to patterns that did not conflict with essential agricultural lands, while rural and suburban development was to be confined to non-essential marginal agricultural lands. The 1980 General Plan was intended to provide policy guidance for shaping growth and development within the unincorporated areas of Solano County, and for protecting its agricultural and natural resources, until the year 1995.

B. Proposition A, an initiative measure passed by the voters of Solano County in June 1984, reaffirmed the General Plan's cornerstone policies of city-centered growth and farmland protection, and imposed strict limitations on the County Board of Supervisor's ability to allow new residential, commercial, or industrial development in agricultural and open-space areas. Proposition A was a limited-term measure that was to expire in December 1995.

C. In 1994, the voters of Solano County proposed the Orderly Growth Initiative in order to extend the protections of Proposition A until December 31, 2010. In response to broad public support for that proposal, the Solano County Board of Supervisors adopted the Orderly Growth Initiative as its Resolution No. 94-170 on July 26, 1994.

D. For 28 years, the 1980 General Plan, Proposition A, and the Orderly Growth Initiative have protected working farms, ranches, and watershed areas in Solano County by directing urban growth and development into our cities. The cornerstone policies of city-centered growth and farmland protection have:

- Provided each city in Solano County the opportunity to develop with its own unique character;
- Reduced flood risks, improved air quality, and protected our water quality;
- Prevented poorly-planned growth and development; and
- Assured the continued preservation of working farms, ranches, and watershed areas between the cities of Solano County.

E. Although the 1980 General Plan was originally intended to be updated in 1995, the Orderly Growth Initiative prevents the County from adopting a comprehensive update to the 1980 General Plan unless the voters amend the language of the land use and development policies set forth in the Orderly Growth Initiative.

F. Solano County's current General Plan does not accurately reflect existing and planned land uses of Solano County's seven cities, nor does it adequately provide for modern farming practices that Solano County's farmers need to employ in order to survive in today's regional, national, and global economies. Solano County cannot effectively plan and manage 21st century land uses and development if its guiding policy document is a 20th century General Plan.

G. Solano County has completed a multi-year process of updating its General Plan. This process was necessary to keep the General Plan current to comply with state law and with changing conditions. The new 2008 General Plan reaffirms the County's commitment to a city-centered development pattern and the protection of agricultural and open-space area. The new 2008 General Plan is intended to serve as the guide for both development and conservation within the unincorporated portion of Solano County through the year 2030.

H. While the 1980 General Plan divided Solano County's agricultural area into two large regions, identified as "Extensive Agriculture" and "Intensive Agriculture," the new 2008 General Plan identifies ten distinct agricultural regions based on soil types and farming practices, and establishes unique development policies for each region. In addition, the new General Plan allows for agricultural processing service uses in areas northeast of the City of Dixon to serve the farming community, and limited industrial development adjacent to the City of Vacaville, but restricted to uses that cannot be accommodated in city industrial areas.

I. The Solano County General Plan's Land Use and Circulation Map, as reaffirmed by Solano County voters as part of the Orderly Growth Initiative in 1994 and as amended since then consistent with policies of that Initiative, is shown in Exhibit A to this ballot measure. The Solano County 2008 General Plan's Land Use Diagram is shown in Exhibit B to this ballot measure.

J. Solano County's 2008 General Plan involves only minor amendments to the Orderly Growth Initiative, as reflected in Exhibits C and D to this ballot measure.

K. This ordinance will continue to protect Solano County's working farms, ranches and watershed areas by extending the essential provisions of the Orderly Growth Initiative for the anticipated duration of the new 2008 Solano County General Plan. This measure will:

- Readopt the Orderly Growth Initiative's policies that strictly limit the Board of Supervisor's ability to change the designation of "Agriculture" or "Open Space" lands through the year 2028.
- Update the Orderly Growth Initiative's density standards for development of "Agriculture" or "Open Space" lands and extend the effect of those density standards through the year 2028. This will prevent poorly planned growth in the unincorporated lands of Solano County.

L. This ordinance and the 2008 Solano County General Plan will:

- Maintain the current development strategy of city-centered growth;
- Retain the overall function of the Orderly Growth Initiative, while updating and refining the Initiative's policies and land use designations;
- Protect and support agriculture as an important component of Solano County's economy and quality of life;
- Provide an opportunity for farm-based, businesses, such as wineries, to develop successfully within Solano County;
- Encourage the location of need new industrial and agricultural processing facilities;
- Sustain and enhance Solano County's natural environment, including its diverse species, watersheds, natural communities, and wildlife corridors;
- Ensure sufficient opportunities for residential, commercial, and industrial development within areas served by the cities, in order to

provide all Solano County's residents with a vibrant economy and affordable housing options;

- Protect the health, safety, and welfare of Solano County's residents by avoiding more air pollution, water pollution, water shortages, traffic congestion, noise and other adverse environmental impacts from urban sprawl;
- Prevent costly and inefficient extensions of urban services and infrastructure to rural areas of the County;
- Permit Solano County to continue to bear its fair share of regional growth and provide safe, decent affordable places for people to live in our cities;
- Prevent piecemeal amendments of the Solano County General Plan that would allow development on agricultural and open space lands;
- Help increase our supply of good jobs by encouraging job development in our growing agriculturally-based industries; and
- Allow the County to update and amend its General Plan periodically as necessary to comply with State law and changing conditions, while requiring that any such amendments be consistent with the cornerstone policies of city-centered growth and protection of farmlands and open space.

Section 2. Orderly Growth Initiative Amendment

The Solano County Land Use and Circulation Element, as amended by the 1994 Orderly Growth Initiative, as part of the Solano County General Plan, is amended as follows:

A. Development Strategy Policy No. 16 (General Plan Land Use and Circulation Element, Chapter II, page 23,) is renumbered as Land Use Policy LU.P-2 and amended to read:

A cornerstone principle of this General Plan is the direction of new urban development and growth toward municipal areas. In furtherance of this central goal, the People of Solano County, by initiative measure, have adopted and affirmed the following provisions to assure the continued preservation of those lands designated "Agriculture," "Watershed," "Marsh," "Park & Recreation," or "Water Bodies & Courses": ***Land Use*** *Policy* ***LU.P-3;*** *Agricultural Policies* ***AG.P-31, AG.P-32, AG.P-33, AG.P-34, AG.P-35, and AG.P-36.*** The General Plan may be reorganized, and individual goals and policies may be renumbered or reordered in the course of ongoing updates of the General Plan in accord with the requirements of state law, but the provisions enumerated in this paragraph shall continue to be included in the General Plan until December 31, ***2028***, unless earlier repealed or amended by the voters of the County.

