

Dry Creek Preserve

A Clovis Community Open Space Legacy

A DRAFT-DEVELOPING CONCEPT

Introduction:

The residents of Dry Creek Preserve, a 785-acre rural residential area that lies between Nees and Shepherd Avenues and Dry Creek and the Enterprise Canal in Fresno County, have felt the pressure of urbanization as the City of Clovis has moved northward over the past 15 years. Housing developments now mark the perimeter on three sides of the area and at least one development is currently proposed within the Dry Creek Preserve. As residents of Dry Creek Preserve, we desire to maintain the rural lifestyle that we chose when we moved into this area. We believe that the Dry Creek Preserve represents a unique opportunity for Fresno County and the City of Clovis to preserve a legacy of open space, reflecting a rural lifestyle upon which the community was built, for the enjoyment of future generations. This paper outlines a process by which we believe that open space legacy can be cast and preserved. It outlines the open space values we believe could accrue within the Dry Creek Preserve; when and how those values might be obtained for the Clovis community; and what features and commitments would be needed to accomplish those goals.

Providence and Foresight:

Legacies are important. Our remembered leaders have been men and women who demonstrated foresight, creativity and courage. They stepped beyond mundane daily accomplishments and ventured beyond the essential, to establish and preserve legacies. The Dry Creek Preserve represents an opportunity for Fresno County and the City of Clovis to leave such a legacy. Fifty years from now, residents of the expanded, urban area of Clovis will be able to use, appreciate, and enjoy the renewing open space values already in existence today; but that can occur only if we show the foresight to protect, manage, maintain and develop this area sensibly. A truly unique opportunity exists to further define the Clovis Sphere of Influence area as a well-planned and well-designed community, both now and well into the future.

The Dry Creek Preserve Open Space Legacy:

The Dry Creek Preserve (DCP) lies within central Fresno County, inside the City of Clovis' sphere of influence. The 785-acre area is bounded by Nees Avenue on the south and by the converging alignments of the Enterprise Canal and Dry Creek on the north. Land use within this area has long been designated by Fresno County as Rural Residential, with a 2-acre minimum parcel size. That designation was reiterated in the City of Clovis' Herndon-Shepherd Specific Plan, which has been the governing planning document for the area from its inception in 1988 to this day. Accordingly, parcel sizes within the area range from two to thirty acres, and land uses and appearances have generally retained a rural, non-intensive character. The DCP landscape includes agriculture, large

and small animal husbandry, rural residential use, and other open space-related uses. This rural, green, and much softer landscape stands in contrast to the surrounding Clovis urban area.

The areas to the south and west of the DCP feature higher-density residential uses, with businesses located along the major travel routes. Landowners in the area to the north, between Shepherd and Copper Avenues have expressed interest in developing higher density residential and business uses. Companies interested in near-future development already hold many large land parcels under option. Similarly, lands located to the east of the DCP are zoned for medium and high-density residential and business uses. Business centers already exist at Shepherd and Fowler Avenues, and at major intersections along Fowler Avenue south of Nees Avenue. In addition to the numerous dense residential developments already constructed in this area, a large development at Harlan Ranch is now under intensive construction to the east of the DCP.

These past and intended developments have allowed the DCP to remain an undeveloped area, situated in what will be near the eventual core of an expanding City of Clovis. Residents desire to preserve the open-space attributes of their area, which presents a truly unique opportunity to explore the long-term creation of a near-urban public open space preserve. This open space preserve would not only allow the DCP landowners to continue enjoying open space attributes, but Clovis's urban residents would directly benefit as well. They would enjoy open space parklands, trails and other features, which the City itself might eventually acquire, by willing sale. High value open space and facility-based recreation could thus gradually increase to accommodate the City's growing population, at no administrative cost to the City other than that associated cost of its direct land or easement purchases.

DCP residents envision a visually consistent mosaic of privately and publicly managed open space. Owners would continue to practice and enjoy their agricultural and open space-related uses, in juxtaposition with a gradually expanding base of publically-acquired lands. Over several decades, lands would be purchased into City ownership, via willing sales, as residents' needs and lifestyles change, and they offer their properties for sale. DCP landowners envision the Open Space Legacy concept would be included as either an Open Space Element within the City of Clovis' Updated General Plan, within a separate County Specific Plan, as applicable, or both. The plan would set forth protective land use designations and zoning, a process for public fee or easement purchases, agreements to memorialize landowner cooperation, an administrative structure, and funding mechanisms.

The DCP neighborhood includes broad demographics, with differing family, financial, health and lifestyle needs. Intended land uses, neighborhood interests and viewpoints also differ. Many residents hope to continue enjoying the existing rural character of the DCP landscape, with its wildlife, farming, domestic animals, trees, quiet roads and peaceful, familiar neighborhoods. Some have financial or other needs, which invite or force them to consider making substantive lifestyle changes. Because one neighbor's lifestyle changes can materially affect another's, we believe it is important that residents work together with the County and City of Clovis to define eventual goals and land uses within the DCP area.

Regardless of whether the DCP is administratively attached to the City of Clovis or to Fresno County – we anticipate it will favorably affect real estate valuation across the entire north Clovis area. A park-like feature of this kind will significantly enhance the City's attractiveness to new businesses, and represent a major marketing asset for residences constructed throughout the surrounding area. The DCP also represents an excellent opportunity for educational involvement with area schools; an opportunity for students to obtain hands-on learning in areas of water and

water quality, environment, wildlife, animal science and husbandry, agriculture, art, and a variety of other subject areas.

Developing the Open Space Legacy Concept:

The DCP area already supports scenic open space attributes which are routinely visited and enjoyed by many Clovis families. We believe that by working with the County and City, we can develop a Legacy package that is attractive to those entities and the area urban population, and is acceptable to the diverse DCP ownerships. However, the concept will only be realized if the County Board of Supervisors, Fresno County LAFCO and Clovis City Council adopt this Open Space Legacy vision for our area, and jointly commit to the Legacy goals by resisting future development proposals that would irreversibly alter the rural landscape and/or reduce its substantial open space values.

