

San Diego County General Plan Update: Saving Land by Developing It – Contradiction or Plan?

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Guejito Ranch Agricultural Preserve

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Executive Summary

The County of San Diego General Plan Update (GPU) has been in the works for many years, and is finally reaching a culmination. The Final Environmental Impact Report (FEIR) is scheduled to be released in the fall of 2010, and the Board of Supervisors is expected to adopt the General Plan Update in late 2010 or early 2011.

The Cleveland National Forest Foundation (CNFF) and Save Our Forest and Ranchlands (SOFAR) have many concerns with the GPU, and the purpose of this memo is to outline those concerns and discuss methods of actions that can be taken to address them.

General Plan Update Growth Projections

Growth projections (population and dwelling unit increases), formulate the backbone of the GPU, because they outline where and how growth will take place throughout the County over the planning horizon of the GPU (approximately through 2030). Population and dwelling units under the GPU are projected to grow by about 40% compared to 2008 values. Growth in dwelling units east of the County Water Authority boundary is expected to increase by approximately 68%.

The County is rural by nature. The unincorporated communities within the County have a rich farming history. Much of the County also contains large areas of wilderness and open space. As such, these communities are not amenable to supporting dense populations that are characteristically found in urban or city settings. Due to the lack of infrastructure, public services, water supply, and abundance of natural resources within the rural areas of the County, much of the unincorporated County land cannot support extensive development.

Whether it is at the level of planning theory or factual on-the-ground evidence, the issue of sustainability is the dominant theme of the GPU. In this light, it is important to raise at the outset, the question of growth projections. Do they have any connection to facts and conditions on the ground? Do they have any relation to historical growth trends? Do they have any basis in planning theory? Or, are they simply arbitrary numbers without basis in fact or in theory?

No matter the answers to these questions, the fact is that the County is starting off the General Plan process with unusually high growth projections. The County has come up with various mechanisms to implement the growth projections, including: equity mechanisms, the Conservation Subdivision Program (clustering), and removal of Agricultural Preserves.