B. Development Strategy Policy No. 17 (General Plan Land Use and Circulation Element, Chapter II, page 23a) is renumbered as Land Use Policy LU.P-3 and amended to read:

The designation of specific lands and water bodies as "Agriculture," "Watershed," "Marsh," "Park & Recreation," or "Water Bodies & Courses" on the Solano County Land Use ***Diagram***, adopted by the Solano County Board of Supervisors on December 19, 1980, and as amended subsequently consistent with Proposition A ***and the Orderly Growth Initiative***, shall remain in effect until December 31, ***2028***, except lands designated "Agriculture" may be re-designated pursuant to the procedure specified in ***Agricultural Policies AG.P-32 through AG.P-36*** (providing for re-designation upon the making of specific findings, or as necessary to comply with state law requirements regarding provision of low and very low income housing, or permitting certain re-designations to open space).

In addition, these agricultural and open space lands may also be re-designated after a final judgment by a court of competent jurisdiction determining that the absence of a re-designation would constitute an unauthorized taking of private property or is otherwise unconstitutional, but only to the minimum geographical extent and intensity of use necessary to avoid such unconstitutional result. Any such re-designation shall be designed to carry out the goals and provisions of this policy to the maximum extent possible.

Further, the precise boundaries of land use designations may be subject to minor adjustment and refinement prior to development, or upon request of an affected landowner, provided such refinements reflect the overall boundaries indicated on the General Plan Land Use ***Diagram*** and are consistent with all other General Plan policies, in particular, the General Plan policies prohibiting piecemeal conversions of agricultural lands to non-agricultural uses.

C. Agricultural Lands Policy 9 (General Plan Land Use and Circulation Element, Chapter III, pp. 37-37a) is renumbered as Agriculture Policy AG.P-31 and amended to read:

Define parcel size of Agriculture designated lands based on the "Agriculture Regions" section as described in this chapter and presented in Table AG-3.

One residence ***and a permitted secondary unit*** may be built on a lot of record existing as of January 1, 1984, designated "Agriculture" provided however that (i) the owner demonstrates compliance with all other applicable County requirements, and (ii) before such exemption is granted, the lot has first been merged with contiguous parcels to the maximum extent possible consistent with State law.

Continues on next page

D. Table AG-3, as referenced in Agricultural Policy AG.P-31, is added:

Table AG-3
Agricultural Regions

Agricultural Region	Minimum Lot Size	General Uses
Winters	40 acres	Provides for agricultural production, agricultural processing facilities, facilities to support the sale of produce, and tourist services that are ancillary to agricultural production
Dixon Ridge	40 acres	Provides for agricultural production, agricultural processing facilities, and agricultural services
Elmira and Maine Prairie	40 acres – northwest portion (Elmira) 80 acres – southeast portion (Maine Prairie) See Figure AG-5	Provides for agricultural production, agricultural processing facilities, and agricultural services
Montezuma Hills	160 acres	Provides for agricultural and energy production
Ryer Island	80 acres	Provides for agricultural production
Suisun Valley	20 acres	Provides for agricultural production, agricultural processing facilities, facilities to support the sale of produce, and tourist services that are ancillary to agricultural production
Green Valley	20 acres	Provides for agricultural production. A future Specific Plan required for Middle Green Valley will further detail desired agricultural uses and lot sizes
Pleasants, Vaca, and Lagoon Valleys	40 acres – Parcels with current A-40 zoning 20 acres – Parcels with current A-20 zoning See Figure AG-6	Provides for agricultural production and facilities to support the sale of produce, and tourist services that are ancillary to agricultural production
Jepson Prairie	160 acres	Provides for agricultural production
Western Hills	160 acres – West of Pleasants Valley Road 20 acres – East of Pleasants Valley Road and in the Tri-City and County area See Figures AG-7 and AG-8	Provides for agricultural production and tourist services that are ancillary to agricultural production

E. Agricultural Lands Policy 10 (General Plan Land Use and Circulation Element, Chapter III, pp. 37a-37b) is renumbered as Agriculture Policy AG.P-32 and amended to read:

Lands within the "Agriculture" designations as shown on the Land Use ***Diagram*** may be re-designated to a more intensive agricultural designation, or to a rural residential designation (with a maximum density of one unit per 2.5 to 10 acres) if the Board of Supervisors makes each of the following findings:

(a) That the approval will not constitute part of, or encourage, a piece-meal conversion of a larger agricultural area to residential or other non-agricultural uses, and will not alter the stability of land use patterns in the area;

(b) That no land proposed for re-designation is prime agricultural land as defined pursuant to California Government Code section 51201 (the California Land Conservation Act of 1965, also known as the Williamson Act);

(c) That the subject land is unsuitable for agriculture due to terrain, adverse soil conditions, drainage, flooding, parcel size or other physical facts, such that it has no substantial market or rental value under the "Agriculture" designation;

(d) That the use and density proposed are compatible with agricultural uses and will not interfere with accepted farming practices;

(e) That the land is immediately adjacent to existing comparably developed areas and the applicant for the re-designation has provided substantial evidence that the Fire District, School District, County Sheriff, ***the area road system, and the proposed water supplier*** have adequate capacity to accommodate the development and provide it with adequate public services; and

(f) That annexation to a city or incorporation is not appropriate or possible based on the following factors: nearby cities' designated sphere of influence boundaries, cities' general plan growth limits and projections, and comprehensive annexation plans.

All re-designations pursuant to this policy shall be limited to a maximum of 160 acres for any one landowner in any calendar year. Landowners with any unity of interest are considered one landowner for purposes of this limitation.

F. Agricultural Lands Policy 11 (General Plan Land Use and Circulation Element, Chapter III, p. 37b) is renumbered as Agriculture Policy AG.P-33 and amended to read:

To comply with state law regarding the provision of low and very low income housing, as those terms are or may be defined by state law, lands within the "Agriculture" designations on the Land Use ***Diagram*** may be changed to a residential designation. No more than 50 acres of land may be re-designated for this purpose in any calendar year. Such re-designation may be made only upon each of the following findings:

(a) The findings stated in subparagraphs (e) and (f) in Policy ***AG.P-32***, above, are met;

(b) Use of the land re-designated under this policy will be limited to low and very low income housing development, pursuant to a legally valid Housing Element of this General Plan;

(c) There is no existing residentially designated land available for the low and very low income housing; and

(d) The re-designation of lands, and construction of low and very low income housing on those lands, is required to comply with state law requirements for provision of such housing."

Section 3. Policies of the Orderly Growth Initiative Not Being Amended

The 1994 Orderly Growth Initiative provides that its policies may be renumbered and that such renumbering shall not constitute an amendment of the Initiative. The policies identified in this section are being renumbered without amendment in the 2008 Solano County General Plan as follows:

A. Agricultural Lands Policy 12 (General Plan Land Use and Circulation Element, Chapter III, p. 37c) is renumbered as Agriculture Policy AG.P-34. That policy provides as follows:

Lands within the "Agriculture" designations may be re-designated to "Park & Recreation" only for public recreation and public open space uses and only if the uses permitted by the new designation will not interfere with or be in conflict with agricultural operations.

B. Agricultural Lands Policy 13 (General Plan Land Use and Circulation Element, Chapter III, p. 37c) is renumbered as Agriculture Policy AG.P-35. That policy provides as follows:

Lands within the "Agriculture" designations may be re-designated to "Watershed" or "Marsh."