In order to develop the open space legacy concept, DCP residents are committed to working with Fresno County and the City of Clovis to identify:

- 1) The desired short- and long-term vision/actions within the DCP area. This would require defining landowner needs and Open Space Legacy features and expectations. It would require seeking workable and realistic options for those desiring changes.
- 2) The steps to accomplish defined vision/actions. These steps would include developing processes and administrative structures, including the above CSA, to articulate the changes in an orderly way.
- 3) The planning timetables for reaching Legacy goals. The Legacy development should be viewed as a long-term, incremental PROCESS and not as a single point-in-time project or decision. Accomplishment of an Open Space Legacy will require many different sequential and well-coordinated actions, carried out under a realistic timeline, and using long-term funding sources.

The next several years represent a crucial time to realize the Legacy concept. The time to plan for the Open Space Legacy is now, while the majority of owners desire to continue managing their lands with open space attributes. The City has invited residents to provide a realistic vision for Clovis' new General Plan Update, and have indicated an interest in working with residents toward a new Area Specific Plan. Area developers have also indicated an interest in designing open space-compatible development and thus supporting and assisting with the Open Space Legacy concept. Residents are also working with Fresno County toward developing a new County Specific Plan for the area, intending the primary jurisdiction of the area to remain with the County. We believe broad and creative planning is needed, and stereotypical development should be resisted during and after the planning process. This will require some restraint to establish and adhere to existing land use designations and zoning. In keeping with the unique character of the DCP's current soft landscape, high-density, wall-to-wall residence blocks which differ only in architectural variation must be avoided. Allowing islands of intensive development to occur will irreparably alter the overall appearance, accessibility and continuity of the DCP landscape, thus reducing its present and future public Open Space Legacy value.

We have an exciting opportunity to develop an important legacy for all who follow. How we choose to regard and approach that stewardship responsibility will determine not only what values we leave behind for future generations, but also what financial opportunities might present themselves as we make decisions to either stay and enjoy, or sell and leave the area. In the end, we believe everyone will preserve/obtain their land value and transaction options. The Dry Creek

Preserve Open Space Legacy will benefit the City and County with land values far exceeding what can be derived from one-time, permanent conversion of the land into another redundant housing-focused landscape.

Defining Open Space:

“Open Space” is a common term that evokes different images to different people. To some, *Open Space* is a required element of a local land use plan, which contains provisions, regulations and an array of defined “*permissible*” or “*non-permissible*” uses. These elements are typically intended to provide some level of natural appearance within parts of the landscape, and provide for general human relaxation and enjoyment. To others, *Open Space* is less of a legal designation and more of a visual appearance lacking major and visible human alterations, interruptions or perturbations. To still others, *Open Space* may include some fairly intensive human uses—particularly recreational uses—as long as they do not negate, impair or alter the overall “natural” appearance and characteristics at the broad landscape level.

Open space standards vary considerably between communities and locales. Generally open space criteria become tighter and less tolerant of human structures and intrusions within more rural settings, and are much more forgiving of human changes within urban settings. For example, the open space characteristics of San Francisco’s Golden Gate Park appear very softening in context of the City’s other highly intense landscape. But those same features and attributes would appear as rude, out-of-place intrusions to a less-altered landscape, such as along the Sierra foothills, or within a less intensively developed city, such as Clovis. So the process of defining open space characteristics must include developing a proper “fit” to the area of concern. A general theme that seems to be consistent across most open space definitions is an overall softer land appearance, which supplies some level of contrast to developed lands within any particular vicinity. Typically, open space lands are softer to the eye, more relaxing to the mind and body, and they serve to reconnect people to the land, to nature, and to a nostalgic past when their lives were less intense.

Appendix A provides some statutory and regulatory characterizations of “Open Space”, as contained within the California Government Code.

