

MONTEREY COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

Erik V. Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

(831) 755-5025
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MEMORANDUM

Scheduled Date: February 13, 2023

To: Subcommittee of the Agricultural Advisory Committee (Subcommittee)

From: Melanie Beretti, AICP, Principal Planner

Subject: **Agricultural Conservation Mitigation Program** – Receive a report on the status of the agricultural conservation mitigation ordinance and provide feedback to staff. Consider changing the meeting dates of the Subcommittee of the Agricultural Advisory Committee to meet every two weeks rather than monthly.

cc: REF220044 Public Distribution List

ACTION:

Receive a report on the status of the agricultural conservation mitigation ordinance and provide feedback to staff. Consider establishing that the Subcommittee of the Agricultural Advisory Committee (Subcommittee) meet two times in March 2023.

SUMMARY:

Staff presented the Agricultural Conservation Mitigation Program (Program) at the Agricultural Advisory Committee (AAC) on May 23, 2022 (Attachment A), July 28, 2022, and August 25, 2022 (Attachment B). Additionally, between May 2022 and February 2023, staff conducted a series of public and targeted-stakeholder outreach meetings. Staff conducted recent stakeholder outreach to the Local Agency Formation Commission of Monterey County (LAFCO) to understand annexations and the annexation process better. Staff met with the Salinas Valley Cities mayors and city managers to better understand their concerns and recommendations about the countywide policy as it relates to annexations.

Staff conducted a workshop with the Planning Commission (Commission) on October 26, 2022, with policy recommendations regarding the development of the ordinance to mitigate the loss of agricultural lands due to development in the unincorporated inland areas of Monterey County (Staff report and attachments available at [County of Monterey - File #: PC 22-090 \(legistar.com\)](#)). At that meeting, staff presented policy recommendations and options for the Commission.

The Commission provided staff with general input and direction regarding the policy recommendations. The Commission directed staff to return to the AAC to work through the draft policy prior to returning to the Commission in the second quarter of 2023 with a draft ordinance. At its January 26, 2023 meeting, the AAC considered staff's (Attachment C) request to either form a Special Ad Hoc Committee or utilize the existing Ad Hoc

Subcommittee. The AAC supported that it re-establish the existing Subcommittee and appointed AAC members to serve on the Subcommittee with consideration for inviting additional members to be added at the first Subcommittee meeting on February 13, 2023, as appropriate.

Staff requests that the Subcommittee meet every two weeks rather than monthly so staff can continue to make progress to refine and bring forward the draft ordinance to the Subcommittee, AAC, Commission, and the Board of Supervisors by the Sustainable Agricultural Lands Conservation grant end date of June 14, 2023. Staff proposes that the Subcommittee meet twice in March 2023.

Staff is planning to release a preliminary draft ordinance for the Subcommittee's review prior to the Subcommittee's next meeting. Staff is working to develop a recommendation for annexation projects and is currently meeting with LAFCO and the Salinas Valley cities to develop that recommendation. Today, staff has three questions they would like to receive the Subcommittee's input and feedback in preparation for finalizing the draft ordinance.

Good Faith Effort

Staff heard feedback from the AAC, members of the public, and the Commission that staff should develop a clear definition of what constitutes a "good faith effort" by the applicant to purchase a direct conservation easement. The definition of "good faith effort" is important because if applicants cannot locate a direct conservation easement after multiple "good faith efforts," they would potentially be allowed to mitigate through the payment of in-lieu fees.

Staff proposes to define a "good faith effort" as an applicant providing documentation that they made multiple attempts (2 or more) to purchase an agricultural conservation easement and those offers being declined by the seller(s) of the agricultural conservation easement. The applicant shall provide documentation that they worked with a qualified entity to locate an agricultural conservation easement, and those results were unsuccessful. Further, the offers to purchase an agricultural conservation easement must be shown to be of fair market value and that the offers have been made with the intention of purchasing the easement.

Staff would like to receive the Subcommittee's feedback and input on the proposed draft definition of "good faith effort."

Agricultural Mitigation Plan

Staff heard from the AAC, members of the public, and the Commission that while protecting valuable agricultural land is critically important and encouraged by the County's General Plan and the Agricultural Element, the State of California and the County of Monterey are currently experiencing a severe housing affordability crisis and this policy could impact future housing growth.

To simplify the application process and minimize the policy's impact on housing, staff recommends developing clear requirements for applicants to standardize applicant submittals and streamline staff review of proposed mitigation pursuant to the requirements of the draft ordinance. Staff suggests that applicants be required to submit a mitigation plan that all applicants would be required to submit whenever agricultural mitigation would be required as a part of an application. Staff further suggests that the following proposed items be included in the mitigation plan: information about the qualified entity they will be working with, the total acreage of farmland being converted, the total acreage

of farmland in each FMMP category, and the proposed methods of mitigation.

Staff would like to receive the Subcommittee's feedback on the concept of developing a mitigation plan and the proposed required information contained therein. Staff would also like to receive the Subcommittee's input on additional items the Subcommittee thinks may be useful to require in the mitigation plan.

Mitigation Requirement Within Planning Area

Staff heard strong support from the AAC to require mitigation in the same Planning Area. Staff received feedback from some members of the public and during the Commission workshop that only allowing mitigation within the same Planning Area may negatively impact mitigation for applicants with projects near the boundary of the Planning Area.

Staff proposes requiring mitigation within the same Planning Area unless the applicant's project is within 5 miles of a Planning Area boundary. Further, staff recommends that the Subcommittee limit where the applicant can purchase a direct conservation easement to within 15 miles of the applicant's project, but only if the applicant's project is within 5 miles of a Planning Area boundary.

Staff would like to receive the Subcommittee's input on the proposed geographic criteria for mitigation for projects located near the boundary between two planning areas.

AAC SUBCOMMITTEE INPUT AND/OR COMMENTS:

Receive a report on the status of the agricultural conservation mitigation ordinance and provide feedback to staff. Recommend that the Subcommittee meet two times in March 2023.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti, AICP, Principal Planner, at (831) 755-5285 or at berettim@co.monterey.ca.us

NEXT STEPS:

Staff will take feedback from the Subcommittee, and before the next Subcommittee meeting, staff will provide the draft ordinance to the Subcommittee for review. Staff will return to the Subcommittee at their next meeting to review and discuss the draft ordinance. Based on feedback, staff anticipates bringing forward the draft ordinance to the April 27, 2023, AAC meeting for the full committee's consideration. Staff would then bring the draft ordinance to the Planning Commission and Board of Supervisors in the late spring of 2023.

ATTACHMENTS:

Attachment A – May 23, 2022, Staff Memo to AAC
Attachment B – July 28, 2022, Staff Memo to AAC
Attachment C – December 1, 2022, Staff Memo to AAC

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MEMORANDUM

Scheduled
Date: May 23, 2022

To: Agricultural Advisory Committee (AAC)

From: Melanie Beretti, Principal Planner

Subject: **Agricultural Conservation Mitigation Program** - Program to mitigate for the loss of agricultural lands due to development, including implementation of General Plan Agricultural Element Policy AG-1.12 (Mitigation) to establish a program to mitigate for projects involving a change in land use designation resulting in the loss of Important Farmland.

cc: Monterey County Farm Bureau
Grower Shippers Association
Monterey County Ag Land Trust
United Farmworkers Union

ACTION:

Provide initial feedback to staff on the development of agricultural conservation mitigation program policies.

SUMMARY:

Monterey County Policy Background

The County of Monterey (County) elected to include an Agriculture Element as part of the 2010 General Plan because agriculture is the largest industry in the County, contributing significantly to the County's economy. The General Plan's intention is to preserve, protect, and enhance farmland in order to maintain the productivity and viability of the County's agricultural industry. Loss of farmland to development is irreparable and can have cumulatively negative impacts on the region's economy. Population growth in Monterey County is predicted to continue and Monterey County has a severe shortage of housing, especially affordable housing units. While additional housing and commercial developments will be required to support the increased population, there is time to facilitate both growth and the continued success of the agricultural industry, which will likely continue to provide income for a significant part of the County's population.

The General Plan Agricultural Element Goal AG-1 is to Promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural lands. Agricultural Element Policy AG-1.12 specifically requires that the County prepare, adopt, and implement a policy that requires that projects involving a change of land use designation

Attachment A

resulting in the loss of Important Farmland¹ to mitigate the loss of acreage. AG-1.12 will be implemented as part of an Agricultural Conservation Mitigation Program (Program) being developed by the County. AG-1.12 further states:

“For such land to be annexed to incorporated areas, the County shall work in consultation with the cities to mitigate the loss of Important Farmland resulting from annexation. The program may include ratios, payment of fees, or some other mechanisms. Mitigation mechanisms established through this program shall be based upon a graduated value of the Important Farmland, with mitigation for loss of prime land having the highest agricultural value. The County shall support private, non-profit land trusts and conservation organizations to promote the policies of this General Plan, facilitate the implementation of the program, and to receive, by voluntary donation or purchase, development rights on any lands to be preserved as part of this program’s implementation strategy.”

California Environmental Quality Act (CEQA)

California law requires mitigation for development impacts to farmland. The loss of agricultural land due to agricultural land conversion is often found to be a significant impact that must be mitigated pursuant to the California Environmental Quality Act (CEQA). While the staff acknowledges that it may not be possible to fully mitigate for the loss of agricultural land without bringing non-farmed land into production, and that complete mitigation is unlikely to be feasible due to a lack of available land, setting in place partial mitigation measures as part of the Program would ensure that the agricultural industry can persist well into the future.

Mitigation Thresholds & Exemptions

Central to developing an Agricultural Conservation Mitigation Program will be establishment of thresholds that trigger mitigation. Under CEQA, lead agencies are encouraged to utilize the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation (DOC). Key issues of concern are conversion from agriculture to non-agricultural uses, conflicts with existing agricultural zoning or Williamson Act contracts, and changes to the environment that, due to location or nature, could result in the conversion of farmland (e.g., zoning). The County does not have established thresholds for when mitigation would be required, instead relying on a case-by-case basis to negotiate mitigation requirements. Alternatively, the policies must also identify what use or activities may be exempt from mitigation. Pursuant to Policy AG-1.12, for example, acreage within a project or annexation to be inclusionary housing is not subject to mitigation.

Staff is seeking input from the AAC to determine when mitigation is required or what the thresholds are to determine if and the type of required mitigation.

Mitigation Methods

Monterey County has historically (since the adoption of the 1982 General Plan) required one or more of the following mitigation options when allowing conversion of agricultural lands to other land use designations:

- Purchase of a conservation easement - To mitigate the loss of agricultural lands, a party may purchase the development rights (or otherwise restrict development) associated with a similar parcel of strategically located agricultural land in order

¹ Important Farmland as mapped by the California Department of Conservation Farmland Mapping and Monitoring Program. Important Farmland categories include: Prime Farmland; Farmland of Statewide Importance; Unique Farmland; Farmland of Local Importance; and Grazing Land.

Attachment A

that it is permanently preserved and set aside for farming. While the purchase of the conservation easement would be required for the developer, it is voluntary for the seller.

- Payment of in-lieu fees into an exclusive farmland preservation and mitigation fund or conservation organization - Another method of mitigating for development of agricultural land is the payment of fees into a fund or mitigation bank specifically reserved exclusively for later purchase of a conservation easement or fee title of agricultural land that is then transferred to a conservation entity. These funds can be managed by the County or by a conservation entity.

Other potential mitigation methods that may be considered to further reduce the impact of the loss of agricultural land may include: 1) Development dependent mitigation based on development density; 2) Mitigating condemnation of easement land; 3) Discouraging County-sponsorship of conversion of agricultural lands; 4) Mitigating loss of agricultural land to public works projects; 5) Conservation of soil at development sites; or 6) Alternative or applicant-designed mitigation.

Staff is seeking input from the AAC to inform what mitigation methods are preferred and under what circumstances or conditions.