C. Watershed Lands Policy 2 (General Plan, Land Use and Circulation Element, Chapter III, page 39) is renumbered as Agriculture Policy AG.P-36. That policy provides as follows:

Lands designated Watershed.

a. Within the "Watershed" land use designation, the maximum permitted residential density is one dwelling unit per one hundred sixty (160) acres.

b. Notwithstanding the preceding paragraph, one residence may be built on a lot of record existing as of January 1, 1984, designated "Watershed" provided however that (i) the owner demonstrates compliance with all other applicable County requirements, and (ii) before such exemption is granted, the lot has first been merged with contiguous parcels to the maximum extent possible consistent with state law.

Section 4. Effective Date

This ballot measure shall take effect ten days after the date on which the election results are declared by the Solano County Board of Supervisors. Upon the effective date of this ordinance, and not sooner, the 2008 Solano County General Plan becomes effective, provided it includes amendments to the various policies of the 1994 Orderly Growth Initiative as set forth in Sections 2 and 3 of this ordinance.

Section 5. Exemptions for Certain Projects

This ordinance shall not apply to any of the following: (1) any project that has obtained as of the effective date of the Initiative a vested right pursuant to state or local law; (2) any land that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution. Nothing in this ballot measure shall be applied to preclude the County's compliance with housing obligations under state law or the use of density bonuses where authorized by state law.

Section 6. Severability and Interpretation

This ordinance shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this ordinance is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of it. The voters declare that this ordinance, and each section, sub-section, sentence, clause, phrase, part, or portion of it, would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this ordinance is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this ordinance that can be given effect without the invalid application. This ordinance shall be broadly construed in order to achieve its purposes.

Section 7. Amendment or Repeal

Except as otherwise provided, only the voters of Solano County may amend or repeal the policies set forth in Sections 2 and 3 of this ordinance.

This ordinance was passed by a vote of the people of the County of Solano, on November 4, 2008, by the following vote:

Yes: _____

No: _____

The vote on this ordinance was declared by the Board of Supervisors on _____, 2008.

_____
John F. Silva, Chair
Solano County Board of Supervisors

Attest:
Michael D. Johnson, Clerk
Board of Supervisors

By: _____
Patricia J. Crittenden, Chief Deputy Clerk

Ordinance No. 2008-01

Exhibits:

Exhibit A: Solano County Land Use and Circulation Map, a part of the 1980 Solano County General Plan.

Exhibit B: Solano County Land Use Diagram, figure LU-1 of the 2008 Solano County General Plan.

Exhibit C: Agricultural and Open Space Land Use Designation Changes from 1980 General Plan

Exhibit D: Sections 2 and 3 of Ordinance No. 2008-01 with revised text.

Solano County
Existing 1980 General Plan

Legend

- Waste Disposal Site
- Intersections
- Creeks, Streams and Canals
- Railroads
- Freeways
- Major Arterial
- Minor Arterial
- Collector
- Local
- Urban Growth Line

General Plan Land Use Designations

OPEN SPACE
- Watershed
- Marsh
- Park & Recreation
- Water Bodies & Courses

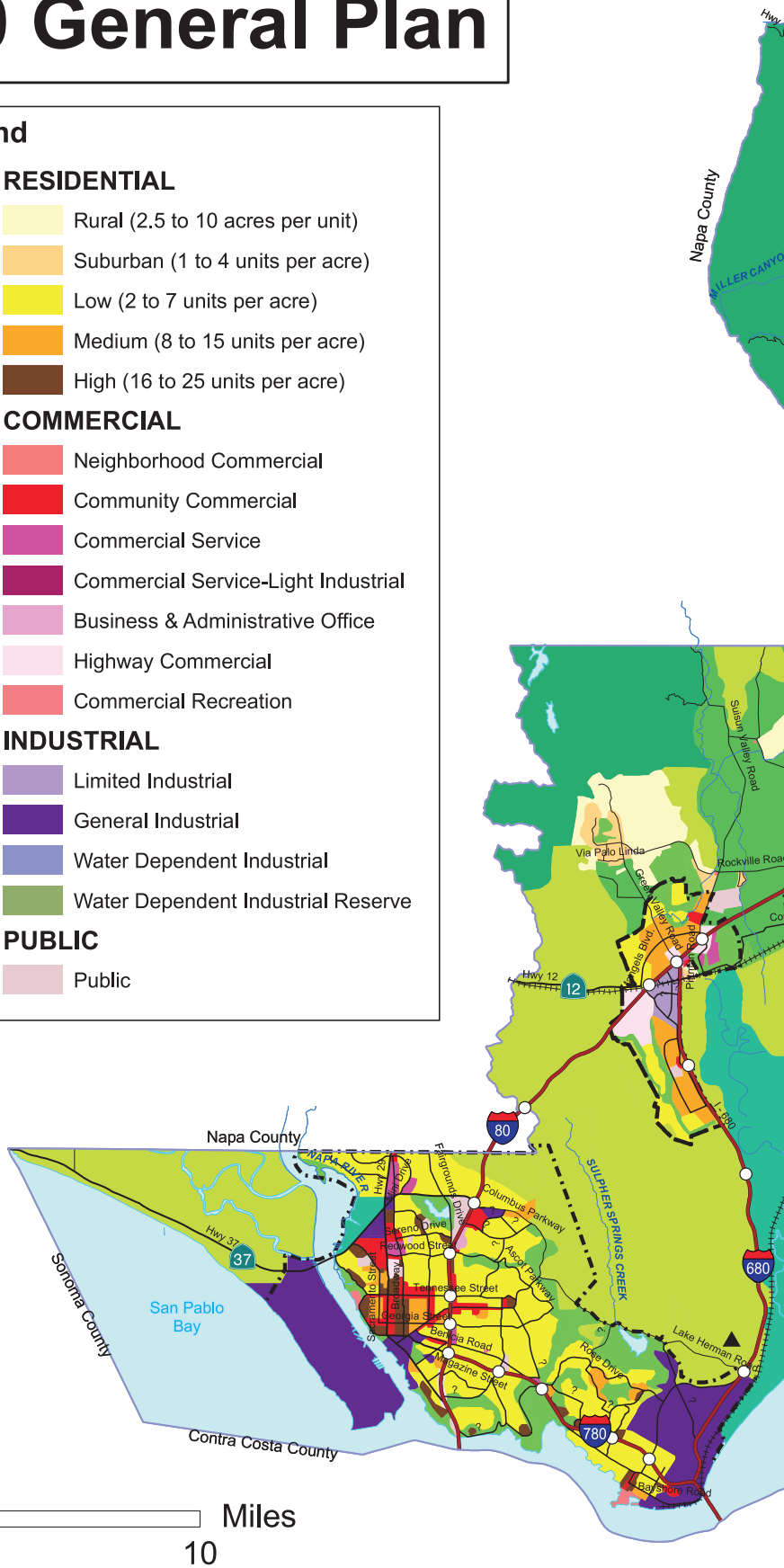
AGRICULTURE
- Intensive Agriculture
- Extensive Agriculture