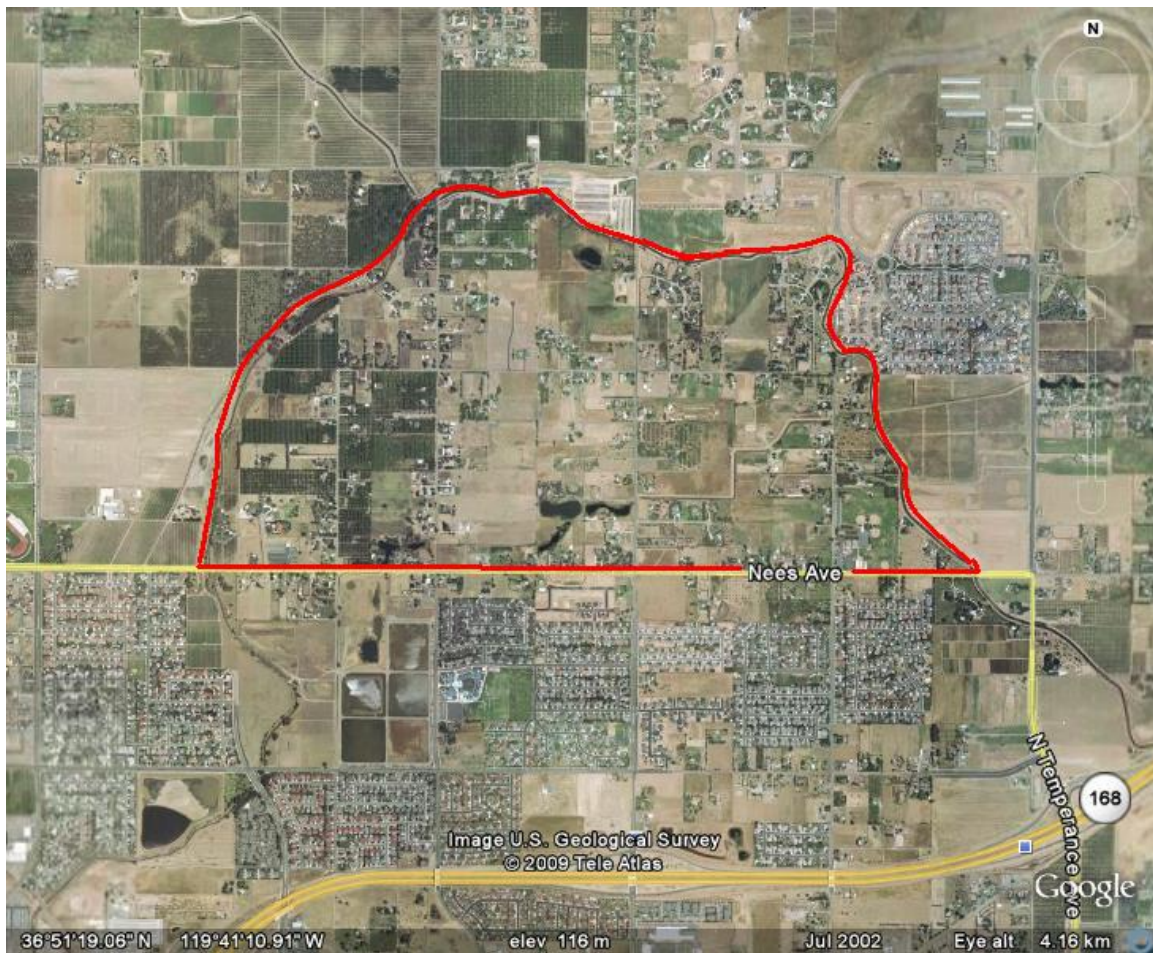
What Makes the Dry Creek Preserve A Desirable Open Space Resource?

The following 2002 aerial photo depicts the general rural character of the DCP area. During the development of the Herndon-Shepherd Specific Plan in 1988, this area was referred to as the “Dry Creek Crescent” reflecting its shape. During that planning effort by the City of Clovis, there was little development interest in the area, coupled with much vocal opposition to development, which resulted in the area retaining its former zoning (Rural Residential, 2-acre minimum parcel size). The large parcels have enabled retention of the attractive natural appearance of the area and a less intense neighborhood character.

Parcels ranging in size between 2 and 30 acres characterize the area's ownership. Present uses include rural residential, farming, pasturage, religious, a large-animal veterinary clinic, and various specially permitted uses. Owners reflect a social cross section that includes many different ages, ethnicities, family structures, occupations and economic situations. Permanent owner dwellings or rentals occupy many properties. Due to the large parcel zoning, most parcels support open space characteristics, either in the form of formal residential landscaping, farmed area, pastures, or other non-intense uses.

Proximity to Clovis:

The DCP is located in proximity to the Clovis city core. A short drive or bicycle ride connects the area to most of the City's population. It is immediately adjacent on three sides to the City's developed trail system and public facilities could easily be developed in these locales. The DCP can become a vital part of Clovis' future quality of life, if we consciously seek these long-term values and goals in planning with both Fresno County and the City to develop the intended CSA and eventual Legacy products.



State Government Code section 65661 (b) (see page 5, above) deals with prevention of “leap-frog” urban sprawl into open space areas. The section emphasizes open space preservation as a basis and reason for containing sprawl. In the present case, the open space preservation could be viewed as a generator of sprawl, by holding near-urban lands back from intensive development. This Open Space Legacy proposal is not intended to prevent all development. It would only prevent development and intensities incompatible with maintaining open space values. The DCP embodies a large in-holding of open space nearly surrounded by sprawl that has already occurred, in pursuit of the dispersed communities prescribed within the Herndon-Shepherd Specific Plan. The DCP thus represents an extremely valuable “urban open space resource” at this point. Its articulation with other open space is subordinate to its articulation with the now-urban population as a recreational and relaxation site. If properly developed, it will eventually have value and community importance similar to Golden Gate Park in San Francisco, Central Park in New York, and other similar urban respite locations.

Wildlife:

Due to its undeveloped character, the area supports substantial wildlife. Populations of waterfowl (typically Mallard Ducks, Wood Ducks, resident and migratory Canadian Geese, geese and other occasional visitors) are present and highly visible throughout the area. Songbirds are abundant and diverse. With its location along Dry Creek and adjacent to the City of Clovis Recharge Basins, the area represents a winter subsistence habitat for many altitudinal migrant bird species temporarily driven from Montane and Foothill habitats by transient weather. An abundant variety of hawks and owls inhabit the area, including Red-tailed Hawk, Red-shouldered Hawk, Kestrel, Merlin, Cooper and Sharp-shinned Hawk, which are all common and nest frequently in the DCP area. Resident owls include Great Horned Owl, Short-Eared Owl, Screech Owl, Barn Owl, Saw Whet Owl and occasional Long-Eared Owl. Shorebirds seasonally find a home in our pastures and along ditches and roadsides. Resident breeding populations of raccoon, opossum, red fox, grey fox, coyote, striped skunk, California ground squirrel, red squirrel, cottontail rabbits and various rodents exist in the area. Recent past (assumed transient along Dry Creek) occurrences have also been documented within the area of bobcat, ring-tailed cat, mountain lion, black-tailed deer, and badger.

A variety of reptiles and amphibians are present, and on warm spring evenings, we see many people walking our neighborhood, listening to the loud frog chorus coming from rain and irrigation ponds. This wildlife preserve represents a treasure to the City of Clovis and its residents, who would have to travel to the foothills to experience a like diversity of fauna.