Mitigation Ratios & Equivalence

An important factor in determining the success of a mitigation program is the degree to which the loss of Important Farmland is mitigated as determined with a mitigation ratio. Policy AG-1.12 specifically calls for mitigation mechanisms established through this Program shall be based upon a *graduated value of the Important Farmland*, with mitigation for loss of prime land having the highest agricultural value. There are two general types of agricultural land use conversions that occur within the County specifically mentioned in Ag-1.12: 1) Development of parcels of land within the County; and 2) Annexation of farmland by cities. Decision makers will have to determine whether to mitigate for the loss of agricultural land at the same rate for each type of conversion, or whether to have different requirements for private parties and cities.

Some California counties and cities require that the loss of agricultural land is mitigated at a 1:1 ratio, meaning that one acre of land is permanently protected for every acre developed. Other municipalities, such as the City of Davis, require higher mitigation ratios (2:1). Monterey County is one of the nation's top producing agricultural counties with some of the highest levels of productivity largely due to the natural features of the area, making the average relative agricultural productivity higher than the Statewide average. Some of the most productive farmland is also the scarcest in the Salinas Valley, begging the question of what the appropriate mitigation ratio may be for the gradient of Monterey County's Important Farmlands.

It is generally thought that the land identified to mitigate for the lost agricultural land should be of a similar quality in terms of soil, productivity, scarcity, and other characteristics. Ideally, the property would also be in the vicinity of the parcel to be developed and promote the definition and creation of a permanent agricultural-urban edge. Determining the relative "equivalency" of a proposed mitigation parcel compared to the farmland being lost must be tailored to the unique characters Monterey County agricultural lands.

Staff is seeking AAC input for determining mitigation ratios along the gradient of Important Farmland. Staff is also seeking input to guide policies for determining the

Attachment A

appropriateness of a proposed site to mitigate for the farmland to be developed.

AAC INPUT AND/OR COMMENTS:

Staff would like to obtain your comments and input on the proposed Program. We are particularly interested in comments or ideas pertaining to: 1) Mitigation thresholds and exemptions; 2) Mitigation methods; and 3) Mitigation ratios and equivalence.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti at (831) 755-5285 or at berettim@co.monterey.ca.us

NEXT STEPS:

Based on preliminary feedback from the AAC and community and stakeholder outreach, staff will prepare a draft ordinance for consideration by the Planning Commission at a public workshop (anticipated for July 2022).

ATTACHMENTS:

None

Attachment B

MONTEREY COUNTY

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MEMORANDUM

Scheduled
Date: July 28, 2022

To: Agricultural Advisory Committee (AAC)

From: Melanie Beretti, AICP, Principal Planner *MSB*

Subject: **Agricultural Conservation Mitigation Program** – Workshop to consider policy options related to a program to mitigate for the loss of agricultural lands due to development in the inland areas of unincorporated Monterey County.

cc: REF220044 Public Distribution List

ACTION:

Provide feedback to staff on proposed policy options for the development of agricultural conservation mitigation program policies.

SUMMARY:

On May 26, 2022, the Agricultural Advisory Committee (Committee) received a presentation from staff regarding the development of an Agricultural Conservation Mitigation Program to mitigate for the loss of agricultural lands due to development for unincorporated inland areas of Monterey County (Program). At that meeting, staff presented an overview of the proposed Program and solicited initial feedback from the Committee (Attachment 1). At this meeting, the Committee requested that staff: 1) provide examples of programs and/or policies being implemented by other jurisdictions; and 2) conduct a workshop at its June 23, 2022, meeting (which was cancelled due to lack of quorum).

Agricultural Mitigation Program and Policy Examples

Monterey County contributes approximately 12% of the state's agricultural production on just 2% of the state's farmland, and has agricultural resources superior to those in all but a few places on earth. It is a goal of the General Plan to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land in the county. Staff have researched mitigation programs and policies throughout the state, and identified several clear and well-developed models that may be looked to as possible examples for the County's Program. Staff has identified the following two agricultural mitigation programs from other jurisdictions and a model program and ordinance that can be used to inform Monterey County program development efforts:

- Conserving California's Harvest: A Model Mitigation Program and Ordinance for

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Local Governments (Attachment 3)

- Yolo County Zoning Code Adopted July 2014 with Amendments Through October 2015, Sections 8-2.404: Agricultural Conservation and Mitigation Program & 8-2.405: In-Lieu Agricultural Mitigation Fee (Attachment 4)
- Butte County Code Chapter 35 “Protection of Agricultural Land”, Article II “Agricultural Mitigation” (Attachment 5)

Other examples can be provided upon request, but these three models were found to have the most detail and were found to be the best examples of programs containing criteria like the criteria called for in the 2010 Monterey County General Plan that directs development of an agricultural mitigation program in Monterey County.

Agricultural Mitigation Policy Input

Program Purpose and Goals

Of principal importance for Program development is establishing agreed upon purpose and goal statements. Incorporating specific goals laid out in the County’s 2010 General Plan, staff has developed the following proposed draft purpose and goals statement for consideration and input by the Committee.

Purpose- Provide clear and consistent policies to mitigate the loss of agricultural land due to development or conversion to non-agricultural uses

Goals-

- 1) Promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural lands;
- 2) Ensure the commercial viability of Monterey County’s agricultural industry; and
- 3) Support growth management policies that encourage growth in or near developed or developing areas and away from valuable agricultural land.

Quantifying & Valuing Loss of Agricultural Land & Eligibility for Receiving Sites

General Plan policy requires that the mitigation mechanisms established through this program shall be based upon a graduated value of the Important Farmland, with mitigation for loss of prime land having the highest agricultural value. Monterey County classifies farmland according to categories utilized by the California Department of Conservation’s Farmland Mapping and Monitoring Program (FMMP). Important Farmland Categories, which are proposed to serve as the basis for the proposed Program, are distinguished and defined as:

- *Prime Farmland* - Farmland with the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date
- *Farmland of Statewide Importance* - Farmland similar to Prime Farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.
- *Unique Farmland* - Farmland of lesser quality soils used for the production of the State's leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.

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- *Farmland of Local Importance* - Land of importance to the local agricultural economy as determined by each county's board of supervisors and a local advisory committee.
- *Grazing (Range) Land* - Land on which the existing vegetation is suited to the grazing of livestock. This category was developed in cooperation with the California Cattlemen's Association, University of California Cooperative Extension, and other groups interested in the extent of grazing activities.

Staff is seeking the Committee's input regarding the following proposed categories being used to establish a meaningful gradient for Important Farmland for the Program: 1) Prime Farmland as the highest category; 2) Next is a combined category including Farmland of Statewide Importance, Unique and Locally Important Farmland; and 3) Grazing/Rangeland.

Staff has received strong feedback to date that a key criterion for determining the value of the agricultural land being converted or developed, as well as to appropriateness of the site to receive mitigation, is to obtain an appraised fair market value based on the easement diminution value for removing the development rights and conserving the land for agricultural uses. Staff is seeking the Committee's input regarding this fair market value approach.

It is also important that mitigation for lost agricultural land be provided in a location that is meaningful to support the Program Goals. Based on lessons learned since 2010 addressing agricultural protection and mitigation through coordination efforts and agreements in place amongst the County, Salinas Valley cities, and Local Agency Formation Commission of Monterey County (LAFCO), as well as based on feedback received to date through staff's outreach efforts, staff has developed the following proposed recommendations:

- 1) Mitigation measures (e.g., easements, in-lieu fees, etc.) must be applied within the land use planning area where the agricultural land loss/impact occurs;
- 2) For developments to be annexed into a city or that takes place within designated growth areas such as Community Areas, mitigation should be prioritized at sites that help establish or reinforce agreed upon urban-agricultural boundaries; and
- 3) Due to the uniqueness and high value of Blanco Drain area/soils, the mitigation resulting from conversion or development on these soils should be applied within the Blanco Drain area. Staff is seeking the Committee's input regarding these receiving site location recommendations.

While farmland type, value, and location are key, a recurring theme that has been raised through research and outreach to date is ensuring that any receiving mitigation site has sufficient water quantity and quality to enable the site to remain in long-term agricultural production. Staff is seeking the Committee's input regarding meaningful criteria that the regulations should consider with respect to water at a receiving site.

Exceptions and Special Considerations

General Plan Policy AG-1.12 specifically exempts the following activities from the mitigation policy: 1) Acreage within a project or annexation that is to be utilized for inclusionary housing; and 2) Community Plan or Rural Center Plan that includes a mitigation program. Based on feedback received to date, it is proposed that Agricultural Support Services/Facilities be exempt from the policy. Feedback has been received to date supporting exemptions for housing for agricultural workers and/or their families. Alternatively, there was some public feedback that stressed the importance that very few projects qualify as exempt from the mitigation policy. Staff is seeking the Committee's

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feedback on project types to be exempted from the policy.

The County of Monterey has historically, since the adoption of the 1982 General Plan, required that projects that convert agricultural lands to other land use designations to mitigate the loss of agricultural land through either or both purchase of an agricultural conservation easement or payment of in-lieu fees into an exclusive farmland preservation and mitigation fund or conservation organization. Staff's experience has been that direct mitigation through the purchase of an agricultural conservation easement has been a highly effective form of mitigation. To this end, the policy should have clear criteria for when a project would be required to mitigate via purchase of an agricultural conservation easement, when is it appropriate to require in-lieu payment only, and in what circumstances should the policy allow flexibility as to the mitigation approach.

Based on staff research and input received to date, staff offers the following proposal for the Committee's consideration and input. Purchase of an easement from a willing (voluntary) landowner is proposed to be required for projects that result in the loss of 40 acres or more agricultural land, consistent with typical minimum size for parcels in the Farmland and Permanent Grazing zones. The policy should establish circumstances and criteria that could be met to allow payment of in-lieu fees in the event a developer, upon making a "good faith" effort to be defined by the policy, is unable to purchase an easement that meets the mitigation requirements of the project. For projects that impact fewer than 10 acres of agricultural land, staff proposes that the project be required to pay an in-lieu fee. For projects impacting fewer than 40 acres but more than 10 acres of agricultural land, staff proposes that either purchase of an easement and/or payment of in-lieu fees may be appropriate. In this instance, purchase of an easement would be strongly encouraged but not required.

Alternative Protection Measures

There are other farmland protection measures that are utilized to a far-lesser extent by other Counties. These measures may be considered as supplements to the better-established mitigation strategies including the purchase of conservation easements and contributions of in-lieu fees, rather than strategies in and of themselves. For proposed projects that result in the loss of farmland, the County may encourage the following additional farmland protection measures to further reduce impact of the loss of agricultural land:

- *Conservation of soil at development sites* - Soil at Prime agricultural sites may be required to be removed from development sites and relocated to improve and enhance the productivity on permanent agricultural conservation sites. For example, the Ag Land Trust of Monterey County recently negotiated an agreement with Lowe's. If construction goes forward, topsoil from the farmland at its future Salinas location would be moved to a ranch under permanent conservation easement to improve the quality of that soil, thereby increasing the productive capability of that ranch. While this method may provide a partial mitigation and preserve productive soils, it does not constitute a satisfactory mitigation in and of itself, because while productivity may increase on the ranch receiving the soil, it is unlikely to match the productivity of the developed parcel of Prime farmland. Each project would need some review and determination of equivalency of land impacted versus land preserved/improved.
- *The Improvement or Creation of Farmland via Preservation of Prime Soils* - When development is planned on Prime agricultural land, the topsoil from the development site

Attachment B

shall be removed and placed on another ranch (ideally under permanent conservation easement) where it can be used for agricultural production.

- *Development-dependent mitigation* - Under this strategy recommended by the American Farmland Trust, the amount of mitigation required, whether through direct purchase of a conservation easement or payment of in-lieu fees, would be based on the density of the development proposed for farmland. The purpose is to reward higher density developments, the logic being that if the developed acre is utilized by more people, it will reduce the pressure to build on additional farmland, thereby preserving more farmland than just through a simple ratio. Although this strategy may be effective, it seems more appropriate for a city to implement as cities have their own land use plans and generally want to determine the relative densities of different areas themselves. A density bonus system may be a practical compromise.
- *Mitigation of Condemned Conservation Properties* - When a parcel under agricultural conservation easement is subject to condemnation proceedings, the action must be mitigated for at the same ratio as applies to non-easement land of the same classification. If the property to be condemned was itself mitigation for another land use conversion, additional mitigation in the form of a permanent conservation of a property similar in size and classification shall be required.
- *Discourage County-sponsorship of conversion of agricultural land* - The County may establish a general policy that County funds shall not be used to encourage the conversion of prime agricultural land when feasible alternatives are available.