RESIDENTIAL
- Rural (2.5 to 10 acres per unit)
- Suburban (1 to 4 units per acre)
- Low (2 to 7 units per acre)
- Medium (8 to 15 units per acre)
- High (16 to 25 units per acre)

COMMERCIAL
- Neighborhood Commercial
- Community Commercial
- Commercial Service
- Commercial Service-Light Industrial
- Business & Administrative Office
- Highway Commercial
- Commercial Recreation

INDUSTRIAL
- Limited Industrial
- General Industrial
- Water Dependent Industrial
- Water Dependent Industrial Reserve

PUBLIC
- Public



Prepared by Solano County Planning Department
Adopted by Solano County Planning Commission November 6, 1980
Adopted by Solano County Board of Directors December 19, 1980

Note: Within Urban Growth Lines, reference should be made to individual city General Plans for more Specific land use designations and development policies

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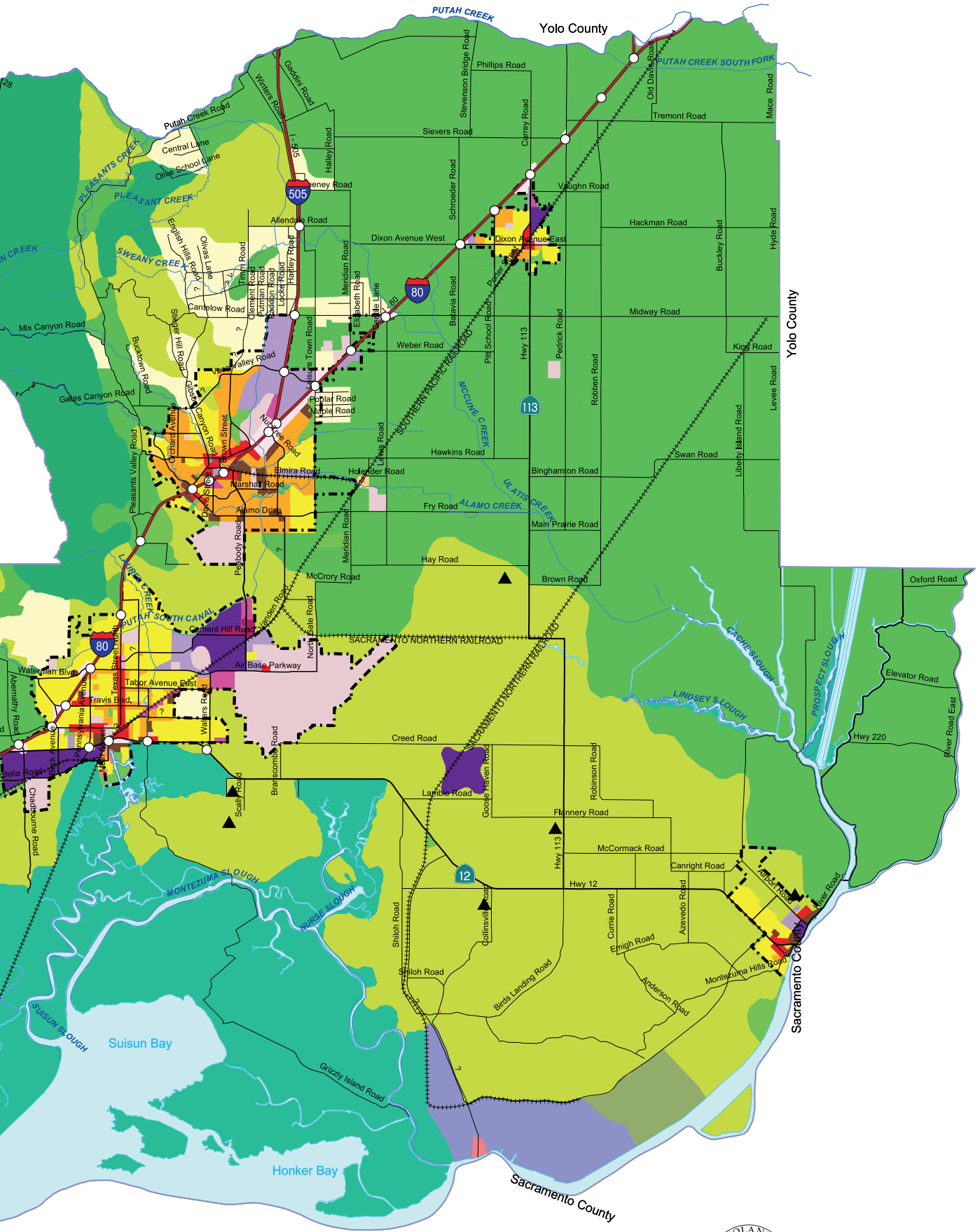
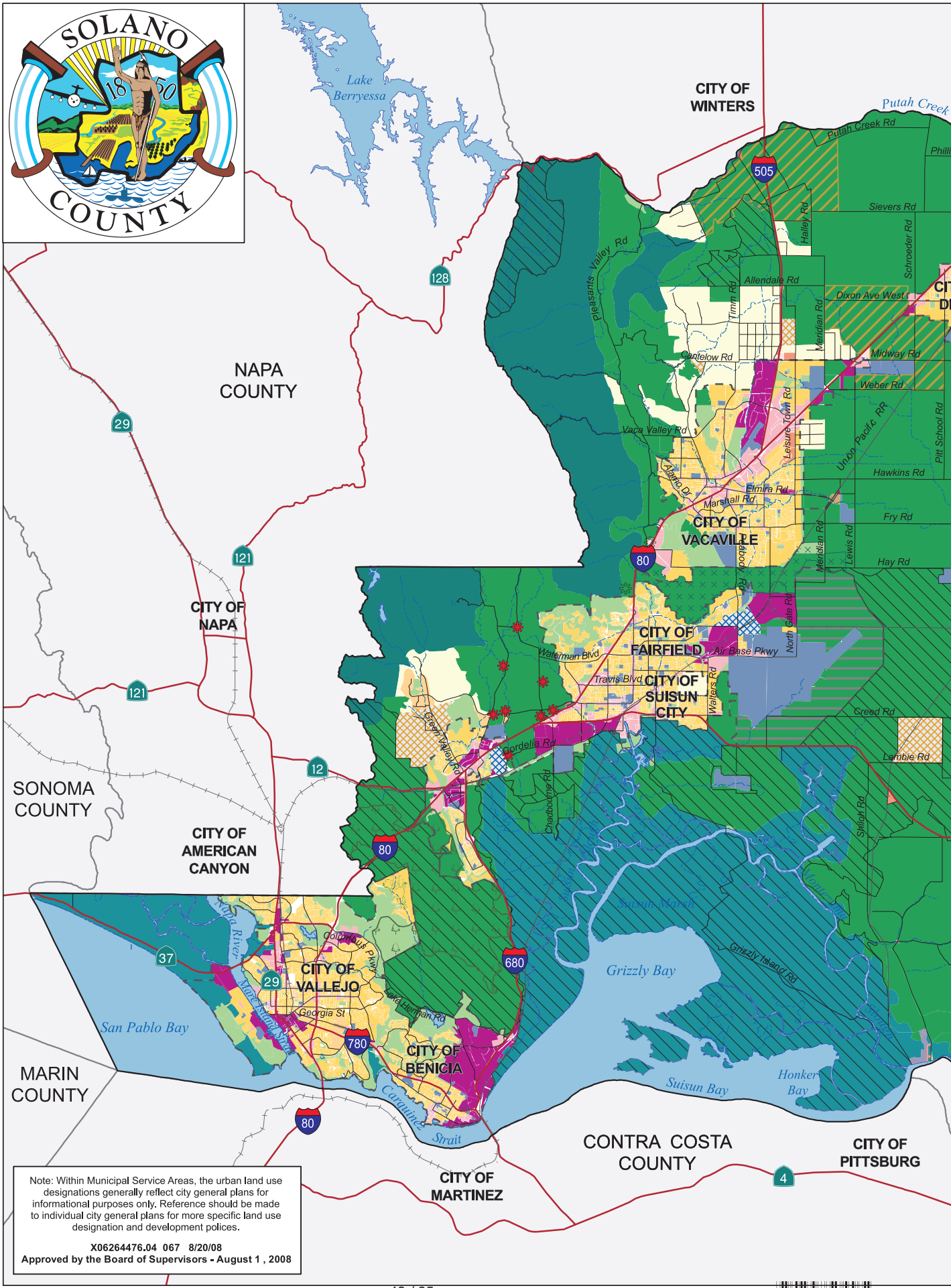
48 / 33