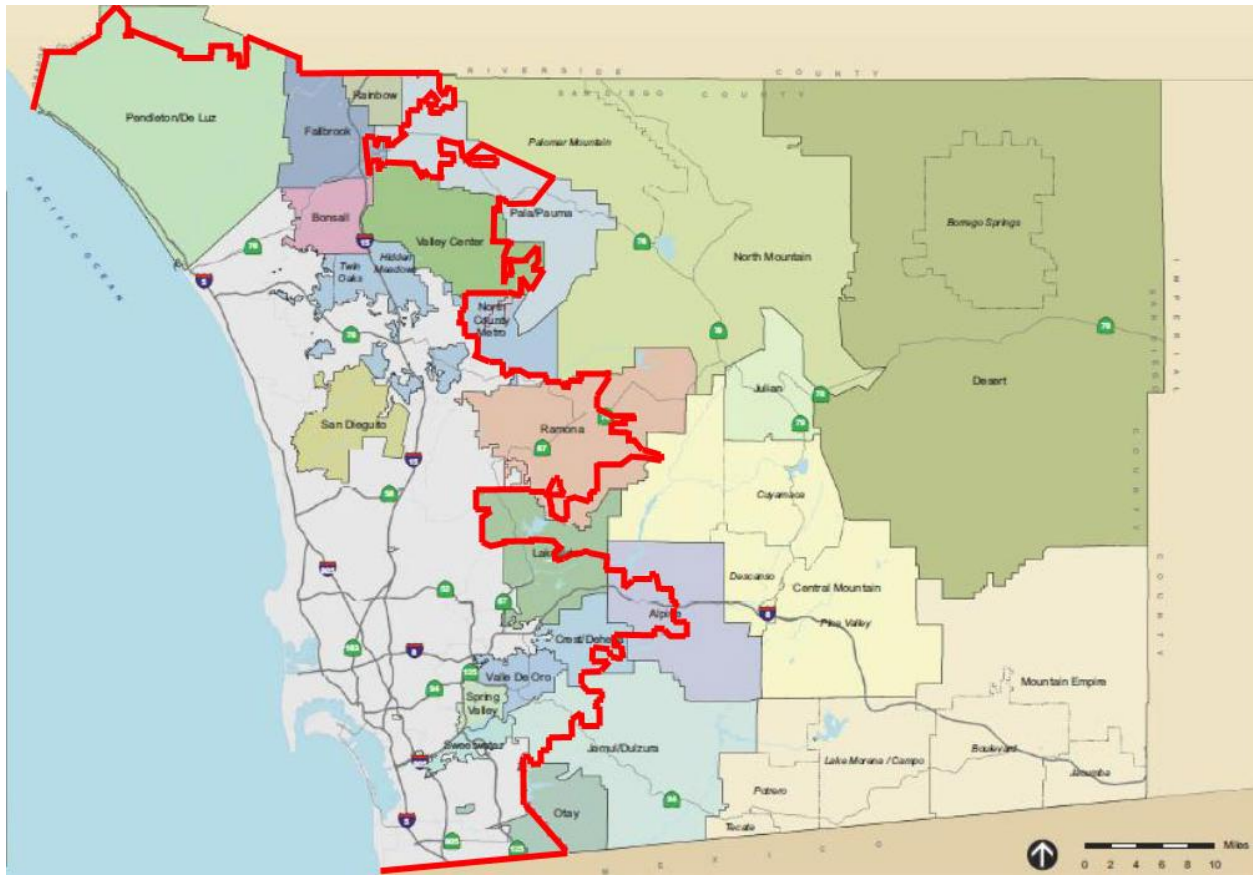


Figure 1: County Communities in Relation to the CWA

Equity

Closely connected with the growth projections anticipated within the County of San Diego GPU is the promotion by private consultants and development interests of the so-called “equity mechanisms.” According to the Draft EIR for the GPU, Objective 4 states: “Promote environmental stewardship that protects the range of natural resources and habitats that uniquely define the County’s character and ecological importance.” In an attempt to protect environmental resources consistent with Objective 4, while recognizing the County’s growth projections, the GPU calls for downzoning (reducing density allotments) of some backcountry lands and allowing for increased development within community “villages” and semi-rural lands. Specifically, the proposed GPU would allow “clustering” in rural and semi-rural areas (please see the section below titled Conservation Subdivision Program for more information). Development of villages and rural clusters will in theory make development more compact and close to existing infrastructure, thereby allowing the County to accommodate growth over a smaller area of land.

In response to proposed downzoning, which was widely opposed by developers and other private interests, the County is considering so-called “equity mechanisms”, as a means of

“reducing negative economic impacts to property owners.”¹ But, in order to accomplish this goal, the County must codify entitlement to zoning, which runs afoul of constitutional rulings on land use law. For example, the County states:

“Advocacy for an equity mechanism to be part of the General Plan Update is based on the argument that the General Plan Update will result in a loss of property value to many property owners that are proposed to receive density designations lower than their current density.”²

In addition, the Farm Bureau made the following statements about equity in its April 2010 Newsletter:

“Because density decreases can result in devaluation of property, Farm Bureau took an early position that farmers needed options for equity protection to ensure the financial integrity of the farming enterprise, which is often based on property value...Without an equity mechanism, I suspect Farm Bureau would have taken a position against the proposal (GPU) as it stands today.”

The notion that zoning is equivalent to a private property right undermines the fundamental principle that community planning is for the public good. The public value of clean water, clean air, farm land and wilderness cannot be overstated; these are resources that underlie the very existence and health of the community. As such, these values by definition cannot be bartered and sold in the real estate market where they are regarded not as ends in themselves, but as a means to private wealth. The courts have ruled over and over again on this subject, stating that private property rights refer to the use, but not to the zoning of the land. For example, in the landmark California Supreme Court case of *HFH, Ltd. v. Superior Court of Los Angeles County*, the court ruled:

“A purchaser of land merely acquires a right to continue a *use* instituted before the enactment of a more restrictive zoning. Public entities are not bound to reimburse individuals for losses due to changes in zoning, for within the limits of the police power 'some uncompensated hardships must be borne by individuals as the price of living in a modern enlightened and progressive community.’”³

The court went on to state that, **“It is thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society.”**⁴

The County, by making “equity” the foundation of the GPU, has turned the court directives completely upside down. Instead of the general plan acting as the “constitution” of land use planning and decisions, it becomes subordinate to the market place, where zoning is bought