Based on experience and feedback to date, conserving soil at development sites as well as preserving valuable topsoil excavated at a development site and placing it at another location to improve or create farmland is a viable supplemental measure that should be encouraged by the regulations. There are additional measures that have been used to a lesser extent but may have value to include as part of our Program. Staff is seeking the Committee's input regarding these supplemental measures.

AAC INPUT AND/OR COMMENTS:

Staff would like to obtain the Committee's comments and input on the proposed policy options and other matters of importance to the Committee.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti, AICP, Principal Planner at (831) 755-5285 or at berettim@co.monterey.ca.us

NEXT STEPS:

Based on feedback from the Committee and community and stakeholder outreach, staff will prepare a draft policy option for consideration by the Planning Commission at a public workshop anticipated in September 2022. The draft policy options are anticipated to be consistent with what is discussed and presented to the Committee. Should recommendations to the PC deviate significantly from this discussion, staff will return to the Committee prior to going to the PC.

ATTACHMENTS:

Attachment 1 – Memo and Presentation to the AAC dated May 23, 2022

Attachment B

Attachment 2 – Conserving California’s Harvest: A Model Mitigation Program and Ordinance for Local Governments

Attachment 3 - Yolo County Zoning Code Adopted July 2014 with Amendments Through October 2015, Sections 8-2.404: Agricultural Conservation and Mitigation Program & 8-2.405: In-Lieu Agricultural Mitigation Fee

Attachment 4 - Butte County Code Chapter 35 “Protection of Agricultural Land”, Article II “Agricultural Mitigation”

Attachment 5 - Presentation

MONTEREY COUNTY

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MEMORANDUM

Scheduled
Date: May 23, 2022

To: Agricultural Advisory Committee (AAC)

From: Melanie Beretti, Principal Planner

Subject: **Agricultural Conservation Mitigation Program** - Program to mitigate for the loss of agricultural lands due to development, including implementation of General Plan Agricultural Element Policy AG-1.12 (Mitigation) to establish a program to mitigate for projects involving a change in land use designation resulting in the loss of Important Farmland.

cc: Monterey County Farm Bureau
Grower Shippers Association
Monterey County Ag Land Trust
United Farmworkers Union

ACTION:

Provide initial feedback to staff on the development of agricultural conservation mitigation program policies.

SUMMARY:

Monterey County Policy Background

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The General Plan Agricultural Element Goal AG-1 is to Promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural lands. Agricultural Element Policy AG-1.12 specifically requires that the County prepare, adopt, and implement a policy that requires that projects involving a change of land use designation

Attachment B

resulting in the loss of Important Farmland¹ to mitigate the loss of acreage. AG-1.12 will be implemented as part of an Agricultural Conservation Mitigation Program (Program) being developed by the County. AG-1.12 further states:

“For such land to be annexed to incorporated areas, the County shall work in consultation with the cities to mitigate the loss of Important Farmland resulting from annexation. The program may include ratios, payment of fees, or some other mechanisms. Mitigation mechanisms established through this program shall be based upon a graduated value of the Important Farmland, with mitigation for loss of prime land having the highest agricultural value. The County shall support private, non-profit land trusts and conservation organizations to promote the policies of this General Plan, facilitate the implementation of the program, and to receive, by voluntary donation or purchase, development rights on any lands to be preserved as part of this program’s implementation strategy.”

California Environmental Quality Act (CEQA)

California law requires mitigation for development impacts to farmland. The loss of agricultural land due to agricultural land conversion is often found to be a significant impact that must be mitigated pursuant to the California Environmental Quality Act (CEQA). While the staff acknowledges that it may not be possible to fully mitigate for the loss of agricultural land without bringing non-farmed land into production, and that complete mitigation is unlikely to be feasible due to a lack of available land, setting in place partial mitigation measures as part of the Program would ensure that the agricultural industry can persist well into the future.

Mitigation Thresholds & Exemptions

Central to developing an Agricultural Conservation Mitigation Program will be establishment of thresholds that trigger mitigation. Under CEQA, lead agencies are encouraged to utilize the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation (DOC). Key issues of concern are conversion from agriculture to non-agricultural uses, conflicts with existing agricultural zoning or Williamson Act contracts, and changes to the environment that, due to location or nature, could result in the conversion of farmland (e.g., zoning). The County does not have established thresholds for when mitigation would be required, instead relying on a case-by-case basis to negotiate mitigation requirements. Alternatively, the policies must also identify what use or activities may be exempt from mitigation. Pursuant to Policy AG-1.12, for example, acreage within a project or annexation to be inclusionary housing is not subject to mitigation.

Staff is seeking input from the AAC to determine when mitigation is required or what the thresholds are to determine if and the type of required mitigation.

Mitigation Methods

Monterey County has historically (since the adoption of the 1982 General Plan) required one or more of the following mitigation options when allowing conversion of agricultural lands to other land use designations:

- Purchase of a conservation easement - To mitigate the loss of agricultural lands, a party may purchase the development rights (or otherwise restrict development) associated with a similar parcel of strategically located agricultural land in order

¹ Important Farmland as mapped by the California Department of Conservation Farmland Mapping and Monitoring Program. Important Farmland categories include: Prime Farmland; Farmland of Statewide Importance; Unique Farmland; Farmland of Local Importance; and Grazing Land.

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that it is permanently preserved and set aside for farming. While the purchase of the conservation easement would be required for the developer, it is voluntary for the seller.

- Payment of in-lieu fees into an exclusive farmland preservation and mitigation fund or conservation organization - Another method of mitigating for development of agricultural land is the payment of fees into a fund or mitigation bank specifically reserved exclusively for later purchase of a conservation easement or fee title of agricultural land that is then transferred to a conservation entity. These funds can be managed by the County or by a conservation entity.

Other potential mitigation methods that may be considered to further reduce the impact of the loss of agricultural land may include: 1) Development dependent mitigation based on development density; 2) Mitigating condemnation of easement land; 3) Discouraging County-sponsorship of conversion of agricultural lands; 4) Mitigating loss of agricultural land to public works projects; 5) Conservation of soil at development sites; or 6) Alternative or applicant-designed mitigation.

Staff is seeking input from the AAC to inform what mitigation methods are preferred and under what circumstances or conditions.

Mitigation Ratios & Equivalence

An important factor in determining the success of a mitigation program is the degree to which the loss of Important Farmland is mitigated as determined with a mitigation ratio. Policy AG-1.12 specifically calls for mitigation mechanisms established through this Program shall be based upon a *graduated value of the Important Farmland*, with mitigation for loss of prime land having the highest agricultural value. There are two general types of agricultural land use conversions that occur within the County specifically mentioned in Ag-1.12: 1) Development of parcels of land within the County; and 2) Annexation of farmland by cities. Decision makers will have to determine whether to mitigate for the loss of agricultural land at the same rate for each type of conversion, or whether to have different requirements for private parties and cities.

Some California counties and cities require that the loss of agricultural land is mitigated at a 1:1 ratio, meaning that one acre of land is permanently protected for every acre developed. Other municipalities, such as the City of Davis, require higher mitigation ratios (2:1). Monterey County is one of the nation's top producing agricultural counties with some of the highest levels of productivity largely due to the natural features of the area, making the average relative agricultural productivity higher than the Statewide average. Some of the most productive farmland is also the scarcest in the Salinas Valley, begging the question of what the appropriate mitigation ratio may be for the gradient of Monterey County's Important Farmlands.

It is generally thought that the land identified to mitigate for the lost agricultural land should be of a similar quality in terms of soil, productivity, scarcity, and other characteristics. Ideally, the property would also be in the vicinity of the parcel to be developed and promote the definition and creation of a permanent agricultural-urban edge. Determining the relative "equivalency" of a proposed mitigation parcel compared to the farmland being lost must be tailored to the unique characters Monterey County agricultural lands.

Staff is seeking AAC input for determining mitigation ratios along the gradient of Important Farmland. Staff is also seeking input to guide policies for determining the

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appropriateness of a proposed site to mitigate for the farmland to be developed.

AAC INPUT AND/OR COMMENTS:

Staff would like to obtain your comments and input on the proposed Program. We are particularly interested in comments or ideas pertaining to: 1) Mitigation thresholds and exemptions; 2) Mitigation methods; and 3) Mitigation ratios and equivalence.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti at (831) 755-5285 or at berettim@co.monterey.ca.us

NEXT STEPS:

Based on preliminary feedback from the AAC and community and stakeholder outreach, staff will prepare a draft ordinance for consideration by the Planning Commission at a public workshop (anticipated for July 2022).

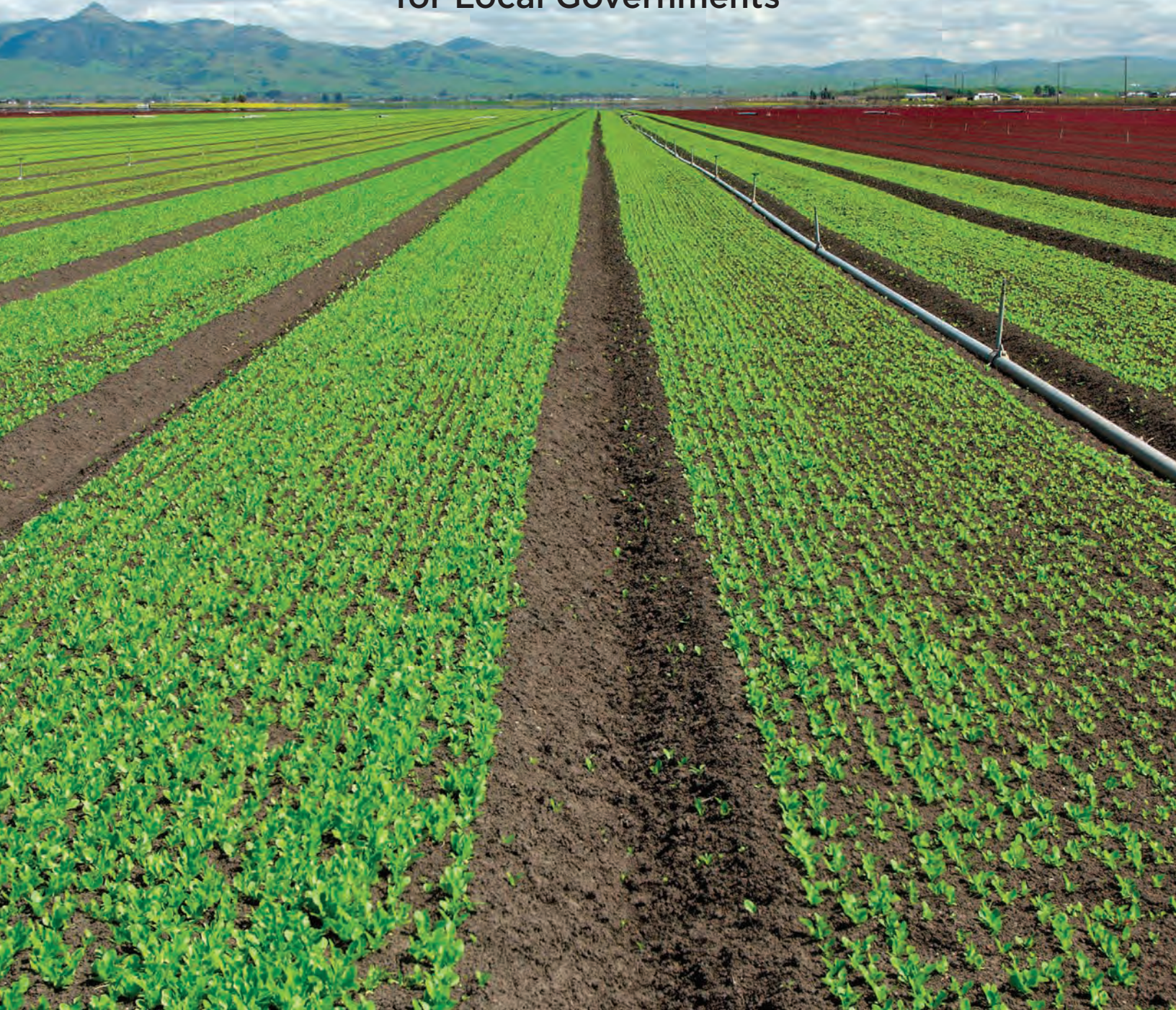
ATTACHMENTS:

None



Conserving California's Harvest

A Model Mitigation Program and Ordinance
for Local Governments



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FOREWORD

California is blessed with a dynamic agricultural landscape and diverse economic interests. Renewed interest in agriculture and a rebounding development economy—particularly in the renewable energy, housing, water infrastructure and transportation sectors—has increased the need for tools and skills to balance the two and when necessary to provide effective viable mitigation for the loss of farmland. This guidebook, “Conserving California’s Harvest: A Model Mitigation Program and Ordinance for Local Governments,” provides valuable knowledge, insights and tools to help policymakers and stakeholders achieve and maintain that balance.