Solano County
Department of Resource Management
675 Texas Street, Suite 5500
Fairfield, CA 94533 February 7, 2008

48 / 34



Note: Within Municipal Service Areas, the urban land use designations generally reflect city general plans for informational purposes only. Reference should be made to individual city general plans for more specific land use designation and development polices.

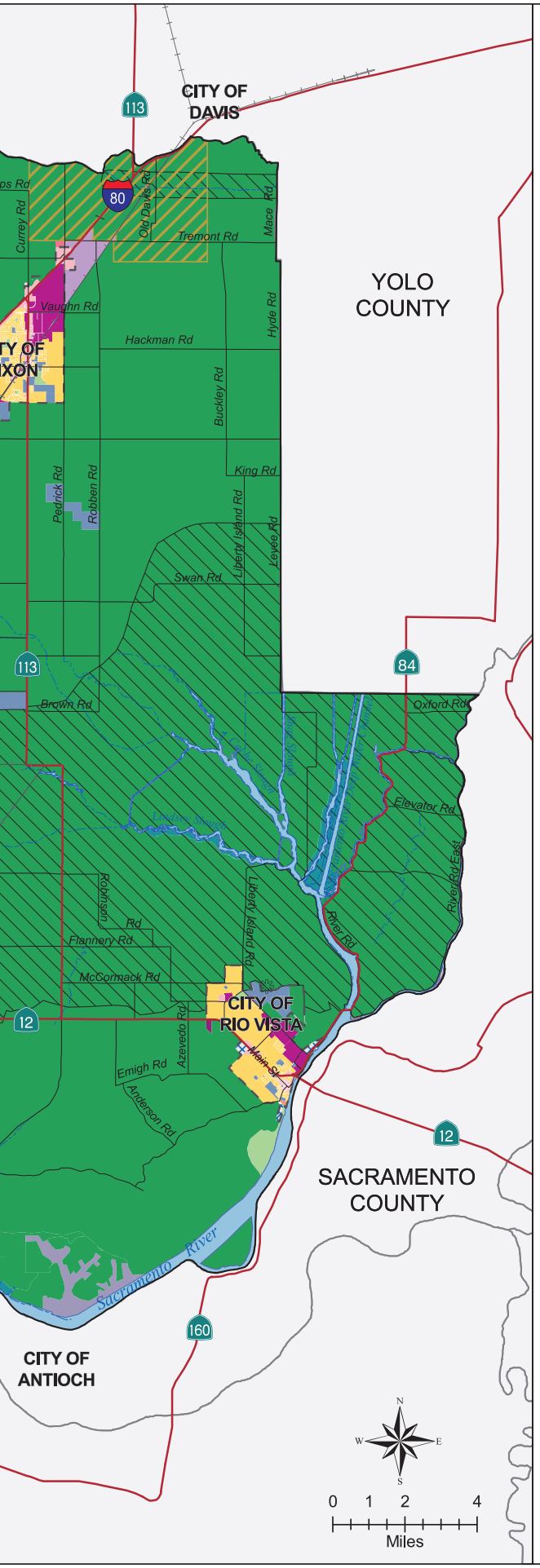
X06264476.04 067 8/20/08
Approved by the Board of Supervisors - August 1 , 2008

48 / 35

2008 Solano County General Plan

Figure LU-1

Land Use Diagram



Legend

- Municipal Service Areas

General Plan Land Use Designations

Natural Resource Designations

- Water Bodies and Courses
- Park and Recreation
- Marsh

Agricultural Designations

- Watershed
- Agriculture

Public Designations

- Public/Quasi-Public

Residential Designations

- Rural Residential
- Traditional Community - Residential
- Traditional Community - Mixed Use
- Urban Residential

Commercial Designations

- Neighborhood Commercial
- Neighborhood Agricultural/Tourist Center
- Commercial Recreation
- Service Commercial
- Highway Commercial
- Urban Commercial

Industrial Designations

- General Industrial
- Limited Industrial
- Water Dependent Industrial
- Urban Industrial

