

## **ATTACHMENT H – SUMMARY PAPER**

### **Antiquated Subdivisions**

There are an estimated 400,000 to 1,000,000 antiquated subdivision lots in the counties of California. Nearly 200 maps depicting thousands of such lots were also recorded in Yolo County prior to 1929. Many antiquated subdivision maps were drawn without regard to topography or consideration of fundamental access, safety, and development issues.

Neither California law nor policy supports widespread recognition of the lots shown on antiquated maps. If those historic lots were recognized, the resulting detriment to orderly urban planning would be profound. Local governments would have no authority to require general plan consistency, to impose mitigation measures to address harm to the environment, or to require a single developer to provide necessary infrastructure and services as a condition to subdivision approval. In addition, members of the public would be excluded from the subdivision process—losing their due process right to participate in making vital decisions affecting their communities. These are only a few examples of how the lots shown on antiquated maps, never before relied upon and never reviewed by the community or local government, can distort and impair the local planning process.

For these reasons, the Subdivision Map Act recognizes past subdivisions of land in only limited circumstances. The certificate of compliance process, set forth in Government Code section 66499.35, protects the reasonable expectations of those who have relied on past conveyances and governmental approvals. A certificate of compliance confirms that parcels of land are legal, thus entitling the owner to sell, lease, or finance the parcels without further steps to comply with the Map Act. Together with the Act's grandfather provisions, the certificate of compliance process exempts bona fide purchasers of individual parcels and those who have obtained local government approvals under certain prior versions of the Act from changes in the law that impose more stringent requirements on the subdivision of land. Importantly, California law requires these provisions to be construed narrowly so that these exceptions do not become the rule regarding discretionary local government review and approval of subdivisions.

There is active legal debate currently in many California counties about whether subdivision maps recorded prior to 1929 created parcels that must be recognized as legal today. In Yolo County, there were about 170 maps recorded in the disputed time period (1893-1929). These maps collectively depict thousands of subdivision lots on tens of thousands of acres in the County, primarily in rural areas. If the County chooses to recognize the lots shown on these maps, this will essentially set the stage for "ranchette" development in many areas, which would not only result in a loss of land available for commercial agriculture, but also impact agriculture on neighboring properties, increase traffic and the demand for public services in many areas of the County not currently planned for urban development, etc. That's the basic policy issue.

As a legal matter, in September 2006, the County denied two landowner appeals relating to certificates of compliance. In deciding those appeals, the County took the position that maps recorded prior to 1929 did not create parcels upon their recordation (unlike modern final and parcel maps), and that the "grandfather" provisions of the State Subdivision Map Act do not apply to parcels shown on such old maps unless those maps were: a) approved by the local governing body (i.e., the Board); b) under a law regulating the design and improvement of the subdivision; and c) the "approval" somehow related to the design/improvement of the subdivision. Solano and Sonoma counties also take essentially the same position with regard to lots on maps recorded between 1893 and 1929. And like Yolo County, Sonoma and Solano are currently in litigation over the issue. Eventually, it is anticipated that a California Court of Appeal

or even the California Supreme Court will decide the issue, and/or that the Legislature will amend the Subdivision Map Act to clarify the scope of the grandfather provisions.

### **Transfer of Development Rights (TDR)**

Since every legal agricultural parcel in the County is allowed a principal and second dwelling unit by right there are basically two directions the County can take to control rural residential housing: the County can decide to limit the total number of potential new units within agricultural areas by taking steps to reduce the number of allowable units; and/or the County can decide to make no changes to current unit allowances and instead focus on ways to control the location and design of those units so that they have little or no effect on agricultural practices.

Regarding the first issue, under the County's current zoning regulations, one principal residence and one second unit can be constructed on any legal parcel in the County so long as zoning code standards, such as setback requirements, can be met. The Code could be amended to require Use Permit approval for second units or for primary units on parcels smaller than a specified size. However, this would also make it more difficult for farmers, their family members, and workers to live on-site. A second approach would be to increase the minimum parcel size (currently 20 acres) in agricultural areas. Staff had previously explored an increased minimum parcel size of 80 acres which would have the effect of eliminating units currently allowed on smaller parcels. On March 27, 2007 on a 3:2 vote, the Board directed staff to eliminate this from consideration as a part of the Preferred Land Use Alternative (Minute Order No. 07-100; Ayes: Chamberlain, McGowan, Rexroad; Noes: Thomson, Yamada).

Regarding the second issue, at that same March 27, 2007 meeting on a 5:0 vote the Board directed staff, among other things, to pursue control of rural home site development by establishing specific criteria for approval (Minute Order No. 07-99). This direction can be assisted greatly through relevant policy guidance and carefully crafted Transfer of Development Rights (TDR) regulations.

A successful TDR ordinance would reward desirable location and design of an otherwise already allowed residential unit. It would create incentives for desirable organization of those units so that impacts to agriculture over time are avoided or minimized. Successful clustering of units through TDR-type programs can result in fewer impacts resulting from encroachments into productive agricultural areas and more efficient service delivery. It can also dovetail with implementation of the County's future HCP/NCCP program in that the County may decide to make later amendments to the TDR program to allow for unit transfers out of HCP preserve areas and into other more desirable receiver areas in the future.