Over the past 20 years, the tools for farmland mitigation have evolved, and local governments now have a variety of approaches to consider for their local farmland mitigation programs that aim to preserve our open spaces and working lands, strengthen our agricultural economies, and help protect California’s biodiversity. Moreover, each community brings its own array of philosophies, experiences and tools to this task. The California Council of Land Trusts, with grant support from the Department of Conservation’s California Farmland Conservancy Program and the Columbia Foundation, has prepared this guidebook to assist these communities in their endeavors to develop, refine and enhance their farmland mitigation programs. The guidebook has distilled the best practices developed over the years into a farmland mitigation primer with an accompanying model farmland mitigation ordinance for use by local governments.

We believe this guidebook will be a valuable asset to local governments for developing and fine-tuning their farmland mitigation programs so that they are effective. We look forward to seeing the continued implementation and evolution of farmland mitigation programs that preserve and protect our world-class agricultural landscape. California’s farmers and consumers deserve no less.

John Laird
Secretary
California Natural Resources Agency

Karen Ross
Secretary
California Department of Food and Agriculture





EXECUTIVE SUMMARY

California has a rich and unique agricultural heritage of feeding the nation and even in this era of a global food economy its farms and ranches still produce nearly 50% of the nation's food. The expanding footprint of transportation, water, and renewable energy infrastructure, along with the resurgence of the housing market, are generating pressure on California's working farms and ranches for development and conversion of their vital and irreplaceable land to non-agricultural uses. There is a growing interest by local governments—especially in the Central Valley—to create local mitigation programs for the loss of farmlands. It is up to the discretion of a lead agency—often a local government—to determine what mitigation is required and it has become standard practice to provide some form of mitigation. As the implementation of farmland mitigation has evolved there is an increasing need for farmland mitigation programs that will withstand legal challenges.

This guidebook is intended as a resource for local governments that are developing mitigation programs for the conservation of farmland in California. The guidebook thoroughly discusses farmland mitigation policies and implementation strategies. It includes model policies and a model local ordinance. The California Council of Land Trusts developed this guidebook with input from experts in the fields of local governance, agriculture, conservation, law and mitigation. In addition to the guidebook, on-line resources are available and a full training course designed for local government has been developed and can be provided in-person and by webinar¹.

¹ <http://www.calandtrusts.org/resources/conserving-californias-harvest>



INTRODUCTION

In the face of renewed pressure on farmland for conversion to housing, utility scale renewable energy projects, and infrastructure development there is a growing interest by California's local governments—especially in the Central Valley—to create local farmland mitigation programs. Some form of compensatory mitigation has become a standard requirement for projects that convert farmland to non-agricultural uses, and it is up to the discretion of a lead agency to determine what mitigation is required.

Over the last 30 years, the need to provide mitigation measures to avoid, minimize, reduce, and/or compensate for the loss of farmland resulting from development or other land use changes has fostered the exploration of a variety of mitigation approaches in California. Providing land mitigation, which results in the preservation of farmland to compensate for the loss of farmland, has been a fundamental concept for farmland mitigation. Strategies include

direct protection of farmland by acquisition of fee title or conservation easements, term protection via deed restrictions, in lieu fees for acquisition, and fees to fund agricultural supportive programs such as research stations, youth education programs and the like. There are serious questions if the funding of programs to support agricultural marketing, education and research, while laudable, fulfills the nexus requirements for mitigation of the loss of farmland. Farmland conservation easements are one of the most common tools used to mitigate for the loss of farmlands. Recent court cases such as *Masonite*² have upheld the validity of farmland conservation easements as a means of implementing required mitigation for the loss of farmlands.

Compensatory mitigation for the loss of farmlands in California began in earnest in the mid 1990's. Some of the earliest farmland mitigation easements in California are the result of requirements from

² *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230

the City of Davis and the Yolo County Local Agency Formation Commission (LAFCO) related to the annexation and development of farmland for several residential development projects. The requirement of compensatory mitigation for the loss of farmlands is now common in many regions of California and across the nation³.

Two issues are driving the growing demand for farmland mitigation programs that will withstand legal challenge. First, as witnessed in recent court decisions⁴, local governments face challenges to create viable and defensible mitigation programs. Second, local governments are developing regional plans in response to SB 375 (the Sustainable Communities and Climate Protection Act of 2008). SB 375-related plans may require agricultural mitigation programs as part of their implementation strategy and the planning processes can include identification of agricultural easements. This guidebook was developed by the California Council of Land Trusts (CCLT) to assist local government and stakeholders in responding to the demand for legally defensible and functional farmland mitigation. The guidebook includes:

- **Farmland Mitigation Primer**—Covers key concepts for local governments about implementation of agricultural mitigation, mitigation strategies, processes for establishing agricultural mitigation easements, types of qualified easement holders, relevant state statutes, recent legal cases, stewardship requirements, and a discussion of agricultural mitigation easement issues. These issues include nexus, location and “stacking” agricultural mitigation easements with other types of mitigation lands. (See page 1)
- **Farmland Mitigation Implementation Policy and Procedures**—Provides model local agricultural mitigation policy documents including a model agricultural mitigation ordinance that local governments can customize to address the rationale, roles of respective parties, timing, process, and procedures of their mitigation requirements.

Annotations, as appropriate, have been provided to illuminate rationales or provide discussion about alternatives. (See page 10)
- **Guide for Effective Farmland Mitigation Easements**—Identifies and explains the necessary elements of a conservation easement being used for farmland mitigation, discusses the purpose of each major section of an agricultural conservation easement and, where appropriate, provides recommended language for key elements. A discussion of the types of services and costs that may be involved in creating an agricultural conservation easement—transaction costs, survey or legal review—is also provided. (See page 14)
- **Memorandum of Understanding (MOU)**—Provides essential elements of an MOU between the easement holder and local agency including roles and relationships, monitoring, enforcement, and endowment. A model MOU is in Appendix 2. (See page 19)
- **Oversight and Management of Farmland Mitigation Endowments**—Easement holders have a significant and enduring responsibility to manage endowments that accompany easements created through the mitigation processes. This chapter covers the many requirements, activities and decisions⁵ that easement holders must make, as well as guidance for the agencies that have oversight responsibility when another entity (e.g., a nonprofit) holds the mitigation easement and associated endowment. (See page 21)

³ In addition to California, farmland mitigation is required in Connecticut, Massachusetts, Pennsylvania, and Vermont.

⁴ Building Industry Association of Central California v. County of Stanislaus et al. (2010) 190 Cal.App.4th 582

⁵ This includes managing each endowment separately or consolidating for investment purposes and maintaining project accounting, the need to develop sound investment policies that meet state requirements, need to understand and balance risk levels with return, and the costs versus benefits of professional investment services

- **Guidelines for Farmland Mitigation Banking** —Provides policies and guidance for establishing an agricultural mitigation bank, a discussion of how to secure initial funding to create a bank, and includes two case studies of approaches to agricultural mitigation banks. (See page 24)

The California Council of Land Trusts assembled an Advisory Committee of local government representatives, CEQA attorneys/experts, planners, developers, agricultural land owners, and land trusts experienced in holding farmland mitigation easements to provide additional expertise, insight and recommendations for this guidebook.

In addition to this guidebook, CCLT has developed a training course for local government staff and decision-makers. Training materials include a PowerPoint presentation, additional case study materials and small group exercises⁶.



AGRICULTURAL LAND MITIGATION IN CALIFORNIA

Both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) require the consideration of the potential impacts to agricultural lands from development. This guidebook relies on CEQA definitions of agricultural land located in Section 21060.1 of the California Public Resource Code:

- “Agricultural land” means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.
- In those areas of the state where lands have not been surveyed for the classifications specified in sub-division (a), “agricultural land” means land that meets the requirements of “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code.

Mitigation is defined in Section 15370 of the California Code of Regulations (CEQA Guidelines) as:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

There can be confusion when the term “agricultural land” is used as it can refer to irrigated prime farmland, farmland of statewide importance, or unique farmland as well as grazing and range land. While the preservation and protection of grazing and range land is crucial for both its agricultural value and its ability to provide high value habitat to a wide range of species, many of which are listed as threatened or endangered, this guidebook is focused on the mitigation of the loss of prime farmland, farmland of statewide importance and unique farmland. For clarity, the guidebook uses “farmland” to avoid confusion with grazing and range land, however the policy approaches and mitigation practices are relevant to grazing and rangeland mitigation.

⁶ www.calandtrusts.org/conserving-californias-harvest



• • • FARMLAND MITIGATION PRIMER

The Farmland Mitigation Primer provides a discussion of the various approaches to farmland mitigation including:

- Conservation Easement
- Restrictive Covenants or Deeds
- Fee Title
- In Lieu Fees
- Mitigation Banks

CONSERVATION EASEMENT

A conservation easement is a voluntary, legally binding agreement that limits certain types of uses or prevents development from taking place on a piece of property now and in the future, while protecting the property's resources such as habitat, open space or, as in the case of agricultural conservation easements, farmland. A conservation easement is recorded in the chain of title of the property and it "runs with the land" so that the restrictions also apply to future owners of that land. Conservation easements are provided for in California Civil Code 815 et seq. Appendix 1. Conservation easements, as defined by California

Civil Code 815.1, are perpetual (California Civil Code 815.2b). Any easement used for mitigation purposes is specifically required to be perpetual per CA Government Code 65966(a):

"Any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration, whether created pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of this code or Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of the Civil Code."

Agricultural conservation easements are a specific type of conservation easement and are typically used to fulfill farmland mitigation requirements in California. Agricultural conservation easements are designed to protect farmland so that it may remain in agricultural use by removing the development pressures from the land. Agricultural conservation easements prohibit activities and uses that would damage or interfere with the agricultural use of the land. The easement remains in effect even when the

land changes ownership. The project proponent may either locate and facilitate the acquisition of the conservation easement or may provide funds for the conservation easement acquisition, including associated costs, to the land trust⁷ or local government.

Agricultural conservation easements are held by land trusts, governmental agencies including Resource Conservation Districts, and California Native American tribes. The easement holders are responsible for ensuring that the terms of the easement are upheld. The terms of each agricultural conservation easement are negotiated between the landowner, the easement holder, and, in the case of mitigation easements, the land use authority or CEQA and/or NEPA lead agency. The easement holder will conduct monitoring visits, not less than annually, to the property to verify that the uses of the property are consistent with the terms of the individual easement. It is the responsibility of the CEQA lead agency to ensure that easement holders are fulfilling their monitoring and stewardship responsibilities. Easement holders are frequently required to provide reports to the CEQA lead agency summarizing their monitoring activities.