Special Purpose Areas

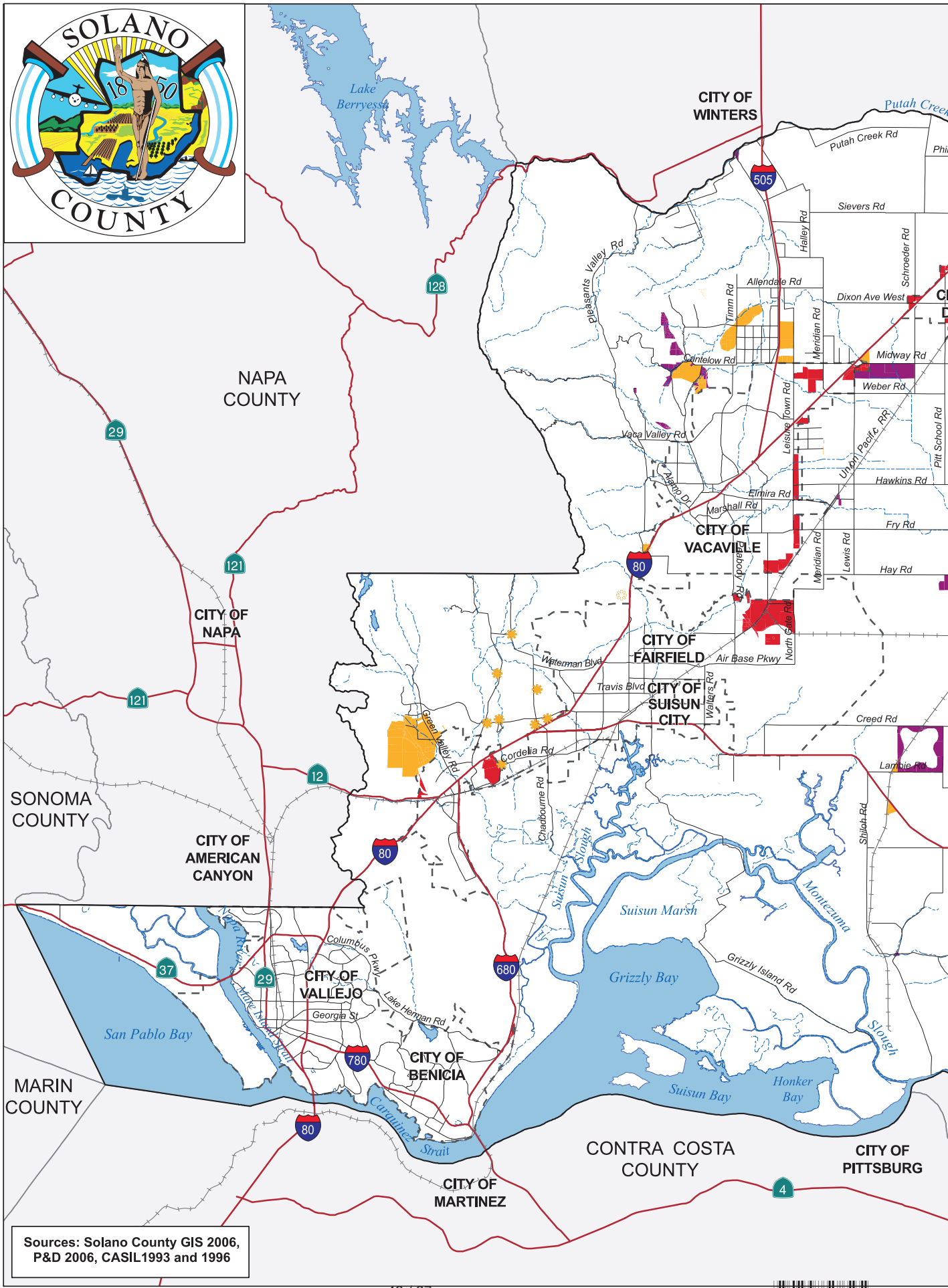
- Joint Study Area
- Specific Project Area
- Urban Project Area

Overlays

- Vacaville-Fairfield-Solano Greenbelt
- Travis Reserve Area
- Agicultural Reserve Overlay
- Tri-City/County Cooperative Planning Area
- Resource Conservation Overlay

"Planning for a Sustainable Solano County"

48 / 36

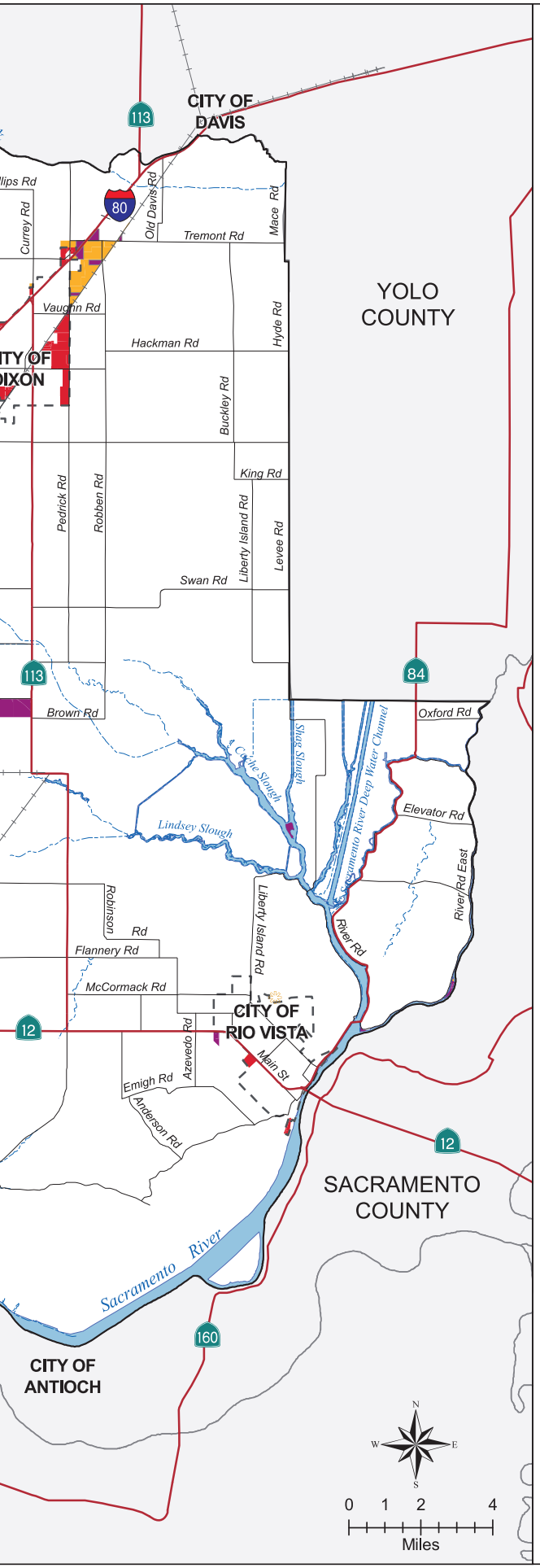


Sources: Solano County GIS 2006, P&D 2006, CASIL1993 and 1996

48 / 37

2008 Solano County General Plan

Agriculture and Open Space Changes from the 1980 General Plan Land Use Map



Legend

Change Areas

- Redesignations outside MSAs
- Technical Adjustments outside MSAs
- All Adjustments within MSAs
- Proposed Agricultural Tourism Center
- Proposed Joint Study Area

Basemap Layers

- Roadways
- Highways
- Railroads
- Streams and Creeks
- Major Water Features
- Municipal Service Areas
- Adjacent Counties (very light gray fill)

Notes

1. Change areas within the MSAs reflect changes to be consistent with the city general plans.

2. Change areas outside the MSAs reflect changes from 1980 agriculture or open space land use designations to proposed public, residential, commercial, industrial or special project area uses on the 2008 Draft General Plan Land Use Diagram.

3. Technical adjustments include adjustments to existing land use designations to more accurately reflect the existing development pattern and zoning and adjustments to reflected land use designations described in the 1980 Land Use Element text but were too small to be reflected on the 1980 Land Use Map.

"Planning for a Sustainable Solano County"

07.31.2008

48 / 38

Exhibit D: Sections 2 and 3 of Ordinance 2008-01 with revised text.