¹ http://www.sdcounty.ca.gov/dplu/gpupdate/docs/pcrpt_041610_J_equity.pdf

² http://www.sdcounty.ca.gov/dplu/gpupdate/docs/pc_feb10_a.pdf

³ *HFH, Ltd. v. Superior Court of Los Angeles County*, 15 Cal.3d 508, 516. Available at: <http://www.eminentdomain-law.com/docs/appLaw/AmiciCuriae/HFHLtdvSuperiorCourt.pdf>

⁴ *Id.* at p. 515.

and sold. In this upside-down planning world, land speculation rather than principle becomes the key to decision-making. Our water, air, farms, and wilderness become commodities for power brokers, rather than foundational values that are shared by the entire community. Public resources represent an inheritance and a legacy, which should be preserved and passed on to the next generation. The role of planners is that of the good steward, who recognizes his/her obligation to safeguard this inheritance. The planner is a steward, not a salesman. Failure to recognize their role as stewards undermines the entire planning process.

Conservation Subdivision Program

The Conservation Subdivision Program (CSP) is a provision within the proposed GPU that the County has been reformulating with various interest groups, including private consultants, the building industry, and the Endangered Habitat League, for many years. As currently proposed, the CSP would reduce minimum lot sizes, decouple minimum lot sizes from zoning designations, and result in “clusters” of homes on smaller lots. Clustering as outlined under the CSP is a method of increasing density in rural areas while in theory reducing development footprints, thereby resulting in areas of undeveloped land that could be set aside for conservation. In other words, the County is proposing the CSP as a method of developing land in order to save it from development.

The CSP is closely linked with “equity mechanisms,” because it allows for denser development that would be used to offset land conservation. In some ways, the CSP itself can be looked at as its own equity mechanism, because it allows landowners to retain a certain level of building density, which for some is seen as being directly related to property value, while still allowing for land conservation. This notion was expressed by Eric Larson of the Farm Bureau, who stated:

“We think this can get done and, in our view, an equity mechanism would take the form of a cafeteria-style plan, where a farm owner with a quantified devaluation would have options to choose from. Those options could include transferring development rights to another property, having development rights purchased, **or using a clustering or conservation subdivision strategy that concentrates the deployment potential of a property in exchange for placing an easement on the remainder.**”

The so-called cafeteria theory of planning is yet another example of the strange idea that by developing farmland, you save farms. The fundamental problem with the CSP, other than the fact that equity for zoning is illegal and constitutes bad planning, is that it has the potential to increase development on rural lands. In addition, it does nothing to ensure that lands are permanently set aside for conservation. The County states the CSP is,

“A program to encourage residential subdivisions that preserve environmental resources, balancing planned densities and community character with environmental protection.”

As with the “equity mechanisms,” the CSP is a proposal that supposedly allows the County to meet its two goals of obtaining extremely high growth projections, while conserving land. Just as the “equity mechanisms” are a fallacy that promote growth and private interests over the interests of the common good, so too does the CSP fail to prioritize good planning and potentially negates the notion that the County’s role is that of a planner and steward for the public good. This notion is not just the opinion of CNFF and SOFAR, but of various communities throughout the County, who oppose the CSP. Below is a list, which was presented by County of San Diego planners at a December 2009 meeting of the GPU, and demonstrates different perspectives on the CSP:

Table 1: Perspectives on the Conservation Subdivision Program⁵

DEVELOPMENT INDUSTRY PERSPECTIVES	COMMUNITY PERSPECTIVES
Emphasis placed on community character does not allow for the GPU to be fully implemented.	Clustered style developments are not compatible with Community Character.
Population targets cannot be met under the GPU.	Clustering will create demand for urban facilities and services in the backcountry.
Communities should not be allowed to prohibit conservation subdivision/clustering development in the Community Plans.	Additional restrictions and out-right prohibition of Conservation Subdivision developments in the Community Plans.
Mandate reductions in minimum lot sizes or make reductions “by-right”.	Maintain zoned minimum lot sizes to match density.
Would like assurances of build out to maximum planned density	Clustering will promote leapfrog urban development.
Allowing for alternative waste systems are a critical component of the CSP.	Small lots in the backcountry will create incompatible lifestyles.
Restrictions on extending sewer service are a significant limiting factor for development.	Conservation Subdivisions are not compatible in groundwater dependant areas.
Allow for greater flexibility in the SR-10 Rural Lands designation to ensure that the remains meaningful development opportunities in those designations.	No guarantee that the proposed open space will be preserved in perpetuity.