RESTRICTIVE COVENANTS OR DEEDS

Some project proponents⁸ and organizations have occasionally suggested that a deed restriction or covenant that does not qualify as a conservation easement is nevertheless a reasonable alternative to a conservation easement as a means of mitigating for the loss of farmland. This is not recommended. Deed restrictions, including covenants or other servitudes, are typically held by a benefitted landowner rather than by a third-party entity with the authority to enforce the restriction. As a result, no independent entity is responsible for monitoring the property to ensure compliance with the restrictions. It is unrealistic to rely on the project proponent, project operator or landowner to enforce the terms of the deed restriction or restrictive covenant. Monitoring and enforcement of deed restrictions and covenants by local agencies very rarely happens. By contrast, conservation easements are held by an entity typically with a

conservation purpose who is distinct from the landowner and who is responsible for regularly, not less than annually, monitoring the easement to ensure that there are no violations of its terms. If a violation does occur, the easement holder has the authority to enforce the terms of the conservation easement.

Deed restrictions may be of limited duration; they “run with the land” and bind future owners of the restricted property only if the restrictions benefit a specific, separate parcel of real property. By contrast, conservation easements need not benefit a specific parcel in order to remain enforceable in perpetuity. Conservation easements can address the wide range of other issues that must be considered if agricultural productivity is to continue on a property, such as protecting and enhancing water supply, prohibiting any use or activity that is likely to cause soil degradation or erosion, restricting uses that are inconsistent with the agricultural purpose of the property, and restricting development of the property to specific locations.

Further, there has been intensive investment in developing the legal language and stewardship framework for conservation easements. Conservation easements are the superior tool for assuring that a property remains available for and capable of agricultural productivity.

FEE TITLE

In some instances impacts to farmland from development may be mitigated through the acquisition of the land (fee title) instead of or in addition to a conservation easement on the agricultural land. The purchase of the land is funded by the project proponent and it is held by a land trust or local government. The project proponent may either do the actual land acquisition and transfer the title to the land trust or local agency or may provide funds for the land acquisition, including associated costs, to the land trust or local government. A conservation easement is typically also placed over the land to provide assurance that the agricultural values of the land will be protected in perpetuity.

⁷ A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements. Land trusts work with landowners and the community to conserve land by accepting donations of land, purchasing land, negotiating private, voluntary conservation agreements on land, and stewarding conserved land through the generations to come. Most land trusts are community based and deeply connected to local needs, so they are well-equipped to identify land that offers critical natural habitat as well as land offering recreational, agricultural and other conservation value.

⁸ Under CEQA both private developers and government agencies are required to mitigate for impacts resulting from their activities. For the purposes of this Guide “project proponent” refers to any party undertaking a project.

IN LIEU FEES

In lieu fees are another approach to fulfilling farmland mitigation requirements. “In lieu” of the project proponent acquiring mitigation property, the project proponent pays a specified fee to the lead agency or other designated agency. The in lieu fee is intended to be used by a third party such as a land trust or government agency to acquire the required mitigation property.

A nexus study should be prepared to defensibly establish an in lieu fee and the fee should be updated regularly so it is responsive to changes in real estate values. The in lieu fee should include all costs associated with providing the required mitigation including:

- Cost of the land or conservation easement
- All transaction costs including:
 - Identifying and negotiating for the mitigation land or easement
 - Surveys, appraisals, title research
 - Legal review
 - Preparation of transaction documents
 - Other due diligence including environmental site assessment and mineral remoteness evaluation
- Preparation of baseline condition reports for the mitigation site
- Escrow costs and title insurance
- Staff time
- Funding for long term stewardship and monitoring of the mitigation site.

A nexus study should be prepared to defensibly establish an in lieu fee and the fee should be updated regularly so it is responsive to changes in real estate values.

The use of in lieu fees shifts the mitigation responsibility from the project proponent to another party—such as a governmental agency or qualified land trust⁹. Because of this transfer of responsibility it is essential to correctly calculate the entire cost of fulfilling the mitigation requirement to ensure that the acreage required for mitigation is actually protected and the mitigation project is sufficiently funded for

the long term. Any in lieu program should have a mechanism for assessing costs and adjusting the fee as needed on an annual basis. In lieu fee programs must not exceed the reasonable costs of providing the required mitigation and must meet the requirements of the CA Gov. Code 65965—65968.

FARMLAND MITIGATION BANKS

In a few instances agricultural mitigation banks have been created by for-profit conservation businesses, land trusts, or project proponents to provide mitigation for multiple projects. A mitigation bank is simply the acquisition and protection of land by fee title or conservation easement in excess of what is currently required and the excess is available for future use as mitigation. There are two basic scenarios:

- A third party, such as a qualified land trust, joint powers authority, or governmental agency acquires land or a conservation easement, which is suitable for farmland mitigation by the nature of its location, soil and water resources, and size. The third party who establishes the bank pays all the costs of establishing the bank and recaptures those costs when they sell mitigation “credits” for the acres of land needed by a project proponent. The actual land or conservation easement remains in the ownership of the third party. The credits sold are deducted from the credits available at the bank until all credits have been “sold” and the bank has been fully utilized.
- A project proponent acquires land or establishes a conservation easement on acreage that exceeds their mitigation needs. The project proponent transfers the land and/or the conservation easement to a qualified conservation holder, such as a land trust, joint powers authority, or governmental agency, to be held and managed for the conservation purposes. The excess acres are then available for the project proponent to utilize for their future projects or to make available to other project proponents for their mitigation needs. The project proponent who establishes the bank finances all the costs of establishing the bank. If other project proponents utilize the bank to meet their mitigation needs, they typically compensate the project proponent who established the bank.

⁹A qualified land trust meets the requirements of Section 815.3 of the California Civil Code and is either accredited by the Land Trust Accreditation Commission <http://www.landtrustaccreditation.org> or is a member in good standing of the California Council of Land Trusts <http://www.calandtrusts.org>

CASE STUDY: FEE ACQUISITION AND PROJECT MITIGATION BANK

A HOUSING DEVELOPER proposed a 162-acre project within a 1,000 acre Specific Plan area in Silver County that had been recently annexed into Golden City. The site of the proposed subdivision was both prime farmland and foraging habitat for the threatened Swainson's hawk. An EIR was prepared and certified; this EIR required mitigation for the loss of 1,000 acres of prime farmland and 1,000 acres of Swainson's hawk foraging habitat that would result from the development within



the Specific Plan. As a result of CEQA litigation, the mitigation land had to be preserved within a four square mile target area and had to be comprised of agricultural lands that were highly desired for conservation. The agricultural community was strongly opposed to both the approved Specific Plan and proposed subdivisions. The majority of the landowners within the mitigation target area were unwilling to sell conservation easements because they felt selling conservation easements would enable the development of the very Specific Plan they opposed. A few landowners were potentially willing to sell conservation easements within the required target area; however, they placed a premium on the easements' value that the developers felt was economically unfeasible. The opposition and unwillingness to sell conservation easements created a bottleneck in the process.

The developer eventually purchased 1,000 acres of prime farmland within the mitigation target area. The farmland, which was predominately in alfalfa, was bordered by a riparian slough, making it also high value Swainson's hawk foraging habitat. The developer then negotiated conservation easement terms and conditions

with the county, city, and a local land trust to fulfill the mitigation requirements. The negotiation of the terms and conditions for the "stacked" farmland and foraging habitat conservation easement and the amount required for the endowment took over two years. Once the conservation easement was recorded and the endowment paid to the land trust out of the escrow, the developer was able to fulfill their requirement for 162 acres of farmland and Swainson's hawk foraging habitat mitigation.

The conservation easement and endowment is held by the local land trust and the city and county have third-party beneficiary rights for enforcement. The developer reimbursed all the costs, including staff time and legal fees, incurred by the local jurisdictions and the land trust.

After the developer fulfilled their mitigation requirements, a tracking system was established between the developer, city, county, and the land trust to allow for the "sale" of the remaining 838 acres of

mitigation "credits" to other developers within the Specific Plan. The sale of the credits enabled the developer to recapture all of their costs for the fee title acquisition, establishment of the conservation easement, endowment, and other transaction costs. The developer also made a profit on the entire mitigation project.

SUCCESSES

High value farmland and foraging habitat was preserved in perpetuity.

LESSONS LEARNED

A narrowly defined mitigation target area resulted in limited mitigation options. The limited mitigation options lead to the developers within the Specific Plan being essentially held hostage by a small group of landowners who controlled the only available mitigation land.

CASE STUDY: CONSERVATION EASEMENT WITH ADVANCE MITIGATION CREDITS

A PROPOSED INDUSTRIAL PROJECT in Copper County needed to establish a conservation easement on 245 acres of farmland to fulfill the mitigation aspect of permit requirements imposed by the county.

In an unrelated situation, an agricultural landowner and Copper County Land Trust were nearing completion of a conservation easement transaction to be funded through a state grant to the land trust. The landowner was selling the conservation easement to the land trust to protect 490 acres of prime and important farmland. The terms and conditions of the easement had been negotiated and the amount of the endowment established. The value of the easement had been established by an appraisal and the land trust had secured grant funds to purchase the easement.

The developer of the proposed industrial project approached the landowner and offered to pay more than the appraised value for the conservation easement. The landowner accepted the offer with the requirement that the land trust would be the easement holder. The land trust required the developer to cover any costs it incurred as a result of the change in funding sources, additional negotiations, legal review and staff time.

The change in the project could have had negative consequences for the land trust's relationship with the state agency that was funding the grant for the purchase of the easement. The land trust immediately contacted the state agency that was providing a grant and advised them of the sudden change to the project. The state agency and the land trust worked together to have the funds reallocated to another project within the land trust's service area.



The developer funded the purchase of the entire 490-acre conservation easement and utilized 245 acres of the easement to fulfill the mitigation requirement for her proposed industrial project. The remaining 245 acres would be available as mitigation "credits" for the developer's future use.

Subsequently, the developer, land trust, landowner, and county renegotiated the terms and conditions of the conservation easement to meet the mitigation requirements and developed an MOU for the management of the remaining 245 acres of mitigation credits.

SUCCESSSES

High value farmland was protected in perpetuity.
Scarce grant funding was diverted to other important projects.

LESSONS LEARNED

Close communication between landowner, land trust, jurisdictions, and grant funders allowed for a smooth project transition.



GENERAL FARMLAND MITIGATION PROCESS OVERVIEW

GENERAL ACQUISITION PROCESS

Mitigation requirements for impacts to farmland are determined as part of a CEQA or NEPA review, by local ordinances or general plan policies. Mitigation measures typically identify the amount of farmland that must be preserved or protected, the caliber of farmland to be protected, and its location. The mitigation is implemented by the acquisition of farmland, by conservation easement or by fee title. The acquisition is only from willing sellers per California Civil Code Section 815.2. The voluntary nature of farmland mitigation requirements and conservation easements was further clarified by the Stanislaus case¹⁰ which found that the project proponent has the latitude to place the mitigation on their own land or to acquire it from a willing seller. Additionally, it is the project proponent's choice to proceed with a development project or not. It is a voluntary choice with attending responsibilities and costs. The acquisition of the mitigation land by fee title is a basic real estate transaction—the land, buyer and seller,

price, and escrow requirements are identified, title research and land survey prepared, and the transfer of the deed is recorded. The acquisition of a conservation easement includes these steps but also requires the negotiation and drafting of a conservation easement. The intent of both the fee title and conservation easement scenarios is to preserve and protect the farmland in perpetuity. A public agency could use eminent domain to acquire land in fee title to mitigate a public project (e.g. a highway or school) although this rarely happens.

GENERAL STEWARDSHIP PROCEDURES

The job is not over once the conservation lands have been acquired. The conservation lands, including agricultural conservation easements, require ongoing stewardship and monitoring to ensure that the resources remain protected. This is especially essential for mitigation lands that are intended to compensate for the loss of land or habitat as a result of development.

¹⁰ *Building Industry Association of Central California v. County of Stanislaus et al.* (2010) 190 Cal.App.4th 582

Stewardship and monitoring of protected land including conservation easements is a two-step process. The initial step is the documentation of the existing or “baseline” conditions for the property and the protected resources. The baseline conditions are documented with written descriptions and photos/ videos of the character and condition of the resources and conservation values protected. Key features and photo monitoring locations are mapped for future reference. The baseline records are reviewed and agreed upon by the parties to the mitigation site—typically the conservation holder, landowner, and lead agency.