Portions of text of the Orderly Growth Initiative, a part of the current Solano County General Plan's Land Use and Circulation Element, as amended by proposed Ordinance 2008-01. Text to be inserted in the General Plan is indicated in **bold italic** type, while text to be deleted is indicated in ~~strikeout~~ type. Text in standard type currently appears in the General Plan and to be readopted and reaffirmed by the voters.

Section 2. Orderly Growth Initiative Amendment

The Solano County Land Use and Circulation Element, as amended by the 1994 Orderly Growth Initiative, as part of the Solano County General Plan, is amended as follows:

A. Development Strategy Policy No. 16 (General Plan Land Use and Circulation Element, Chapter II, page 23) is renumbered as Land Use Policy LU.P-2 and amended to read:

A cornerstone principle of this General Plan is the direction of new urban development and growth toward municipal areas. In furtherance of this central goal, the People of Solano County, by initiative measure, have adopted and affirmed the following provisions to assure the continued preservation of those lands designated "~~Extensive~~ Agriculture," ~~"Intensive Agriculture,"~~ "Watershed," "Marsh," "Park & Recreation," or "Water Bodies & Courses": ~~Development Strategy~~ ***Land Use*** Policy ~~No.17~~ ***LU.P-3***; Agricultural ~~Lands~~ Policies ~~Nos. 9, 10, 11, 12, and 13; and Watershed Lands Policy No. 2~~ ***AG.P-31, AG.P-32, AG.P-33, AG.P-34, AG.P-35, and AG.P-36.*** The General Plan may be reorganized, and individual goals and policies may be renumbered or reordered in the course of ongoing updates of the General Plan in accord with the requirements of state law, but the provisions enumerated in this paragraph shall continue to be included in the General Plan until December 31, ~~2010,~~ ***2028***, unless earlier repealed or amended by the voters of the County.

B. Development Strategy Policy No. 17 (General Plan Land Use and Circulation Element, Chapter II, page 23a) is renumbered as Land Use Policy LU.P-3 and amended to read:

The designation of specific lands and water bodies as "~~Extensive~~ Agriculture," ~~"Intensive Agriculture,"~~ "Watershed," "Marsh," "Park & Recreation," or "Water Bodies & Courses" on the Solano County Land Use ~~and Circulation Map~~ ***Diagram***, adopted by the Solano County Board of Supervisors on December 19, 1980, ~~as readopted and reaffirmed by the voters of Solano County in Proposition A in June 1984~~, and as amended subsequently consistent with Proposition A ***and the Orderly Growth Initiative***, shall remain in effect until December 31, ~~2010~~, ***2030***, except lands designated "Agriculture" may be re-designated pursuant to the procedure specified in ~~the Land Use and Circulation Element, Chapter III, Agricultural Land Use Policies Nos. 10 through 13,~~ ***Agricultural Policies AG.P-32 through AG.P-36*** (providing for re-designation upon the making of specific findings, or as necessary to comply with state law requirements regarding provision of low and very low income housing, or permitting certain re-designations to open space).

In addition, these agricultural and open space lands may also be re-designated after a final judgment by a court of competent jurisdiction determining that the absence of a re-designation would constitute an unauthorized taking of private property or is otherwise unconstitutional, but only to the minimum geographical extent and intensity of use necessary to avoid such unconstitutional result. Any such re-designation shall be designed to carry out the goals and provisions of this policy to the maximum extent possible.

Further, the precise boundaries of land use designations may be subject to minor adjustment and refinement prior to development, or upon request of an affected landowner, provided such refinements reflect the overall boundaries indicated on the General Plan Land Use and Circulation Map and are consistent with all other General Plan policies, in particular, the General Plan policies prohibiting piecemeal conversions of agricultural lands to non-agricultural uses.

C. Agricultural Lands Policy 9 (General Plan Land Use and Circulation Element, Chapter III, pp. 37-37a) is renumbered as Agriculture Policy AG.P-31 and amended to read:

Define parcel size of Agriculture designated lands based on the "Agriculture Regions" section as described in this chapter and presented in Table AG-3. ~~Lands Designated Intensive Agriculture or Extensive Agriculture. (a) Within the "Intensive Agriculture" land use designation, the maximum permitted residential density is one dwelling unit per eighty (80) acres, except that if a landowner demonstrates that a particular parcel is capable of highly productive agricultural use such as orchard and vineyard lands prime agricultural land, then a maximum permitted residential density of one dwelling unit per forty (40) acres may be applied. Within the "Extensive Agriculture" designation, the maximum permitted residential density is one dwelling unit per one hundred and sixty (160) acres. However, in non-essential agricultural areas which have limited viability for agricultural uses, a maximum permitted residential density of one dwelling unit per twenty (20) acres may be applied. Nothing in this policy shall be interpreted to prevent the provision of farmworker housing pursuant to state law.~~

~~(b) Notwithstanding the preceding paragraph, one~~ ***One*** residence ***and a permitted secondary unit*** may be built on a lot of record existing as of January 1, 1984, designated "Agriculture" provided however that (i) the owner demonstrates compliance with all other applicable County requirements, and (ii) before such exemption is granted, the lot has first been merged with contiguous parcels to the maximum extent possible consistent with State law.

Continues on next page

D. Table AG-3, as referenced in Agricultural Policy AG.P-31, is added:

Table AG-3
Agricultural Regions

Agricultural Region	Minimum Lot Size	General Uses
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Elmira and Maine Prairie	40 acres – northwest portion (Elmira) 80 acres – southeast portion (Maine Prairie) See Figure AG-5	Provides for agricultural production, agricultural processing facilities, and agricultural services
Montezuma Hills	160 acres	Provides for agricultural and energy production
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Green Valley	20 acres	Provides for agricultural production. A future Specific Plan required for Middle Green Valley will further detail desired agricultural uses and lot sizes.
Pleasants, Vaca, and Lagoon Valleys	40 acres – Parcels with current A-40 zoning 20 acres – Parcels with current A-20 zoning See Figure AG-6	Provides for agricultural production and facilities to support the sale of produce
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Western Hills	160 acres – West of Pleasants Valley Road 20 acres – East of Pleasants Valley Road and in the Tri-City and County area See Figures AG-7 and AG-8	Provides for agricultural production and tourist services that are ancillary to agricultural production

E. Agricultural Lands Policy 10 (General Plan Land Use and Circulation Element, Chapter III, pp. 37a-37b) is renumbered as Agriculture Policy AG.P-32 and amended to read:

Lands within the "Agriculture" designations as shown on the Land Use ~~and Circulation~~ ***Diagram*** ~~Map adopted by the Board of Supervisors on December 19, 1980 as readopted and reaffirmed by the voters of Solano County in Proposition A in June, 1984, and as amended subsequently consistent with Proposition A,~~ may be re-designated to a more intensive agricultural designation, or to a rural residential designation (with a maximum density of one unit per 2.5 to 10 acres) if ~~and only if~~ the Board of Supervisors makes each of the following findings:

(a) That the approval will not constitute part of, or encourage, a piece-meal conversion of a larger agricultural area to residential or other non-agricultural uses, and will not alter the stability of land use patterns in the area;

(b) That no land proposed for re-designation is prime agricultural land as defined pursuant to California Government Code section 51201 (the California Land Conservation Act of 1965, also known as the Williamson Act);

(c) That the subject land is unsuitable for agriculture due to terrain, adverse soil conditions, drainage, flooding, parcel size or other physical facts, such that it has no substantial market or rental value under the "Agriculture" designation;

(d) That the use and density proposed are compatible with agricultural uses and will not interfere with accepted farming practices;

(e) That the land is immediately adjacent to existing comparably developed areas and the applicant for the re-designation has provided substantial evidence that the Fire District, School District, County Sheriff, ~~and County Transportation Department~~ ***the area road system, and the proposed water supplier*** have adequate capacity to accommodate the development and provide it with adequate public services; and

(f) That annexation to a city or incorporation is not appropriate or possible based on the following factors: nearby cities' designated sphere of influence boundaries, cities' general plan growth limits and projections, and comprehensive annexation plans.