Agriculture:

The area has excellent, sandy loam, agricultural soils and supports a diverse small-acreage farming enterprise. Commercially grown crops include pecans, walnuts, almonds, grapes, strawberries and oranges. Domesticated animals are abundant, and include horses, sheep, goats, cows, burros, donkeys, mules, llamas, alpacas, guanacos, rabbits, chickens, pheasants, peafowl, emu, ostriches, and others. Farm animal sounds characterize the evening and morning hours, and many Clovis residents and schools now routinely visit or tour the area to hear, see, and interact with these rural-dwelling animals. It is a unique opportunity to see such an array of farm animals in proximity to the urban population

Water Resources:

The area residences rely on pumped groundwater for residential supply. Water-intensive agricultural uses rely upon surface water supplied by the Fresno Irrigation District, and transported via the Enterprise Canal and its distributaries. A few orchards are now drip irrigated, using pumped groundwater; however most orchards and pastures are flood or furrow irrigated from FID supplies during the available season—typically March through September. Flood irrigated acreage within the area thus supplies a major groundwater recharge asset. In total, about 450-500 acres is flood irrigated at a rate of about .4 acre-feet per acre, per month. Over the usual seven-month irrigation supply season, this amounts to 2.7AF/A or a total of about 1,350 AF/yr for the area. Estimates of percolation of applied water past the root zone for flood irrigated acreage range from 0.5 to 1 AF/A, or about 250 to 500 AF/y recharged into the groundwater aquifer. In consideration of the approximate 2,500 AF/Y groundwater overdraft which the City now experiences (Provost and Pritchard, 2003), this supplemental recharge mechanism represents a substantial annual benefit for aquifer beneath the City of Clovis.

Additionally, a number of ponds dot the landscape along former drainage courses, fed by FID water. These ponds also represent potential recharge sources to the aquifer.

Recreational and Historical Values:

The DCP area currently provides an important open space resource for persons residing within north Clovis. Families commonly drive, walk or bicycle through the area on weekends or evenings, stopping to observe or photograph the scenery, interact with the domestic animals or view the abundant wildlife. This use spontaneously occurs without any form of promotion. People naturally seek open space attributes. We believe an orchestrated program of education and interpretation—including some signage to enable recognition of public features—would invite even greater recreational use for the residents of the City.

Substantial historical value is also present and visible throughout the area. The original home-site of Clovis Cole (City namesake) was on the east side of Dry Creek. His dry-land wheat farm stretched across much of the Preserve area. Today heritage-size Valley Oak trees, a scattering of historical farm equipment and water structures, stands of cottonwoods, and other features dot the landscape. Overall there exists substantial restoration opportunity for valuable historical interpretation and education.

The above represent only a few of the many reasons why we believe the DCP represents a valuable open space resource. The land and use characteristics are certainly consistent with urban-level open space preservation, and many of the features remain in fully natural condition and beauty.

Implementing the Open Space Legacy Concept:

The DCP area is a gem worthy of deliberate acknowledgment and careful development of compatible uses in the upcoming General Planning process. Within this area, the Open Space Element which we propose for the City General Plan and County Specific Plan should therefore

receive equal and/or greater priority than the other growth-related elements, including Housing, Circulation, and others.

As a part of the planning process, we need to explore and utilize methods that have worked in other places, and to set our expectations to patiently allow the goals to be met over timetables of several decades. This will allow us to:

- 1) See trends unfold and respond to them incrementally,
- 2) Develop needed financial resources,
- 3) Explore and make new kinds of public open space conservation purchases in fee title or easement, from willing sellers,
- 4) Transcend current ownerships and utilize the ownership transfers as opportunities to purchase/incorporate open space reservations,
- 5) Work closely with landowners to plan and define the mosaic of public and private open space attributes, so as to minimize public-landowner conflicts, and
- 6) Understand and plan for development of the area as a dynamically and gradually growing open space preserve.
- 7) Have time to establish the County CSA to assure road and infrastructure development that is compatible with the intended open space values.

In our earliest discussions with the City and County, including with the Clovis City Council, the idea of an “Open Space Preserve” was discussed. All parties recognized that differences between individual landowners’ philosophies and intended uses could become problematic, unless: 1.) the City’s Updated General Plan and Specific Plan and the County Specific Plan for the area continue to set land use designations to protect open space values; i.e., exclude intensive uses which are non-compatible and/or could degrade the open space landscape character, and 2.) the above Plans and associated ordinances establish effective development standards and mitigation strategies to support and protect open space values. We believe that the “Preserve” concept can be articulated as a compatible mix of private and public land uses and its integrity can be maintained as long as the above features are established—along with a commitment to adhere to them. Without these measures, the process would erode into a program of phased, redundant, intensive residential development, with nothing more than token open space values, thus destroying the rural character and public attractiveness of the neighborhood.

We believe the issues between compatible land uses can easily be ameliorated by such standards or mitigation measures as the following:

- 1) Strategically located purchases of public open space parcels and/or easements,
- 2) Well-defined development and density standards within the “Preserve” area,
- 3) Recognition of a memorialized “community intent” to provide open space in perpetuity,
- 4) Enforceable Agreements assuring continuation of present individual landowner uses (including the right to farm, fence, keep livestock, keep and maintain wells, keep current effluent disposal, keep surface irrigation),
- 5) Better traffic regulation and enforcement, emphasizing slow speeds consistent with open space appreciation, including roadside activities.
- 6) An administrative structure to make open space acquisition and management decisions and to manage public-acquired lands,
- 7) Identification of enhanced-value land uses and businesses that are compatible with open space character. These might include well-designed golf courses, country clubs, nursing home facilities, low-intensity recreation, leased community vegetable garden plots, and wildlife care centers, and

- 8) A process for marketing those uses in place of the less compatible uses, such as higher density residential development.