Table 1 demonstrates that how the development industry wants to accommodate growth in San Diego County is completely opposite of what the communities themselves want. The fact that some communities are proposing out-right prohibition of the CSP in their communities demonstrates that this program is not a program for the community good, but a program that the County designed to appease special interest groups.

⁵ This table is an abbreviated version of a list produced by the County of San Diego titled “Perspectives on the Conservation Subdivision Program,” which was available as a handout at the Conservation Subdivision Subcommittee meeting held on February 5th, 2010.



Corte Madera Agricultural Preserve

Agricultural Preserves

Since its inception nearly fifty years ago, Board Policy I-38 has proven a successful means of protecting and preserving agricultural lands throughout the County. Board Policy I-38, which governs Agricultural Preserves in San Diego County, was first enacted in the 1960s, and amended in 1989. The Board Policy facilitates agricultural land protection through resolutions that formally place lands in “Agricultural Preserves.” These lands carry an “A” zoning designator that includes development restrictions necessary to preclude farmland conversion.

According to the draft GPU, there are currently 402,100 acres of land designated as Agricultural Preserves, and another 80,500 acres of land formally contracted as Williamson Act lands with the State of California.⁶ The stated purpose and function of Agricultural Preserves in the County is to preserve lands for the public good: “an agricultural preserve shall be created only when its establishment will be a benefit to the public.” Board Policy I-38. In addition to ensuring the preservation of agricultural lands, Agricultural Preserves also facilitate the preservation of open space and recreational uses. Board Policy I-38’s definition of agricultural preserves expressly

⁶ The California Land Conservation Act of 1965, otherwise known as the Williamson Act, is a California State law that allows private landowners to enter into contracts (Williamson Act Contracts) with the government. These contracts restrict privately held lands to agricultural or open space uses, and in exchange private landowners receive reduced property tax assessments.

recognizes the dual function of the designation: “an agricultural preserve is an area devoted to agricultural use, open space use, recreational use, or any combination of such uses, and compatible uses which are designated by the County.”

Unfortunately, the County of San Diego has a long history of taking actions that jeopardize the status of the County’s Agricultural Preserves, thereby freeing up this land for development.⁷ In keeping with this pattern, the County now proposes, via the proposed GPU, **to eliminate the majority of agricultural preserve lands that do not have Williamson Act Contracts:**

“Implementation of the proposed General Plan Update would remove parcels from adopted Agricultural Preserves for most of the land that is not currently under a Williamson Act Contract. Additionally, implementation of the General Plan Update would remove the County Zoning Ordinance “A” Special Area Regulation Designator in all Agricultural Preserves not currently under a Williamson Act Contract.”

According to the Draft EIR for the GPU, the County’s proposed approach would impact approximately **321,590 acres** of Agricultural Preserve land, which represents almost **80%** of all lands currently so designated that are not under Williamson Act Contract. The County has produced a “Fact Sheet” regarding this action, which fails to give any meaningful justification for removing protections from the Agricultural Preserves. Instead, the document simply states that some of the lands with Preserve status are not used for agricultural purposes.⁸ Of course, this argument completely ignores the fact that Board Policy I-38 is unequivocally intended to establish Agricultural Preserves to benefit the public at large, and that the Policy expressly dictates uses within the Preserves be limited not only to agricultural, but also open space and recreation.

⁷ Follow this link <http://www.sofar.org/gpa9603main.htm> to read a brief history of SOFAR’s past battle with the County of San Diego, involving a proposed General Plan Amendment that would have seriously threatened 200,000 acres of critical backcountry lands, including areas designated as Agricultural Preserves.