The second step of the stewardship process is the ongoing monitoring of the property by the conservation organization. A management plan provides the protocols for the monitoring of the conservation lands. The management plan is prepared based on the purpose and goals for the conservation lands. If the conservation land involves a conservation easement, the management plan must be consistent with the terms and conditions of the conservation easement.

Formal monitoring of the mitigation site is mandatory and is conducted on a regular schedule, not less than annually, to document the character and condition of the conservation values protected. Informal monitoring of the property may occur on an ongoing basis and may entail a visual inspection of the mitigation site by vehicle from public roadways. Any departures from the terms of the management plan or conservation easement for the property are documented and actions are taken to restore the site to the required conservation condition.

Ongoing communication between the easement holder and the landowner can minimize or avoid violations of the easement’s terms, but in rare instances more aggressive actions, including legal actions, may be needed to ensure the conservation values are kept intact.

THINGS TO CONSIDER

Legal Requirements

Farmland mitigation, like other development excisions, is subject to requirements under the federal and California constitutions. The mitigation required

CASE STUDY: CONSERVATION EASEMENT

A PROPOSED solar power plant project in Sunlit County needed to establish a conservation easement on 160 acres of prime farmland as required by the mitigated negative declaration adopted by the county to mitigate the loss of agricultural land resulting from the development of the project.

The developer of the proposed solar project sought out agricultural landowners who were willing to sell an agricultural conservation easement that could be used to fulfill the mitigation requirement. Simultaneously the developer worked with the local land trust to determine their requirements and process for holding a farmland mitigation easement. The county, landowner, land trust and developer’s general terms and conditions were identified and the viability of the proposed mitigation site was confirmed. Once a specific mitigation site was agreed upon, the terms of the conservation easement were negotiated by the land trust and landowner. Simultaneously, the details of the acquisition including cost, MOU, and escrow instructions were identified and agreed upon by the

land trust, county and developer. The land trust and county required the developer to cover all costs associated with the acquisition of the conservation easement including negotiations, legal review, due diligence, and staff time. The developer deposited the funding for the purchase of the conservation easement and all transaction costs into the escrow account. At close of escrow the funds were distributed to the landowner, land trust and county and the conservation easement was recorded.

SUCCESSSES

High value farmland was protected in perpetuity.

LESSONS LEARNED

Close communication between developer, landowner, land trust, and county allowed for streamlined project transaction.

of a development project must serve a legitimate governmental purpose, be roughly proportional to the impact, be consistent with local general and specific plans, and comply with other state and federal law. Farmland mitigation that is imposed by local ordinance must bear a reasonable relationship to the impacts of the projects to which it applies. Mitigation imposed on a case-by-case basis may be subject to more rigorous requirements of “nexus” and “rough proportionality.” For farmland mitigation, this typically involves ensuring that the mitigation land is comparable to the land which was converted. This includes acreage, soil type and capacity, water resources, location, and other characteristics which affect its agricultural productive capacity.

Location

The location of the farmland protected as mitigation must have some tangible relationship to the location of farmland that was converted to a non-agricultural use. Guidance is necessary to provide the project proponent with the means for complying with the mitigation requirement. Often mitigation requirements specify a general location or distance from the development project where the mitigation land must be located. Some jurisdictions use the placement of farmland mitigation sites to reinforce or support plan boundaries or urban growth limit lines. Clustering farmland mitigation sites can also promote the long term agricultural viability of an area by minimizing the potential for conflicting land uses and development. However, identification of target areas may result in escalated real estate values in the targeted mitigation locations. The use of performance standards or criteria rather than specific location requirements can alleviate this issue.

Stacking

“Stacking” refers to combining or layering multiple types of mitigation at one mitigation site. Stacked mitigation allows multiple resource mitigation requirements to be fulfilled on the same acreage. For example, including Swainson’s hawk foraging mitigation along with farmland mitigation in a conservation easement at a single site would be stacked mitigation. Stacked mitigation is frequently attractive to project proponents as a strategy to consolidate their mitigation acquisitions to control and minimize their mitigation costs. While it is possible to achieve multiple mitigation goals with a single site, care



must be taken to ensure the conservation goals of the required mitigation are compatible in the long term and there is sufficient funding to achieve those goals and manage them over time. Agricultural practices are dynamic and evolve over time in response to changing economic conditions, climate, regulations, and technological advances. At the same time, farmland mitigation is perpetual. Any limitations on agricultural practices generated by fulfilling another mitigation requirement, such as crop limitations for Swainson’s hawk foraging, may create an unintended conflict between mitigation goals. Additionally, the stewardship requirements discussed above will apply to all aspects of a stacked mitigation project.

Qualified Mitigation Holders

Mitigation lands require an entity other than the project proponent to hold, manage, and if necessary, defend the mitigation lands to fulfill mitigation requirement. This entity can be a government agency such as a branch of local government, a special district, a tribe, or a resource conservation district. The entity can also be a non-profit organization with conservation as part of their organizational purpose. Section 815.3 of the California Civil Code regulates which entities or organizations may acquire and hold conservation easements:

- (a) *A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.*
- (b) *The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to*

real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant to this chapter.

- (c) A federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

Cities, counties, and special districts do hold farmland mitigation lands, either in fee or by conservation easement. While this approach is allowed under California law, the long term stewardship responsibilities can present special challenges for local government, which typically does not have the preservation, protection and management of farmlands as part of its core purpose and lacks the resources and specialized knowledge to undertake that role. These activities require ongoing staff work, management, and oversight. Many jurisdictions avoid this additional burden by partnering with qualified local or regional land trusts. The activities of holding and managing a farmland mitigation easement are intrinsic to land trust purposes and operations. Land trusts frequently hold and manage farmland mitigation lands and conservation easements. In addition to meeting the requirements of Section 815.3 of the California Civil Code, a land trust or conservation organization should, at a minimum, be either accredited by the Land Trust Accreditation Commission¹¹ or be a member in good standing of the California Council of Land Trusts¹². Accreditation or membership in the California Council of Land Trusts signifies that the land trust's operation and practices meet professional standards for acquiring, holding and managing conservation lands.

Recent Legal Cases

Two recent court cases have clarified the legal authority for requiring mitigation for the loss of farmland and the feasibility of using conservation easements to accomplish the mitigation.

Building Industry Association of Central California v. County of Stanislaus et al. (2010) **190 Cal.App.4th 582**

The Building Industry Association (BIA) challenged Stanislaus County's Farmland Mitigation Program (FMP), requirement that all farmland land converted to residential use be replaced at a 1:1 ratio of equal farmland within the county. The county's General Plan update specified the requirement for a FMP. On appeal, the court addressed whether Civil Code section 815.3, subdivision (b) applied to agricultural conservation easements mandated by a city or county's General Plan policies. The court held that the BIA failed to sufficiently demonstrate the invalidity of the FMP under the county's legal authority. Citing the goals and policies in the county's agricultural element, the court held that the FMP requirements clearly bear a reasonable relationship to the loss of farmland to residential development. Finally, the court held that Civil Code section 815.3 (b) did not invalidate the FMP because the applicant and/or developer was not required to grant an easement. The easement arrangement could be made through a third party, and in any case, a developer has a choice of whether or not to develop in the first place¹³.

Masonite Corporation v. County of Mendocino (2013) **218 Cal.App.4th 230**

Masonite addressed the feasibility of using agricultural conservation easements and in lieu fees under CEQA to mitigate the direct impacts of loss of agricultural land to development. On appeal, the court found that while agricultural conservation easements (ACEs) do not replace onsite resources lost to development they can, when of equivalent size and comparable quality, appropriately mitigate the direct loss of agricultural land. The court concluded that

“ACEs may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use, even though an ACE does not replace the onsite resources. Our conclusion is reinforced by the CEQA Guidelines, case law on offsite mitigation for loss of biological resources, case law on ACEs, prevailing practice, and the public policy of this state. The off-site ACEs compensate for both direct and cumulative impacts on farmland, preventing the total consumption of land resources.”

¹¹ <http://www.landtrustaccreditation.org/>

¹² <http://www.calandtrusts.org>

¹³ Osha R. Meserve, Legal Issues Pertaining to Agricultural Land Mitigation, November 6, 2013, pg 3



• • • POLICIES AND PROCEDURES FOR MITIGATING THE LOSS OF FARMLAND

RATIOS

Creating and maintaining a local farmland mitigation program raises many issues for local government. This chapter explores key policies and procedures local government must consider and Appendix 2 provides a model farmland mitigation ordinance which addresses these issues. In California, farmland mitigation has historically been required by cities and counties at a ratio of one acre preserved for each acre of farmland converted, i.e. a 1:1 ratio. This requirement has been promulgated by a variety of general plan policies, ordinances and, most frequently, ad hoc policies. Currently, at least eight cities and three counties have adopted formal mitigation programs which require 1:1 agricultural mitigation for all development projects. Several more jurisdictions are considering adoption of mitigation programs in order to implement General Plan policies. At least four jurisdictions¹⁴ have also adopted

or are considering higher 2:1 mitigation ratios. These higher ratios are based on community desires and could also be used as a tool to further guarantee consistency with existing plans or to incentivize desired land use patterns. For example, 1:1 farmland mitigation could be required for conversion of farmland within a sphere of influence and 2:1 farmland mitigation be required for conversion of farmland outside a sphere.

ROLES AND RESPONSIBILITIES

Mitigation may include physical development such as infrastructure improvement (e.g. roads or flood control) or compensatory acquisition and protection of land via fee title or conservation easement. These actions involve an ad hoc partnership between a lead agency/local jurisdiction, the project proponent, and, typically, a third party conservation partner such as a land trust is frequently included.

¹⁴ Butte County, Yolo County and the Cities of Davis and Hughson

A governing body establishes the farmland mitigation policies. Mitigation requirements are determined via the CEQA review, by compliance with local policies, or a combination of CEQA review and policy compliance during the local land use entitlement for a proposed project. Farmland mitigation is also determined by a lead agency during the environmental review process for those projects such as some infrastructure projects undertaken by a state or federal agency that are subject to CEQA or NEPA but which do not require a local land use entitlement. It is up to the lead or local agency to determine the amount of mitigation required and how it can be achieved including location, site characteristics, management requirements, and if in lieu fees may be utilized. Any mitigation required by the lead agency must be feasible, adequate and effective and is subject to judicial review.

The lead agency is also responsible for reviewing and selecting a qualified entity to hold the mitigation per CA Government Code 65967(c) which states:

“A state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources. The local agency may adopt guidelines to assist it in that review process, which may include, but are not limited to, the use of or reliance upon guidelines, standards, or accreditation established by a qualified entity that are in widespread state or national use.”

The project proponent is responsible for complying with the mitigation requirements. Methods for implementing the mitigation can include:

- Funding the purchase of a farmland mitigation conservation easement that is held by a qualified entity.
- Purchase of farmland and transferring it to a qualified entity to hold and manage the land.
- Payment of in lieu fees to cover the cost of acquiring land or a conservation easement for farmland mitigation and the all the costs associated with the acquisition and long term management of the land or easement.
- Purchase of credits in an approved farmland mitigation bank.

- Purchase of farmland and establishing a conservation easement for farmland mitigation on it, which is held by a qualified entity. In this case the project proponent may recapture some of the cost of the purchase of the farmland by reselling the farmland after the establishment of conservation easement. The conservation easement “runs with the land” and all future landowners would be subject to the terms and conditions of the easement.

The qualified entity, frequently a land trust, may play several roles in a project. The holder of the farmland mitigation land or conservation easement often acts as a technical expert for the establishment of the farmland mitigation. They will work with the lead agency/local government, the project proponent, and the land owner(s) who might be willing to sell farmland or farmland conservation easements for mitigation to identify and acquire the mitigation land. They will hold and manage the farmland mitigation land or conservation easement. Their contribution to the process can include:

- Identifying and refining mitigation strategies that are implementable, cost effective and sustainable.
- Identifying and negotiating the acquisition of the mitigation land or easement.
- Timing the acquisition transaction to meet the project timelines and landowner’s financial planning needs.
- Coordination and preparation of all documents and reports including:
 - conservation easement deeds
 - legal descriptions
 - baseline reports
 - management plans
 - memorandums of understanding between the parties.