Some of these uses may require larger parcels to enable necessary buffering and setbacks. Economics will be an important consideration in developing a set of acceptable land uses. If the alternative uses are not economic, the entire open space protection effort will be ineffective.

Some Guiding Principles:

A number of issues have emerged regarding how to deal with development in the new Clovis General Plan. We offer the following set of “guiding principles” as a starting point for the upcoming DCP Legacy discussions and decision-making.

1. Current Vested Rights Are, In Fact, Restricted to Current Zoning:

The DCP area has had no interruptions of its 2-acre minimum parcel size zoning since adoption of those standards by Fresno County in the 1960s. As such, no current owner has any vested right to develop their property to a “higher use” which exceeds the current 2-acre parcel limitations and any such right would be a new right which would need to be duly developed. No expectation should therefore exist, nor become established which suggests owners who purchased such restricted-use properties (at commensurate lower purchase prices, as compared with developable lands at the time) should be given new vested rights for densities exceeding more than one residence per two acres. Such development should be regarded as an entirely new undertaking and carry the burdens of demonstrating overriding need and value which warrant granting of the new right, in the context of its adverse impacts upon other unwilling and zone-conforming adjacent owners, upon overall neighborhood character, and upon broad public open space values.

2. Annexation as an Issue:

If the area is managed within County jurisdiction, as a County Service Area, there would be no need for, or advantage to, City of Clovis annexation. In fact, said annexation would have significant additional associated costs, such as Mid Valley Fire Transfer Fees, which would present an formidable obstacle to annexation under conditions where lands are not developing and thus generating sufficient value to afford those ancillary costs. It is therefore very likely that a Fresno County Service Area will emerge as the best option for area administration, with the ECP area remaining in County jurisdiction, which is preferred by most residents. Such a CSA would cover roads and other infrastructure desired by the residents and allow residents to have a stronger say in their area planning and design, development and infrastructure intensity. It would include an Advisory Committee who would work with the County and City on land use and infrastructure issues, with an eye toward preserving the open space values and future public opportunity.

2. Annexation Agreements Must Be Mutual Benefit Agreements:

In the unlikely event annexation is pursued, Annexation Agreements would be needed and probably articulated between the City of Clovis and the individual annexing landowners; working through the CSA Advisory Committee. The City of Clovis has utilized “Annexation Agreements” in the past to memorialize and reserve certain

continuing permissible uses of landowners who in turn agree not to object to City Annexation. Similar Agreements are being offered to DCP residents at this time. Parties should recognize that such agreements should not represent a net loss for landowners. They should not simply compromise away portions of the existing vested-right uses (which happen not to be expressly reserved in the agreements), absent any redeeming affirmative ADDITIONAL benefit package for the agreeing landowners.

3. Annexation Agreements Must Be Permanent and Be Recognized as Continuation of Vested Rights Which Cannot Be Taken.

Because: 1) all of the existing permissible property uses and rights are vested rights which, pursuant to the U.S. Constitution 14th Amendment, cannot be taken without just compensation, and 2) any agreement of the City of Clovis to perpetually allow continuation of said rights is simply reaffirmation of said rights in the context of the enforcement of present and future City Policies and Ordinance Codes, and does not represent any change in legal standing or abridgement to the underlying rights themselves, then said rights must not be altered, abridged or modified as a result of any future ordinance formation, through any future cancellation of said Annexation agreements by any party, or by future reinterpretations of the language of the Agreements, without just compensation. Annexation agreements must be between the City and individual landowners, and must be recorded with the deeds of said properties.

4. City of Clovis Housing Element Requirements and Needs:

Federal and State housing element restrictions have been enacted upon municipalities, including the City of Clovis. However, the Dry Creek Preserve locale is not the only area in which the City can realize its Housing Element obligations in order to continue to obtain Federal and State revenues. Substantial opportunities exist for infill housing and for development of new housing within the Clovis Sphere of Influence where owners desire and elect to develop their lands for these purposes. Consistent with the California Government Code, section 65562 (a) and (b), the DCP area has substantial open space values which deserve to be identified and managed in the City's new General Plan, Open Space Element. As such, the choice of localities for satisfying the Housing Element goals would seem to be more reasonably and compatibly attainable within other City Sphere Sectors.

The current world-wide economic situation is severe and warrants special consideration. To that effect, it would seem that the development of abundant new housing in new locations, at a time when residential foreclosure inventories are at highest-ever levels, is totally inappropriate. If the current goals are, in fact, set by the State, based upon past housing market statistics, then it would be much more prudent to reset those goals based on realistic current levels, than it would be to proceed to build new houses for which: i) there is no market, ii) there is severe market-place competition with preexisting standing inventories, which have substantial accrued debt, and iii) new investing parties seem unlikely to be paid.

5. Rights and Legitimate Expectations of Now-resident DCP Landowners:

Current DCP property owners purchased their respective properties based upon their understanding at the time of the restricted vesting of rights (2-ac. min. parcel limitation). All proceeded to make their respective purchases despite the restrictions on parcel size and many have since developed their property to great expense, intending to take advantage of the view-sheds and other redeeming values. They intend and have always intended to remain in residence on the property.

Others desire to leave their purchased property, for whatever reasons. The question then becomes whether the priority in right should be given to those who are operating in accord with the current zoning and have invested in accord with the provisions of the County and later City General Plans and Herndon-Shepherd Specific Plan, or (2) whether priority should be given to those who elect to sell their property for maximized value and leave the area (or to those buyers who are not yet present at the time of this present planning effort). Real estate and other laws do not make any distinction between these competing groups; however such a distinction can be made in the formulation of the General Plan for the Area. The choice becomes whether to continue the rules of the present game or to change the rules in mid-game and avert the investments and personal plans of those who have so-far played properly. The City Council has the authority to continue current zoning and to reject the more dense development proposals. In the case of the DCP, we submit that there is substantial “value added” for the residents of the City of Clovis, to continue the current zoning (2-acre minimum parcel size) and to avoid variance from this zoning in year-to-year practice. If the economics of owners’ desired future property development cannot be satisfied at this zoning level, then the current owners made a poor property selection for their intended purpose/investment, in selecting RR zoned land. That burden should not be moved to other owners who invested consistent with their goals and with regulatory expectations at the time.