⁸ http://www.sdcounty.ca.gov/dplu/gpupdate/docs/pc_feb10_a.pdf



Figure 2: Santa Ynez Agricultural Preserve

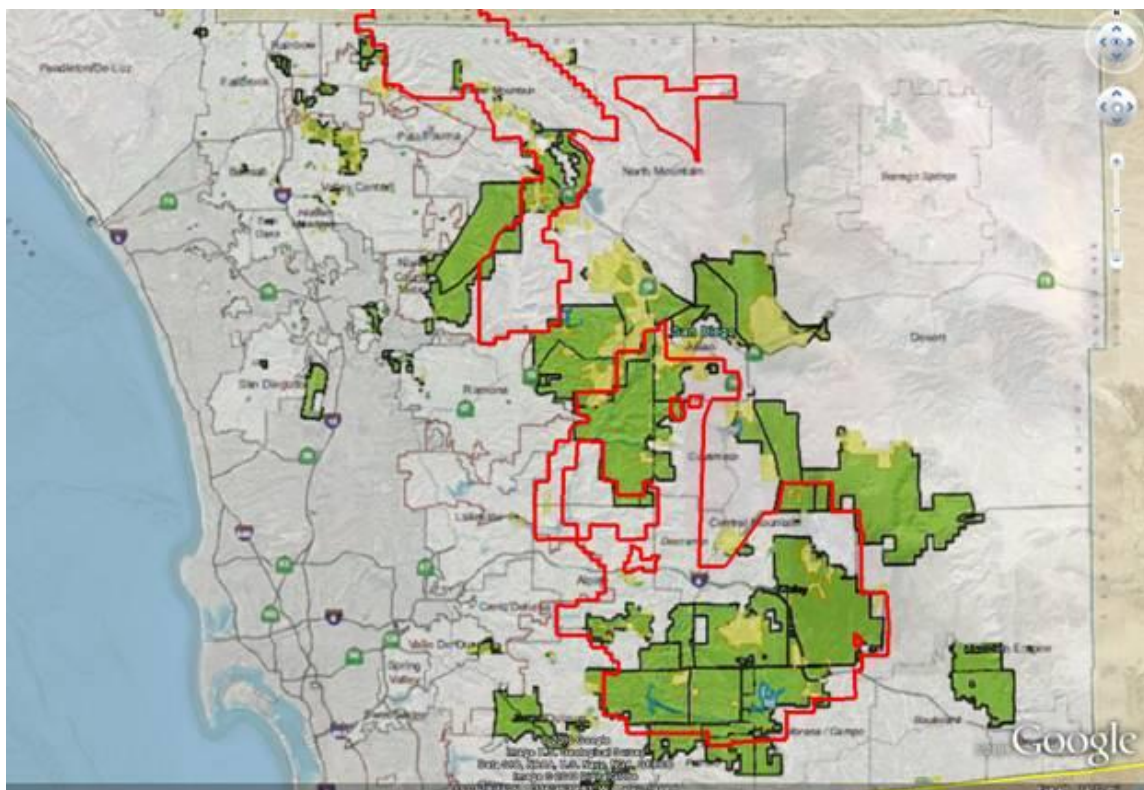


Figure 3: Agricultural Preserve Locations in Relation to the Cleveland National Forest

To truly understanding the importance of San Diego County's Agricultural Preserves, one must first recognize and acknowledge their context and function within the whole of San Diego County land uses. The general location of Agricultural Preserves throughout the County gives one a basic idea of their function as part of San Diego County's backcountry.

Figure 3 shows the location of Agricultural Preserves (green) and Williamson Act Lands (yellow) in relation to the boundaries of the Cleveland National Forest (red). As this figure shows, the Agricultural Preserve lands are often embedded within the boundaries of the forest. In general, these lands are rangelands, and therefore represent valleys and low-lying areas within the Forest.



Figure 4: Agricultural Preserve Area within Palomar Mountain, North County San Diego

Figures 2 and 4 show the appearance of Agricultural Preserves in the County. The Preserve within Figure 4 not only contains important grazing lands, it also contains watershed resources and other important biological resources. The function of Agricultural Preserves was addressed in 2001 by then California Attorney General Bill Lockyer, who stated: "...these (Agricultural Preserve) lands provide habitat for a wide array of sensitive, rare, threatened, or endangered species of plants and animals and play a critical role in maintaining the biodiversity of southwestern California; as a result they represent a natural resource of regional, and even statewide, significance."⁹

⁹ Attorney General Bill Lockyer. 2001. "Revised Draft Environmental Impact Report, Agricultural Issues and General Plan Amendment, GPA 96-03, Log No. 98-ZA-002A. State Clearinghouse No. 19980610804."

