

Offsite Conservation Easements Are Feasible Mitigation For Loss Of Agricultural Resources According to Appellate Court

The First District Court of Appeal has ruled an EIR inadequate for failure to explore fully the use of conservation easements to mitigate impacts to agricultural resources. *Masonite Corporation v. County of Mendocino*, No. A134896 (First Dist., July 25, 2013).

Mendocino County certified an EIR for a proposed sand and gravel quarry that would have converted prime farmland. The county determined that this significant impact could not feasibly be mitigated. The EIR stated that a conservation easement on offsite lands would only address indirect and cumulative impacts resulting from the pressure created by a project to convert additional agricultural lands. It found the project was unlikely to exert such pressures for a variety of reasons, and concluded that feasible mitigation measures are not available for the direct loss of agricultural land so that impact "would be significant and unavoidable." At a hearing before the Board of Supervisors, a staff member added that an easement over agricultural land elsewhere was not feasible mitigation because it would not recreate the prime farmland acreage present on the project site.

The court treated the county's infeasibility finding as a determination that mitigation was *legally* infeasible, and concluded that, accordingly, the adequacy of the county's finding was to be reviewed as a question of law with no deference to the county's decision. The court ruled that agricultural conservation easements "may appropriately mitigate for the direct loss of farmland" even though such an easement does not replace the onsite resources that will be lost to development.

In its opinion, the court agreed with the argument that if agricultural lands were preserved through conservation easements at a 1:1 ratio, then at least half of the agricultural land in a region would be preserved. The court also cited cases upholding the use of conservation easements as mitigation for impacts to biological resources and took note of evidence in the record, and statements in other cases, indicating that conservation easements are commonly used for mitigation purposes. It also emphasized the legislative policy in California to preserve agricultural land, quoted a legislative declaration that CEQA plays an important role in the preservation of agricultural lands, and concluded that excluding conservation easements as a means to mitigate farmland conversion "would be contrary to one of CEQA's important purposes."

Remarkably, the *Masonite* court also relied upon *Citizens for Open Government v. City of Lodi*, a decision that is best known for *upholding* a city's conclusion that "there were no feasible mitigation measures to avoid the loss of prime agricultural farmland because it was not possible to recreate prime farmland on other lands." The *Lodi* court reviewed the city's infeasibility finding as a question of fact requiring that the finding be upheld so long as it was supported by substantial evidence. The *Masonite* court did not address these rulings and instead focused on language in other parts of the *Lodi* opinion.

The conflict between *Masonite* and *Lodi*, and the fact that disputes regarding the viability of agricultural conservation easements as mitigation are coming before the courts with increasing frequency, may draw the attention of the California Supreme Court if a petition for review of the decision is filed.

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