6. “Near-Urban” Open Space Value for the City of Clovis

As a part of its Open Space General Plan Element, we recommend that the City of Clovis look closely at the Open Space values which the DCP area has to offer. These values include: current undeveloped status; open space appearance; absence of preexisting development vesting; proximity to the City’s core and juxtaposition to Old-Town, the trail system and the intended regional park at Dry Creek Reservoir; and preexisting popularity with City residents. We believe these should serve as encouragements to the City Council to:

- 1) Continue the current 2-acre zoning to avoid establishing new development vesting entitlements and avoid later buy-out costs associated with “takings”, and
- 2) Identify the DCP as an Open Space resource in the City’s Open Space Element.

7. Area Governance

The area should be governed in a way that maximizes the voice and interests of the landowners of the DCP area and advances the eventual Open Space Legacy opportunities. The use of a CSA-sponsored Citizen Advisory Committee is probably the best way to network with owners and articulate those needs with the County and City.

Financing the DCP Open Space Legacy:

The acquisition and administration of public land-holdings within the DCP by the County or City will have associated cost. Fortunately, the longer time-frames associated with sporadic willing-seller transactions will generally afford a longer time-window in which to accomplish needed financial planning and arrangements, in advance of receiving offers for desired purchases. We envision several financial options being employed to meet these goals and timetables, as follows:

Land Acquisition Grants:

Grant financing has been used by other communities for similar public parkland acquisitions. Grant funding availability has historically been cyclic, owing to variability in economic strength at different times. While grants are acknowledged to be scarce at this time, we anticipate that grant funding will cyclically become available from various sources over the several decades in which Open Space Legacy funding is needed. Every effort should be made to access grant opportunities as they arise. For grants to become a dependable financial tool, it will be necessary for an appropriate entity to routinely survey the availability of government and other grants and to submit timely applications. It will also be important for the City to work closely with State Assembly and Senate representatives from the Clovis area to assure that the City's Open Space Legacy needs become line-items in the text of developing new State bond legislation. Grant applications are normally more competitive if the requesting party is able to provide matching funds at some level. It is therefore very desirable for other financing options, as below, to be explored for grant matching and direct Legacy financing.

Suggested Developer Fees:

Any residential development within the DCP area which exceeds existing vested rights (2-ac minimum parcels) should be discouraged. Any exceeding of that standard will:

- 1) seriously and permanently degrade the open space and scenic values of the area for future generations,
- 2) establish vesting which will only increase the City's or County's costs for future conservation purchase of lands within the DCP Legacy area,
- 3) potentially partition the Open Space Legacy area into tracts too small to provide effective, aesthetic and connected/usable open space values, and
- 4) dramatically increase area-wide fair-market values, which all subsequent conservation purchases would be legally required to pay for all lands within the area.

The fact that no vesting exists within the area for parcels below 2 acres in size is a major facilitations making the Open Space Legacy possible and financially reachable to the City or County and public. We envision some type of developer fee structure that would discourage exceeding the standard 2-ac minimum density.

No fees are contemplated for purposes of "density averaging" across individual parcels to provide greater buffer margin setbacks. For example: to condense 5 dwellings into the center 4 acres of a 10-acre parcel, in order to afford 6 acres of open space or public passage area. For such averaging, where overall development density does not exceed the 2-acre per parcel limitation, no fees are envisioned.

If the Council rejects the current 2-acre zoning and contemplates development densities in excess of the current 2-acre Rural Residential limitation, we recommend that open space mitigation fees be implemented and that said fees escalate rapidly as proposed density and developed square footage increase, so as to encourage lower numbers of dwelling units per parcel, smaller and less intrusive looking dwellings, and reduced parcel utilization (greater setbacks, public corridors and other density reducing features). Under such cases, we recommend the following development levels for which open space mitigation fee schedules would need to be established:

Level 1:

Land divisions between 0.9 acres and 1.99 acres (0.5 to 1 homes / acre – RA or RR zoning).

Level 2:

Land divisions between 0.9 acres and 0.5 acres (1-2 homes per acre).

Level 3:

Land divisions of 0.5 acres down to .25 acres (2 – 4 homes / acre).

No development would be allowed in excess of 4 units per acre within the DCP boundaries.

Open Space mitigation fees are intended to seriously discourage residential densities in excess of current RR zoning, and to provide at least cursory mitigation for densities as they escalate above that level. They are also intended to enable offsetting public Open Space conservation purchases at a fair and equitable rate. If drawn from the DCP alone, the accrued revenues from these fees will be insufficient to accomplish all of the Open Space Legacy objectives. As such, the other funding sources described here should all be pursued. One option would be for the City's Open Space General Plan Element to require Open Space Mitigation Fees be paid for all development on existing RR-zoned lands within its Sphere, but then to prioritize the DCP Legacy area as the initial conservation acquisition area. This would seem desirable, given the proximity of the DCP area to the urban population. It would greatly extend the financial capability of a developer fee program.

Rolling Land Purchases:

A process of “rolling land purchases” could be employed, in which the accumulated revenues could be used to make willing-sale property purchases. The City would then have the option to re-convey purchased parcels to new owners, but with included recorded conservation and other easements as needed to assure open space preservation, public passage and/or use, or other Open Space Legacy features. Re-conveyance sales enable portions of the fund to be restored for use on other needed time-sensitive conservation purchases. While re-conveyed lands may not afford full public ownership rights, this process is used by many land trusts and conservancies to take advantage of too-fast-approaching purchase opportunities in context with limited land acquisition budgets. It can at least preserve overall landscape character and gain needed public access across specific parcels in cases where outside sale would otherwise be imminent. The rolling fund also enhances landowners' sale options, by extending the dollars available for making public acquisitions.