A fundamental tenet of a TDR program is the idea of transferring the right for an otherwise allowed unit from one undesirable place to another desirable place. This may be in the form of a transfer from one area or region (e.g. agricultural lands) to another area or region (e.g. towns or cities) within an entire County (**area transfers**); it may be in the form of a transfer from one parcel in a joint holding to another parcel in the same joint holding (**clustering**); or it may be in the form of a transfer from one place on a single parcel to another place on the same parcel (**unit placement**). Each of these is discussed briefly below as related specifically to Yolo County.

Regarding **area transfers**, because of the fact that the County has already identified new growth areas through the Preferred Land Use Alternative the County is positioned to implement this should it so chose. In order to do so the County could determine that each new unit (or some ratio of new units such as every five or every ten) in the new growth areas is allowed only

if the “right” for another unit already allowed in the agricultural areas is purchased and thus “transferred”. This would have the effect of redirecting homes out of the agricultural areas and into the designated new growth areas. There is no impact on “property rights” under this scenario as no units are eliminated and only willing buyers and sellers will participate. This would lower the total number of units associated with the General Plan Update because the new growth areas would not result in net new units but rather would only develop to the extent that transferable development rights could be located, purchased, amassed, and then applied within the new growth areas. However, to the extent that the County is trying to create new housing to meet needs and satisfy State mandates this would be problematic. This is also likely to have dramatic effects in the new growth areas including: the pace of growth is predicted to be slow as developers try to collect enough unit rights to make various phases of development feasible; the cost of development in the new growth areas will be increased dependent on the cost of the development units; the ability to successfully fund new/replacement infrastructure for existing underserved units in the new growth areas will be adversely affected by this added time and cost. Finally, this approach may prove infeasible for achieving affordable housing goals. It should be noted that unless an area is identified for new growth, no transferred units could be used on that property.

Having said this, there is one type of area transfer that staff does recommend pursuing – “mitigation transfers”. Developers in new growth areas will be required to mitigate for loss of agricultural land and hawk habitat by placing permanent conservation easements over agricultural land at established mitigation ratios. Through the conservation easement the County could require any otherwise available right to a farm dwelling(s) on the mitigation property to be extinguished. This would, in effect, establish the County’s agricultural mitigation requirement as form of TDR program by trading (and in this case then retiring) farm dwelling unit credits for new growth units.

Regarding **clustering**, this is a key tool for agricultural preservation in Yolo County. Here are two examples of how it could work:

Example A (Joint Holdings) -- One property owner with several smaller (e.g. 10–acre) parcels within an agricultural area opts to cluster allowable farm dwellings in one logical area of the entire property with permanent conservation easements protecting the rest of the property. The same owner must own all the properties and the County could decide whether it is desirable to restrict this opportunity to only contiguous parcels. As an incentive for this desirable outcome, the County provides one or more bonus units (“Agricultural Preservation Credits”) or the County could allow the individual home sites to be split off from the original parcel. Either would be a significant benefit for different reasons and both need not be offered together. The former results in net new units situated on the same number of original parcels (no new saleable parcels are created) – this could be advantageous for the creation of farm worker or extended-family housing. The latter results in net new parcels but no new units (the home sites would be allowed to be split off from the original parcel) – new homes on small lots within the agricultural area are highly marketable and thus of great value to the landowner for raising capital that can fund agricultural expansion or other purposes. This type of “joint holding” transfer would be particularly helpful in addressing concerns relating to antiquated subdivisions. If the Board supports this idea, an estimate of, or cap on, the number of new bonus units needs to be added into the Preferred Land Use assumption as reflected in Attachment A.

Example B (Coordinated Holdings) – Adjoining property owners voluntarily join together to locate their respectively allowed farm dwellings on clustered adjoining property corners with permanent conservation easements protecting the rest of the property. As

an incentive for this desirable outcome, the County provides one or more bonus units ("Agricultural Preservation Credits") or the County could allow the individual home sites to be split off from the original parcels. Either would be a significant benefit for different reasons (see discussion above) and both need not be offered together. If the Board supports this idea, an estimate of, or cap on, the number of new bonus units needs to be added into the Preferred Land Use assumption as reflected in Attachment A.

Regarding **unit placement**, as noted earlier the Board has previously directed staff to pursue control of rural home site development by establishing specific criteria for approval as follows (Minute Order No. 07-99):

Control rural home site development by establishing specific criteria for approval. Proposed homes that comply with the criteria would be issued Building Permits, while those that are not consistent with the criteria would require approval of a Use Permit. Criteria may apply to both the primary and the ancillary home, and would include but not be limited to the following:

- Size of the home(s);
  - Location of the home(s) within the property;
  - A stewardship plan demonstrating how the property would be farmed;
  - Placement of the remainder of the property, outside of any home site(s), in a permanent agricultural conservation easement;
- Home sites less than 20 acres require a use permit.