

Do Conservation Easements Provide Effective Mitigation for Loss of Farmland to Development?

In 2018, the CEQA Guideline which defines the term "mitigation" was amended to add "conservation easements" to the list of measures that can provide "compensatory" mitigation for an environmental impact. Guideline §15370(e). The amendment was intended to resolve a debate about whether conservation easements over off-site farmland can provide a means to mitigate not only the cumulative and indirect impacts of converting farmland to other uses, but also the direct impact of the loss of the farmland on the project site. In a



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Because

the EIR in *King & Gardiner* was certified before Guideline §15370(e) was amended to add conservation easements to its list of potential mitigation measures, the court did not consider the effect of the amendment. Nevertheless, the court's ruling that off-site conservation easements *do not* provide effective mitigation for the loss of farmland converted to another use casts doubt on whether public agencies may rely on Guideline §15370(e) to find that they *do*. Mitigation is considered effective under CEQA if it will "minimize" or "substantially lessen" an environmental impact. The court in *King & Gardiner* ruled that conservation easements do not offset or otherwise reduce the impact of developing farmland. While Guideline §15370(e) lists conservation easements as a potential mitigation measure, it does not explain how a conservation easement

might minimize or substantially lessen the impact of the loss of farmland. The absence of such an explanation could make it difficult for public agencies to justify requiring conservation easements to provide mitigation given the ruling in *King & Gardiner*. An overview of the relevant background and a more detailed analysis of use of conservation easements as mitigation is [available here](#).

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