All re-designations pursuant to this policy shall be limited to a maximum of 160 acres for any one landowner in any calendar year. Landowners with any unity of interest are considered one landowner for purposes of this limitation.

F. Agricultural Lands Policy 11 (General Plan Land Use and Circulation Element, Chapter III, p. 37b) is renumbered as Agriculture Policy AG.P-33 and amended to read:

To comply with state law regarding the provision of low and very low income housing, as those terms are or may be defined by state law, lands within the "Agriculture" designations on the Land Use ~~and Circulation~~ ~~Map~~ ***Diagram*** may be changed to a residential designation. No more than 50 acres of land may be re-designated for this purpose in any calendar year. Such re-designation may be made only upon each of the following findings:

(a) The findings stated in subparagraphs (e) and (f) in Policy ~~10~~ ***AG.P-32***, above, are met;

(b) Use of the land re-designated under this policy will be limited to low and very low income housing development, pursuant to a legally valid Housing Element of this General Plan;

(c) There is no existing residentially designated land available for the low and very low income housing; and

(d) The re-designation of lands, and construction of low and very low income housing on those lands, is required to comply with state law requirements for provision of such housing."

Section 3. Policies of the Order Growth Initiative Not Being Amended

The Orderly Growth Initiative provides that its policies may be renumbered and that such renumbering shall not constitute an amendment of the Initiative. The policies identified in this section are being renumbered without amendment in the 2008 Solano County General Plan as follows:

A. Agricultural Lands Policy 12 (General Plan Land Use and Circulation Element, Chapter III, p. 37c) is renumbered as Agriculture Policy AG.P-34. That policy provides as follows:

> Lands within the "Agriculture" designations may be re-designated to "Park & Recreation" only for public recreation and public open space uses and only if the uses permitted by the new designation will not interfere with or be in conflict with agricultural operations.

B. Agricultural Lands Policy 13 (General Plan Land Use and Circulation Element, Chapter III, p. 37c) is renumbered as Agriculture Policy AG.P-35. That policy provides as follows:

> Lands within the "Agriculture" designations may be re-designated to "Watershed" or "Marsh."

C. Watershed Lands Policy 2 (General Plan, Land Use and Circulation Element, Chapter III, page 39) is renumbered as Agriculture Policy AG.P-36. That policy provides as follows:

> Lands designated Watershed.
>
> a. Within the "Watershed" land use designation, the maximum permitted residential density is one dwelling unit per one hundred sixty (160) acres.
>
> b. Notwithstanding the preceding paragraph, one residence may be built on a lot of record existing as of January 1, 1984, designated "Watershed" provided however that (i) the owner demonstrates compliance with all other applicable County requirements, and (ii) before such exemption is granted, the lot has first been merged with contiguous parcels to the maximum extent possible consistent with state law.

EXHIBIT I

Solano County Orderly Growth Committee

827 Coventry Lane
Fairfield, CA 94533

November 25, 2014

Ms. Linda Seifert, Chair
Solano County Board of Supervisors
675 Texas St,
Fairfield, CA 94533

Dear Chair Seifert and fellow Board Members:

The City of Fairfield and Solano County both have policies that say to developers - "If you want to build a big subdivision, do it within City limits!" And in both cases, this policy was approved by a big majority of the voters. But developers, being no fools, look for ways to build on our precious agricultural land because it's a lot cheaper and their profit margins are a lot bigger. We were appalled a year ago when the Middle Green Valley project tried to sneak by a plan to use City of Fairfield water for their project, even though they knew very well that it was prohibited under Measure L (which they had fought tooth and nail).

We're even more appalled now that they are back again with another ploy that relies on the City of Fairfield's municipal water service to TREAT the water. In this new proposal, the City would still be involved in delivering the water to a development outside the City limits. They're hoping to skirt the intent and the spirit of Measure L by having the Solano Irrigation District contract with the City using part of SID's water entitlements. "See," they'll say, "it's not really the City of Fairfield. It's SID." Forget that SID can't treat the water and needs the City in order to make this deal happen. They hope the voters will forget that the goal was to protect our beautiful agricultural valleys from sprawling urban development. They'll hope the Board of Supervisors will cynically ignore their own policies and make a "technical finding" that everything is in compliance and consistent with County policy, that a 400-unit subdivision is rural development, and that no precedent will be set for the next guy who comes along and - this time - wants to bring Fairfield's water into a big swath of the Suisun Valley.

We hope that will not be what happens. We plead with the Board of Supervisors to follow its own policy. If the Board and the City truly want to support this development - ask the City and the developers to get together and annex the project to the City. That would be a fitting and legitimate way to provide water because it would then be a municipal project.

Water treatment is a basic municipal service. Providing treated water outside City boundaries is, in our opinion, a violation of Measure L. In some ways this may be an even more devious attempt to circumvent the will of the voters. Other projects wait in the wings, like the proposal to develop at Rockville Corners. I would imagine the developer of that project is watching the MGV debate with keen interest. If the City and County can use a third party, like SID, to be the

named provider of municipally treated water you are likely opening the proverbial flood gates for urban sprawl on County lands contravening the intent of both Measure L and Measure T, the current version of the Orderly Growth Initiative

Solano Orderly Growth Committee worked hard, worked with a broad coalition, and won a decisive political decision to get Fairfield's Measure L approved, prohibiting delivery of urban services outside of the City's urban limit line. We continue to assert that any proposal to deliver water to a project outside of the City's urban limit line is in violation of Measure L.

Specifically, Measure L, Section 2. B. 1. Policy LU 3.1 states:
"What is urban shall be municipal and what is rural shall be with the County. Any urban development requiring basic municipal services shall occur only with the incorporated City and within the urban limit line established by the General Plan."

We view Measure L as cornerstone land use polity for areas surrounding the City of Fairfield. It is our strong opinion that only a vote of the citizens of Fairfield can amend Measure L. We fail to understand how anyone can interpret City of Fairfield water treatment as anything other than a basic municipal service.

We are prepared to vigorously defend Measure L.

Sincerely,

Duane Kromm, Treasurer Solano County Orderly Growth Committee

cc: City of Fairfield

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