Extended Purchases:

Some sellers may desire to receive purchase payment in time increments, rather than as a lump-sum. Such delayed disbursements would enable longer times for the purchase funds to be accrued, and they also could enable “rolling purchases” to be simultaneously transacted.

Gifts and Bequeathals:

Most land trusts are able to receive gifts or bequeathals of lands and they actively promote those considerations among landowners within their areas of concern. Given the great lasting value of the DCP Legacy, strong interest could develop among some area landowners to create public legacies of their own. To make this attractive, the means should be developed to provide proper long-term recognition and attribution. This could be accomplished in the same way it has been developed elsewhere, e.g., public benches, paths or other features with permanent contributor plaques.

Corporate Sponsorships:

Many corporations are likely to take an interest in the development of an open space feature which will be of direct value to them in developing adjoining lands, or in attracting client business to the Clovis Area. As such, a concerted effort should be made to promote the Open Space Legacy concept and to make area business aware of the eventual huge associated value. In other venues, such corporate sponsorships have been substantial and have made a very significant positive impact on funding availability.

Option I: Development of a County Service Area for addressing DCP area infrastructure needs and administration:

A CSA, established under Fresno County jurisdiction would enable essential infrastructure service and maintenance to take place at an acceptable cost level to Fresno County, since landowners would directly pay pertinent costs, as defined, through benefit-fee assessments. This would eliminate need for the high costs to be incurred, associated with broad-area City of Clovis annexation.

Option II: Development of an Open Space Management District for acquired lands mangement:

A second option, if the area were ever annexed to the City of Clovis could be to establish a separate Open Space Management District; financed through a benefit fee assessment. Since the benefit fee area would need to include all of the beneficiaries of the City’s (or District’s) open space acquisitions, the associated fees might be widely spread and therefore quite low; particularly if they are set in context with a portfolio of grant financing and open space mitigation fees, as described above. Such a benefit fee structure would require voter approval.

Legality and Necessary Administrative Procedure:

Many of the features described above will require enabling administrative actions, either in the form of City Ordinances, formal City Policies or LAFCO (Local Agency Formation Commission) actions or stipulations. Because the City is embarking on its General Plan update, we anticipate the

needed environmental review, which would be required for these administrative actions, could be incorporated in the Environmental Impact Report performed for the General Plan Update. Individual ordinances would require development by City Staff, noticing and adoption by the City Council or LAFCO (or both). The Steering Committee would work with City Staff to identify which portions would require formal administrative action and pursue the proper means and emphasis for their development.

Because all open space land purchases would be based on willing sale offers made by owners, and no eminent domain acquisition actions are contemplated, there should be no instances of legal “takings” which would require legal support and associated legal costs.

The Dry Creek Preserve Open Space Vision:

The following is the DCP area landowners’ collective vision of how the Dry Creek Preserve can be managed and administered to fulfill its “Open Space Legacy for the City of Clovis.”

- We envision the Dry Creek Preserve becoming a feature of direct social and economic benefit to the City of Clovis, with continuing control and oversight by the City, as well as by Fresno County and LAFCo.
- We envision setting long range, measurable goals which would enhance the value of Dry Creek Preserve to the City of Clovis and its residents, while preserving the open space characteristics desired by the majority of current DCP area residents. We believe this can be done while avoiding serious financial hardships; moreover, we believe it can actually become a substantial profit center for compatible developments.
- We envision a soft landscape of natural features and small constructed features, rather than monolithic and dense developments that appear as human developments or intensive in-holdings. Within the DCP, prohibitions would be enacted on curbs and gutters, un-shrouded street lighting (which affects owls and other night-feeding wildlife) and “urban-looking” managed landscaping with livestock-toxic plants (such as oleander) along streets and parkways. The landscaping would feature the soil, water-ways, native plants, crops, and pastures that collectively define open space.
- We envision inviting businesses compatible with the open space values. Business developments such as nurseries, golf courses, nursing home facilities, public parks, recreational facilities, animal and wildlife care centers, environmental education centers, small size churches, leased gardening plots, and other similar low-intensity uses could be attracted to the area through marketing efforts.
- We envision minimal to no acreage within the DCP area exceeding 1 residence per 2 acres in residential densities.
- We envision real estate transfers continuing, unimpeded, with mechanisms in place to assure parity and equity in real estate valuation. Persons who desire to sell or purchase property could continue to do so, and purchasers would remain limited to the General Plan land uses and the 2-acre minimum zoning ordinances.