The easement holder should take the lead in working with the landowner and drafting the conservation easement to assure that the landowner is informed and has a full understanding of the terms and realities of a conservation easement. It is also a good basis for developing the working relationship between the easement holder and landowner for the management of the conservation easement.

Landowners who are willing to sell either farmland or a farmland conservation easement for mitigation purposes work with the project proponent and/or the entity that will hold the farmland or farmland conservation easement. In the case of a farmland conservation easement, the landowner and the easement holder need to work closely together to clearly define appropriate, sustainable, legally supportable terms for the conservation easement. The landowner and holder of the conservation easement also work closely together in the preparation of the baseline report whose content is dictated by the easement terms.



CONSERVATION EASEMENT

In contrast to purchasing land, the acquisition of a farmland conservation easement requires finding a willing seller of the easement. Once a willing seller and potential farmland mitigation site are identified and general terms for the conservation easement have been defined, then due diligence must be conducted to determine the viability of the proposed mitigation site. Due diligence includes:

- Title research to identify any issues that would undermine the site’s use as farmland mitigation, such as severed mineral rights or for easements (e.g. roads, utility facilities) for future development.
- Environmental site assessment for potential hazardous waste or environmental contamination.
- Identification of soil and agricultural characteristics.
- Mineral resource remoteness evaluation.
- Identification of water rights and sources.
- Land survey to delineate mitigation boundaries and confirm availability of the required acreage.
- Other ownership or title issues that could threaten the viability of the property for long-term conservation.

Other agencies that may be involved include the U.S. Natural Resources Conservation Service (NRCS) and the California Department of Conservation (DOC). The NRCS can provide detailed analysis of the agricultural characteristics of a proposed development site and potential farmland mitigation sites. The DOC can provide guidance related to the California Land Conservation Act of 1965 (Williamson Act) compliance and farmland conservation strategies.

TIMING AND PROCESS

Fulfillment of farmland mitigation requirements should be tied to when the impact or conversion of the farmland occurs. Mitigation is typically triggered by the issuance of site improvement or building permits. Early in the development process the local government or lead agency should require early approval of any proposed mitigation lands or strategies to ensure that the project proponent can appropriately fulfill the mitigation requirement.

Once the suitability of the proposed mitigation site has been confirmed by the due diligence process then the terms of the conservation easement can be refined and finalized. The terms will address permitted and prohibited uses, including any future development, water rights, accessory agricultural uses such as agritourism. Any future development must be supportive of, and ancillary to, the agricultural uses permitted under the terms of the easement. The terms of the easement will provide a framework for monitoring, decision making, and enforcement of the easement. The easement terms must be approved by the governing body of the entity that will hold the easement. Once the easement terms have been fully agreed upon by all parties and the baseline report, survey, legal description have been prepared, the easement is transferred and the conservation easement deed is recorded. The transfer is handled as a real estate transaction and typically an escrow process is followed culminating in the recordation of the conservation easement deed. Project proponents should allow sufficient lead time to accomplish these activities so as to not impact their overall project development schedule.

FARMLAND MITIGATION BANKS

The concept of farmland mitigation banks is a relatively new tool for farmland mitigation. Following the model for habitat mitigation, acreage for farmland mitigation is acquired by a land trust or for-profit entity for the purpose of providing mitigation for multiple development projects in a defined area or region. The acreage for the bank may be acquired by fee title or conservation easement and a fixed number of “credits” for mitigation acreage are assigned to the bank. Development projects within that region or area may then purchase “credits” from the bank to meet their mitigation requirements. The formation of a mitigation bank includes the establishment of a conservation easement and a service region is defined within which development projects may be able to participate in the bank.

While the use of in lieu fees is expedient for project proponents, there is the real risk the in lieu fees will not be used in a timely fashion or will be insufficient to acquire the required amount of mitigation.

REGIONAL ADVANCED MITIGATION PROGRAMS (RAMP)

RAMPs are similar to mitigation banks but are typically undertaken by a public entity. Funds are advanced into a RAMP to acquire mitigation lands by fee or conservation easement. A service region is defined within which development projects may be eligible participate in the RAMP. Eligible project proponents may then meet their mitigation obligation by reimbursing the RAMP for the costs of acquiring the number of acres needed for their mitigation. This approach saves the project proponent the time and effort of seeking and acquiring land. Some have argued that RAMPs may be less expensive than a mitigation bank operated by a for-profit entity.

IN LIEU FEES

Once established, an in lieu fee program allows a project proponent to simply write a check to meet their mitigation responsibility. The fees are then intended to be used for the acquisition of mitigation lands or conservation easements at a future date. The amount of the in lieu fee should cover all the costs of the farmland mitigation for a specific project. These costs include acquisition of the farmland or conservation easement, all transaction costs, surveys, environmental site assessments, staff time and funding for the long-term stewardship, management and defense of the farmland or conservation easement. An appraisal should be prepared¹⁵ to determine the Fair Market Value of the land or conservation easement being acquired when a mitigation acquisition is being funded, in whole or part, by in lieu fees. This provides accountability and transparency on how the funds were used.

Generally, the use of in lieu fees has been very problematic. While the use of in lieu fees is expedient for project proponents, there is the real risk the in lieu fees will not be used in a timely fashion or will be insufficient to acquire the required amount of mitigation. In lieu fees are best used in situations where individual projects requiring mitigation are of small acreage and the fees can be aggregated to acquire a larger mitigation site.

MODEL AGRICULTURAL MITIGATION ORDINANCE

A model agricultural mitigation ordinance is available as a template to assist local government and lead agencies. The model was drafted by Matthew Zinn, an attorney at Shute, Mihaly & Weinberger LLP, with input from experts in farmland mitigation in California. The model ordinance reflects the lessons learned in recent court cases involving farmland mitigation.

See Appendix 2 for Model Agricultural Mitigation Ordinance

¹⁵ The appraisal must be prepared by an appraiser experienced in agricultural appraisals and qualified to appraise the specific property based upon verifiable education, experience, and knowledge of appropriate methodologies, techniques, and the real estate market relevant to the specific property. If the project to be appraised is a conservation easement, the appraiser's education must include advanced-level educational courses or certifications in the valuation of conservation easements.



GUIDE FOR EFFECTIVE FARMLAND MITIGATION EASEMENTS

Conservation easements have been used in California to provide mitigation for the loss of farmland since the mid 1990s. As experience has grown using this tool, the model for a conservation easement to protect farmland has evolved. The California Farmland Conservancy Program (CFCP) of the California Department of Conservation (DOC) created a model agricultural conservation easement¹⁶ for its grant program. This model can also serve as a template for a farmland mitigation conservation easement. The model CFCP conservation easement can be modified to include recitals documenting the mitigation obligations the easement is fulfilling and insertion of the lead or local agency's third party beneficiary rights instead of the CFCP program.

REQUIRED ELEMENTS

A conservation easement has a number of required elements that identify the circumstances of the estab-

lishment of the easement, its conservation purposes, permitted and prohibited uses, how the easement will be monitored and enforced, and provisions for amendment, transfer and termination.

Whether utilizing the CFCP model, using another conservation easement as a template or drafting its own conservation easements for mitigation purposes, it is important that a local government ensures that any easement it approves has the following elements:

The Recitals section documents the parties to the easement, property description, acknowledges the baseline report, the legal framework for the easement, the development and activities the easement is intended to mitigate, and the conservation purposes of the easement. In the case of a mitigation easement the Recitals section should also clearly document the relationship of the easement to fulfilling the required

¹⁶ http://www.conservation.ca.gov/dlrp/cfcp/overview/Pages/cfcp_model_easement.aspx

mitigation including the name of the project mitigated, the CEQA and/or NEPA document or policy requiring the mitigation, how the easement fulfills the mitigation requirement, and the landowner's willing participation.

The Conservation Purposes section is the foundation of a conservation easement; it defines the objective of the easement and is the basis for all interpretation of the terms of the easement. In the case of farmland mitigation easements, the conservation purpose will seek to preserve characteristics such as prime or important soils, water, and acreage, which allow the property to remain in productive agricultural use. If there are additional purposes, such as “preserving the open space character” of the property, they should be identified as subservient to the primary purpose of productive agricultural use.

The Permitted and Prohibited Uses section is the heart of the conservation easement. The permitted and prohibited uses implement the conservation purposes. The permitted and prohibited uses will define how the property can be used, what improvements and structures can be placed on the property, and the limitations on any future subdivision. In the case of a farmland mitigation easement the uses are intended to protect the required acreage as a farmable unit, protect the quality and access to the soils, preserve the availability of water for irrigation, and the overall agricultural utility of the property. Because a farmland mitigation easement is inherently tied to the long-term agricultural use of the property, it is critical to provide for the economic viability of the agricultural operation. This includes providing flexibility for future farming operations while protecting the core agricultural resources of acreage, soil and water.

The Reserved Rights section delineates the ownership rights retained by the landowner including the right to sell, lease, or transfer the property, the right to privacy, the right to exclude any member of the public from trespassing on the property, and any other rights consistent with the conservation purpose of the easement. The Reserved Rights section also addresses the circumstances for the landowner to grant subsequent easements on the property.

The Monitoring section of the easement outlines the frequency and process—including noticing to the landowner—for monitoring of the easement by the conservation easement holder (grantee) and provides for the grantee's legal access to the property. The monitoring activities document the long term condition of the property and compliance with the easement. This is particularly important whenever the property changes ownership.

The Interpretation section codifies that the easement shall be interpreted under that laws of the State of California to give maximum effect to the conservation purposes. This is essential to assure the easement fulfills its mitigation obligations.

The Enforcement section provides the process, roles and responsibilities to uphold and, if necessary, enforce the easement. The Enforcement section relies on the Monitoring and Interpretation sections to provide the foundation for identification and documentation of activities or uses that do not comply with the terms of the easement.

The Perpetual Duration section delineates that requirement¹⁷ and its applicability to all of the landowner's agents, heirs, executors, successors and assigns. This section also provides the required prohibition for any merger of title that would extinguish the easement.

The Subordination section addresses other interests in the title of property where the conservation easement is located that may undermine the conservation values or perpetuity of the easement. Easements or severed rights which would allow development (e.g. roads, mineral extraction, pipelines) could diminish the conservation value of the land. Financial encumbrances, when defaulted upon, could endanger the existence of the conservation easement. Thus, any existing financial liens/encumbrances, easements, and other encumbrances on the title of the property must be carefully examined and, if necessary, subordinated to the conservation easement to assure protection of the conservation values and perpetual status of the conservation easement. Any and all subsequent easements, interests in land, and use restrictions must acknowledge and be subordinate to the easement.

¹⁷ California Civil Code 815.2(b)



The Amendment section provides for addressing changing circumstances that could require legitimate amendments to a conservation easement to maintain or further its conservation purposes and values. The Amendment section provides the criteria for consideration of a proposed amendment and the process for making any amendment to the easement. Any amendment to an easement must be consistent with the conservation purposes and cannot diminish the perpetual term of the easement or its ability to fulfill its mitigation purpose. In addition, an amendment must be approved by the California Office of the Attorney General which has authority over any amendment to a conservation easement in whole or part and whether owned by a public agency or non-profit corporation. An easement held by a land trust or a public entity is considered charitable trust and as such the Attorney General has a duty to protect.

The Transfer section provides for both the transfer, by fee title or lease, of the property to a new landowner and for transfer of the easement to a new holder. The transfer of the property is a right retained by the landowner and the easement holder should be provided advanced notice of any transfer for monitoring purposes. Occasionally circumstances require the transfer of the easement to a new holder. A transfer should require the approval of the easement holder and the agency that required the conservation easement to fulfill a mitigation requirement. This section provides the process for such a transfer and the requirement that a new holder must be a qualified organization. In the case of a land trust, qualification

¹⁸ [http:// www.landtruscreditation.org](http://www.landtruscreditation.org)

¹⁹ <http://www.calandtrusts.org>

The California Office of the Attorney General must be given notice of the proposed extinguishment so that it can represent the public's interest.

should at a minimum be either accreditation by the Land Trust Accreditation Commission¹⁸ or membership in good standing of the California Council of Land Trusts¹⁹.