Furthermore, the Williamson Act notes:

“the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and necessary food for future residents of this state and nation.”¹⁰

A casual look at the location of the Agricultural Preserves in relation to the current boundary of the Cleveland National Forest shows that the Preserves provide essential connections to the so-called “islandized” portions of the Forest, without which Cleveland National Forest lands would be fatally fragmented. In fact, Forest officials and conservation biologists have described the system of meadowlands stretching across San Diego’s mountain ranges as the “biological heart” of the Forest. It is simply inconceivable to envision a plan that lays the groundwork for development of even a part of these meadowlands that would not destroy the integrity of the Forest as a whole. A simple tracking map of the region’s keystone species, the mountain lion (*Puma concolor*), demonstrates this fact (refer to Figure 5). A recent tracking map from the University of California, Davis shows that mountain lions follow deer, which are closely linked to the meadowlands (which occur mostly within Agricultural Preserves) of the Cleveland National Forest (shown as the black boundary in Figure 5). Thus, urban encroachment on even a part of these meadows will necessarily disrupt critical habitat for the mountain lion, and lead to degradation of the entire ecosystem of the Cleveland National Forest.

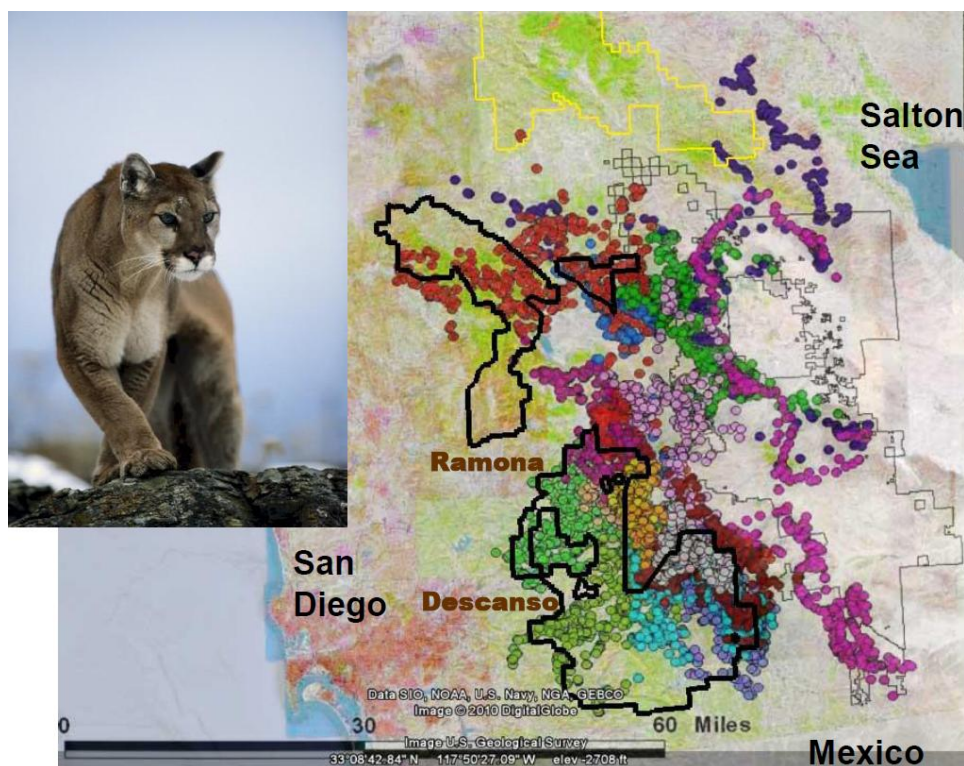


Figure 5: Mountain Lion Tracking Map in San Diego

¹⁰ Williamson Act, Gov. Code § 51220(a).

Due to the importance of agricultural lands and their well-acknowledged value to the County and indeed the State, the County's proposed action appears to be short-sighted, at best. The County's position on Agricultural Preserves is difficult to understand when one considers that the history of Agricultural Preserve Policy I-38 in San Diego County is one of great success in not only preserving land, but of working with private property owners to keep their ranches and farmlands intact and a functional part of the open space community.

