



After deciding in a prior appeal in the same case that offsite agricultural conservation easements (ACEs) were not effective at reducing a project's conversion of agricultural land, the Fifth Appellate District held that ACEs can mitigate such impacts.

V Lions Farming, LLC v. County of Kern, Nos. F084763, F085102, F085220 (5th Dist., March 7, 2024).

Kern County approved an ordinance streamlining the permitting process for new oil and gas wells after certifying an EIR for that project. The County had established a no-net-loss threshold of significance for agricultural land, effectively requiring that the net impact of a project on loss of farmland be reduced to zero acres. The EIR determined that the project's provision of ACE's satisfied this threshold by mitigating the impact

of loss of farmland to a less-than-significant level. In the first appeal, the Fifth Appellate District invalidated the EIR, in part based on its ruling that ACE's were not effective at reducing the conversion of agricultural land to a less than significant level for purposes of CEQA. On remand, Kern County prepared a Supplemental Recirculated EIR. The SREIR stated that it did not require ACEs as mitigation for significant and unavoidable impacts to agricultural land because the appellate opinion had determined that ACEs do not provide effective mitigation.

In the second appeal, the court concluded that its first opinion had decided only the narrow issue of whether ACEs were effective at reducing the agricultural impacts to a less than significant level, and not "the broader question whether ACEs are effective at providing *any type of mitigation for purposes of CEQA*." The court examined CEQA Guideline 15370(e), which defines mitigation to include "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements." It parsed the text of the Guideline, acknowledged federal agencies' treatment of habitat preservation as mitigation, and addressed First Appellate District decisions upholding the use of ACEs as mitigation.

The court reasoned that accepting ACEs as compensatory mitigation would advance CEQA's purpose of long-term protection of the environment, while a contrary holding would diminish the use of ACEs and result in less long-term protection of agricultural land. It accordingly ruled that ACEs are a type of compensatory mitigation for the conversion of agricultural land even though, operating by themselves, they do not replace the converted land or otherwise result in no net loss of agricultural land. The County therefore failed to comply with CEQA when it eliminated the use of ACEs as a mitigation measure for the conversion of agricultural land in situations where other mitigation had not reduced the net loss of agricultural land to zero acres.

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