- We envision some allowances being made to develop some acreage of some properties at densities greater than the current 2-acre minimum (but within the overall 2-acre-per-residence average); for example, for density averaging purposes to increase open space along property margins. Any such increase in density should be conditioned with restrictive standards to assure that the appearance, traffic and other features do not avert the DCP open space values or seriously alter broad or local neighborhood character.
- We envision substantial public ownership of open space resource lands within the DCP area in the future. We envision this being financed through grants and through substantial mitigation fees imposed on developments that exceed the two-acre-minimum parcel requirement and adversely affect the Open Space goals and Legacy process.
- We envision a process of “rolling purchases” of public open space conservation areas, in which the accumulated fund would be used to purchase available properties on a prioritized, willing sale basis. The lands could then be re-conveyed to new owners with included recorded conservation and other easements as needed to assure open space preservation, public passage or uses, or other appropriate features needed to attain the Open Space Legacy goals. With each re-conveyance, portions of the fund would be restored for use on sequential conservation purchases.
- We envision the City of Clovis or Fresno County accepting ownership of purchased properties and an endowment available for managing these lands. We envision the City or County leasing the lands for low-intensity purposes, such as farming or residential rental, as a source of City or County revenue. This could extend until such time that one of these entities has revenue available for site clearing or recreational development. The proceeds of the leasing could be used, at discretion of the purchasing owners to enhance either the acquisition funds or the land management funds.
- We envision a special County Service Area or district formation, with volunteer board members, to coordinate grant applications, make key decisions about public lands acquisition and to articulate the Open Space Plan for the area.
- We envision a public Volunteer Corps available at the request of landowners or the City to assist with clean-up, painting, trash hauling, etc., and to help construct or landscape new public-acquired areas. The Corps would need to be covered by a policy of liability and workers’ compensation insurance.
- We envision public signage with specific logos identifying lands and facilities available to the public. We envision educational interpretation features and displays for historical and natural features. We envision abundant wildlife with viewable habitats available to the public view from trails, roads and public lands.
- We envision a Circulation Plan and enforcement with reduced speed limits, speed bumps and other accessories as needed to maintain traffic speeds and safety in context with public/family open space enjoyment. We see a circulation plan that

encourages non-motorized recreational passage through the area with paths developed along some rights of way for bicycles, baby strollers, etc.

- We envision a strict pet control ordinance, requiring all pets to be on leash or otherwise effectively contained and controlled within the area. We see need for strict animal control enforcement. This is necessary to avoid adverse resident and visiting pet interactions, resident pet and visitor interactions, human safety issues, and livestock damage due to uncontrolled domestic pets.
- We envision a mix of public and private open space which is managed toward a uniform and seamless open-space appearance. While fences and other private-public separations will continue to exist for safety and other reasons, owners will be “gently encouraged” to participate by maintaining property appearances, considering selling easements of rights of way for trails, consider voluntarily providing setbacks from developed features to enable public passage and use within the DCP area, and to work together to provide habitats and corridors for wildlife movement within the area.
- We envision a gradual transfer of willing-sale-purchased private lands into a mosaic of key public (County or City) ownerships and corridors. This will occur over long timeframes, as grants and developer fees enable purchases of fee title or easements from willing sellers, as people elect to gift or bequeath lands or easements to the Preserve, as tax default lands become available to the County or City, all as coordinated and encouraged by the CSA Committee or Open Space District Board.
- We envision the continuation of surface water supplies to all portions of the area from Fresno Irrigation District, with flood irrigation being encouraged along with public interpretation to educate the public about the groundwater balance and recharge needs.

Needed Administrative Structures and Decisions:

To implement such a broad and varied Open Space program, an administrative structure will be needed to provide definitions, determine by whom decisions will be made, make land acquisition and management decisions, and promote public education and interpretation. We anticipate substantial public revenues to be accrued through grants or developer fees; both requiring competent accountability and careful administration. A range of alternatives exists for handling these administrative responsibilities. They may be handled directly by a County Service Area Advisory Committee, or they may include formation of a separate Open Space District. The updated City General Plan and Area Specific Plan or County Specific Plan for the DCP area should identify the means by which the open space and facilities coordination and administration will occur.

We propose the following:

Initial Definitions and Criteria as needed in the City General Plan

Establish a DCP Advisory Committee composed of area landowners to work with the County and City planners in development of the above general plans and specific plans, as applicable and with the intent of including the Dry Creek Preserve Legacy concept in said plans. The role of the Committee would be advise the County about the acceptability of proposals made by private interests or by the County or City. They would serve as a networking resource for County and City Staff to utilize in planning, as related to the following:

The Advisory Committee would recommend to the County and City Council a set of goals for the DCP element of the two entities' General Plan and Specific Plan Open Space Elements. The committee also will develop an Area Specific Plan for the area, including a formal "Open Space" definition for the DCP area. Said definition should include description of the open space attributes which we seek to retain and encourage. It should also define compatible and permissible development, continuing permissible uses, the private and public interface characteristics, and memorialize vested rights established or reaffirmed through City-landowner Annexation Agreements.

The Advisory Committee must also work with County and City staff to conform portions of the City's Circulation Element pertaining to the DCP area. This is to assure compatible through road designs, traffic speeds, controls and enforcement to enable safe public enjoyment of open space lands and corridors.

The Advisory Committee also would work with County and City staff in developing and recommending a schedule of CSA fees for consideration by the County. The schedule must be equitable and fair, and must not reduce or "take" any present land use vested rights. It would need to be capable of deriving a "fair share" of the financial resources needed, over time, to realize the open space goals. Such a fee schedule would need to be duly adopted into the County ordinance code in order to be implemented.

The Advisory Committee should also help the County, City Staff and LAFCO evaluate various options for administering open space. Because public and grant moneys would be administered, an appropriate public accountability process and regular auditing process is necessary.

APPENDIX A

Government Code definitions and requirements affecting establishment and protection of Open Space

STATE GOVERNMENT CODE SECTION 65560:

(a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water which is essentially unimproved and devoted to an open-space use as defined in this section, and which is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lake shores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lake shores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

Government Code Section **65561**: The Legislature finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.

(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.

(d) That in order to assure that the interest of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands.

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.

Government Code Section **65562**: It is the intent of the Legislature in enacting this article:

(a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible.

(b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.

STATE GOVERNMENT CODE

SECTION 65910-65912

65910. Every city and county by December 31, 1973, shall prepare and adopt an open-space zoning ordinance consistent with the local open-space plan adopted pursuant to Article 10.5 (commencing with Section 65560) of Chapter 3 of this title.

65911. Variances from the terms of an open-space zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated. This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands.

65912. The Legislature hereby finds and declares that this article is not intended, and shall not be construed, as authorizing the city or the county to exercise its power to adopt, amend or repeal an open-space zoning ordinance in a manner which will take or damage private property for public use without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or of the United States.