The prospect of removing the Agricultural Preserves relates directly to the three issues discussed above: GPU growth projections, "equity mechanisms", and the Conservation Subdivision Program. As outlined above, the GPU projects enormous growth rates for the backcountry of San Diego, yet has goals to preserve and conserve open space lands and wilderness areas. These opposing goals require that the County produce various actions to ensure private interests that development will be possible in the backcountry, and to make half-hearted attempts at conserving land. Removing lands from the Agricultural Preserves designation is yet another attempt to accommodate the development industry and its attempts to build out to the maximum planned density (refer to Table 1). As they currently stand, the Agricultural Preserves are protected under Policy I-38, and as such the maximum density possible on these lands is relatively low (40 acre minimum currently, with the County proposing higher minimum lot sizes in the GPU). To implement the so-called "equity mechanisms" and the CSP, the County would have to remove both the Agricultural Preserve status and "A" land use designation.

Agricultural Land Use Designations

In conjunction with the removal of Agricultural Preserves, the County also proposes to do away with all agricultural land use designations in the GPU. The existing Land Use Element of the San Diego County General Plan includes two agricultural land use designations, #19: Intensive Agriculture and #20: General Agriculture.¹¹ The existing Land Use Element states the following with respect to agricultural designations:

"The agricultural designations facilitate agricultural use as the principal and dominant use. Uses that are supportive of agriculture or compatible with agricultural uses are also permitted. No uses should be permitted that would have a serious adverse effect on agricultural production including food and fiber production, horticulture, floriculture, or animal husbandry."

Thus, the agricultural designations in the current Land Use Element go beyond using zoning restrictions to protect agricultural resources, by explicitly stating that agricultural is to be the principal and dominant use, and that uses should not be permitted if they would have a serious adverse effect. However, the proposed Land Use Element under the GPU contains *no* agricultural land use designation, and merely looks to the Rural Lands designation to preserve agricultural areas. Under the Rural Lands designation, lands previously designated as General or

¹¹ Existing Land Use Element at II-22 through II-25 and Proposed Land Element Table LU-1 at 3-11.

Intensive Agricultural could potentially be subdivided and converted to residential uses. It is difficult to imagine that conversion of agricultural land into residential uses, as is possible under the GPU, would not constitute a “serious adverse effect” on agricultural production.

The County made the following response to comments that SOFAR submitted regarding the removal of agricultural land use designations in the GPU (emphasis added):

“While, the proposed project (GPU) eliminates these agricultural designations, it assigns appropriate densities for agricultural lands and **allows clustering by-right**. As with the existing General Plan, the actual uses are regulated by the Zoning Ordinance. Therefore, the primary difference between the existing Plan and the proposed Plan is that the General Plan Update **provides more flexibility in that it allows clustering by right and offers greater flexibility for the densities assigned.**”

The above comment from the County completely ignores the fact that the Zoning Ordinance is not the only means of regulating uses on agricultural lands, and that the language of the existing Land Use Element itself has been used to protect agricultural lands.¹² Furthermore, the County’s stance on agricultural protection under the existing General Plan and the GPU is markedly different. While the current general plan makes agricultural use a priority and does not permit uses that would be incompatible with agriculture, the GPU explicitly allows development (clustering by-right) and flexibility of uses with no mention of compatibility or preserving agriculture as a dominant use.

The removal of agricultural designations in the GPU, similar to the removal of Agricultural Preserves, appears to be part of the same philosophy that the County is employing in implementing the rest of the GPU: you have to develop land in order to save it.

Conclusion

In conclusion, the danger posed to the integrity of lands currently designated as agricultural (either as Agricultural Preserves, Intensive Agriculture, or General Agriculture) throughout the County, raises serious questions about how growth projections and “equity mechanisms” (including the CSP) affect other areas, resources, and land use categories in the GPU.

¹² Due to the language within the Regional Land Use Element of the existing General Plan, the County required the applicant of the West Lilac Farms Project to complete an EIR, because of the “serious adverse effect” that this project (a residential subdivision) would have on agricultural land.