The Eminent Domain section provides the procedures for that action consistent with Sections 1240.055 and 1240.510 et seq, of the CA Code of Civil Procedure. The procedures include proper noticing, preservation of public purpose of the easement, and compensation for the easement holder.

The Termination section provides direction if changed circumstances outside of the landowner and easement holder's control, results in the complete loss of the conservation values. In such cases, then potential consideration of termination may occur. The Termination section also provides direction on use of the proceeds from the termination for acquisition of farmland or a farmland conservation easement to re-establish the mitigation that the terminated easement was intended to fulfill. Any proposal to extinguish a conservation easement must be approved by a court of competent jurisdiction. In addition, the California Office of the Attorney General must be given notice of the proposed extinguishment so that it can represent the public's interest.

The Environmental Warranty section of the easement spells out that the easement shall not be construed as giving right or ability by the easement holder to become an "owner" or "operator" with respect to the property as defined by and used in environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This section also documents the landowner's knowledge of any hazardous materials on the property and the landowner's promise to defend and indemnify the easement holder.



• • • COSTS AND SERVICES TO COMPLETE AN EASEMENT ACQUISITION

The acquisition of a conservation easement, like any real estate transaction, requires a number of associated activities and costs such as title research, legal review, appraisal, land survey, escrow costs, title insurance, staff time, and funding for the long term stewardship of the easement. A farmland mitigation program must anticipate and provide for these costs as part of the project proponent's responsibilities.

Title research includes review of a preliminary title report and all supporting documents to identify any issues that may conflict with the proposed easement's purpose and terms. Issues can include lack of clear ownership, severed mineral rights, existing liens, roadway or utility easements that would remove land

from farming, or other easements (e.g. flowage or avigation) that result in the defacto protection of the land from development. The easement holder must purchase title insurance to further assure the durability of the easement. The cost of the title insurance is provided by the project proponent.

Legal review encompasses the drafting of the conservation easement deed and supporting documents and consideration of any title issues identified during the title research. The conservation easement is perpetual and it is essential that all parties have legal representation by counsel knowledgeable in conservation easements, agriculture and, in the landowner's case, tax law.

Frequently the value of a conservation easement must be determined by appraisal to fulfil the fiduciary responsibilities of the landowner or project proponent. An appraisal should be required when mitigation lands or a mitigation conservation easement is being acquired with funds generated by in lieu fees.

The mitigation property must be surveyed to determine and document the boundaries of the conservation easement. This is necessary even when the boundaries of the conservation easement are co-terminus with the property boundaries because legal property boundaries can differ from where landowners perceive them to be.



The identification of a mitigation site, title research and insurance, legal review, negotiation and drafting of easement terms, preparation of supporting documents including the baseline, and organizational review and approval of the acquisition requires considerable staff time for both the lead or local agency and the entity that will be holding the easement. The cost of this staff time is part of the cost of fulfilling a mitigation requirement and is the responsibility of the project proponent. In particular, these full costs must be the responsibility of the project proponent when the project is for-profit such as a residential, commercial or industrial development and the easement holder is a non-profit operating in the public trust such as a 501c3. In this situation, the non-profit cannot use its charitable public trust assets, including staff time, to benefit a for-profit enterprise. To do so could result in private inurement that would endanger the non-profit's status under state and federal law.

Finally, each conservation easement must be provided with funding to provide for the monitoring, stewardship and possible defense of the easement. These funds are typically called an "endowment" or "stewardship fund." These funds are invested to provide sufficient annual income, without touching the principal, to cover the annual expenses of holding and stewarding an easement including the required monitoring, landowner relations and recordkeeping. In some instances, a portion of the principal may be touched for legal defense costs in the event of a breach, violation, or threat to the conservation easement.



MEMORANDUM OF UNDERSTANDING

Farmland mitigation is, at its heart, a partnership between a local or lead jurisdiction, a project proponent and the entity that holds the property or easement. Because of the long-term nature of the mitigation this partnership will extend far past the staff, decision makers and landowners involved in the establishment of the mitigation. The expectations, roles, responsibilities, policies, processes and procedures for the long-term holding of the property or easement should be defined and documented with a memorandum of understanding (MOU) or similar agreement.

The lead or local agency is responsible for ensuring the purpose of the mitigation is fulfilled over the long-term. The property or easement holder is responsible for all activities associated with holding, stewarding, monitoring and enforcing the terms of the mitigation including recordkeeping, management of the endowment, defense and landowner relations.

The roles and responsibilities of the lead or local agency and the property or easement holder will vary by project. The project proponent is responsible for

funding the acquisition of the property or easement, endowment funds, and all costs of the acquisition including those incurred by the lead or local agency and entity holding the property or easement. All acquisition costs must be paid concurrently with the acquisition process. The endowment costs must be paid at the time the conservation easement is recorded.

The MOU will document the agreed upon roles and responsibilities of the local or lead jurisdiction, project proponent and the entity holding the property or easement. Additional essential elements of the MOU include:

- **Monitoring**
The MOU documents the process for monitoring the property or easement, where and how the records will maintained.
- **Enforcement**
The MOU defines the roles and responsibilities of the lead or local agency and mitigation holder in the event that non-compliance with the terms of



The MOU will document the agreed upon roles and responsibilities of the local or lead jurisdiction, project proponent and the entity holding the property or easement.

the mitigation is suspected. The MOU provides the processes and procedures for investigating and resolving any suspected non-compliance including legal avenues for enforcement. In the event third-party enforcement rights exist, these are delineated as well.

- **Endowment Management**

The MOU documents who will be holding the mitigation endowment funds, how they will be managed, used, and accessed for the ongoing stewardship, monitoring and enforcement of the property or easement.

- **Decision Making**

The decision making processes and procedures for the oversight of the mitigation project including monitoring, enforcement, and most importantly, conflict resolution.

A draft MOU template is provided in Appendix 3



OVERSIGHT AND MANAGEMENT OF FARMLAND MITIGATION ENDOWMENTS

There are a variety of costs associated with buying and preserving farmland or establishing a conservation easement to satisfy a mitigation obligation. These costs include acquisition, negotiation, legal review, appraisals, and title insurance. Mitigation land and easement holders are obligated to hold and manage the property in perpetuity so that the project applicant's obligations are satisfied. Accordingly, at the close of escrow, the project applicant must also convey funds to provide for the care and management of the conservation lands in perpetuity.

The traditional method for meeting this long-term obligation is to estimate the annual costs and enforcement needs, and to convey an amount of funding that

will, when invested, generate sufficient dollars annually. The amount set aside is commonly known as an "endowment". There are a variety of methodologies in widespread use in California to calculate the costs and determine the necessary endowment. The mitigation land or easement holder will have an established protocol for calculating the amount required for a project endowment.

The mitigation land or easement holder accepts the endowment, and holds, invests, manages and disburses funds according to the needs of the property and state law. The two state statutes governing mitigation endowments are:

- Uniform Prudent Management of Institutional Funds Act (UPMIFA)
- California Government Code Section 65965-65968

1. **Uniform Prudent Management of Institutional Funds Act (UPMIFA)** (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). This statute contains requirements for all permanently restricted funds or endowments. It provides (1) definitions, (2) restrictions for holding, managing, investing and disbursing endowments, (3) responsibilities of directors and agents, and (4) restrictions upon any changes to the assets. Direction and protections provided by the act include:
 - a. Endowment must be managed as a “permanently restricted fund” consistent with the originating purposes of the fund.
 - b. Investment income earned on the endowment must be treated as “temporarily restricted funds” with the same restricted purpose as the endowment to ensure their application to meeting the purposes for which the fund was established.
 - c. Each person responsible for managing and investing the fund has duties of loyalty and good faith and must exercise these as an ordinarily prudent person (i.e., “prudent man test”) would.
 - d. Allows two or more funds to be pooled for investment and management purposes, but accounting must be kept separate.

- e. Rule to consider a whole host of factors in managing and investing funds, including but not limited to, economic conditions, effects of inflation/deflation, expected tax consequences, role each investment of action plays within overall investment portfolio of the fund, and expected total return from income and appreciation of investment.
- f. Must consider needs of the fund to make distributions and preserve capital. Further, the endowment holder may only appropriate for expenditure or accumulate so much of an endowment fund as determined prudent for uses, benefits, purposes and duration for which fund is established. This is the intergenerational equity test.

Other features of UPMIFA:

- g. Requirement to diversify the investments of the fund unless exceptional circumstances exist.
- h. Creates rebuttable presumption of imprudence if more than 7% of fund is expended in a given year—based on fair market value of fund—unless explicit provision has been made for such an expenditure by the formative instrument or law. Does not create a presumption of prudence for expenditures less than 7%.
- i. Only the court and Attorney General holds authority to modify restrictions or to change the purpose of the endowment.
- j. UPMIFA applies to all endowments that were created on or after January 1, 2009. For endowments that existed before January 1, 2009, the law governs decisions and actions taken on or after January 1, 2009.

2. **Sections 65965-65968 of the California Government Code are dedicated to the laws governing mitigation lands.** These sections first became effective in January, 2007, and have been augmented since, most recently September, 2012. They address general mitigation requirements, who can hold mitigation land and easements, requirements for regulatory agencies to conduct due diligence, and endowment management and oversight. Key provisions concerning endowment are:



Under UPMIFA, the endowment holder is also required to use its own funds from other sources to keep the original amount of the endowment whole.

- a. The endowment shall be held, managed, invested and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside.
- b. The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity.
- c. The endowment shall be held, managed, invested, disbursed and governed as described in subdivision (a) of Section 65965 consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).
- d. The nonprofit corporation that holds the endowment must use generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board or any successor entity. There are parallel requirements for instances in which a public agency holds the endowment.
- e. An annual fiscal report must be submitted to the agency that required the mitigation project to be created. The fiscal report is prepared by the endowment holder unless a mitigation agreement provides for another entity to prepare the report. The following eight elements for each individual endowment held by the endowment holder must be included in the fiscal report:
 - The balance of each individual endowment at the beginning of the reporting period.
 - The amount of contributions to the endowment during the reporting period including, but not limited to, gifts, grants and contributions.
 - The net amounts of investment earnings, gains and losses during the reporting period, including both realized and unrealized amounts.
 - The amounts distributed during the reporting period that accomplish the purpose for which the endowment was established.
 - The administrative expenses charged to the endowment from internal or third-party sources during the reporting period.
 - The balance of the endowment or other fund at the end of the reporting period.
 - The specific asset allocation percentages including, but not limited to, cash, fixed income, equities and alternative investments.
 - The most recent financial statements for the organization audited by an independent auditor who is, at a minimum, a certified public accountant.
- f. If multiple state and/or local agencies required the mitigation, including the California Department of Fish and Wildlife (DFW), the report only needs to be submitted to the DFW.

It is worth underscoring that California has the first and strongest laws in the nation for endowment management and that these laws impose broad and profound responsibilities on the holders of mitigation properties and associated endowments. These responsibilities continue even if the project applicant is long gone, or no longer legally exists. The lead agency may retain broad oversight authority which it is not obligated to act upon. By contrast, the mitigation land or easement holder has perpetual responsibility to hold the land, manage it, enforce the easement terms, and pay insurance, taxes and all the associated costs of land/easement ownership. Under UPMIFA, the endowment holder is also required to use its own funds from other sources to keep the original amount of the endowment whole. If, for example, an economic recession were to cause the endowment principal to dip below its original (or historic for those in existence prior to January 1, 2009) amount, the endowment holder must contribute funds to the endowment from other assets it holds.

These are remarkable responsibilities and liabilities the holder of mitigation land or easements must be prepared to accept.



GUIDELINES FOR FARMLAND MITIGATION BANKING

Mitigation banks provide a streamlined opportunity for project proponents to meet their mitigation obligations while giving communities a method for directing mitigation to preapproved locations which are consistent with local land use policy and, to the extent feasible, further land use goals and objectives. Mitigation banks typically require an “up market” with active development that creates a predictable demand for mitigation. In areas where there is predictable demand for farmland mitigation, a mitigation bank provides a reliable avenue for mitigation. The developer of the mitigation bank has a reasonable certainty of recovering his or her costs and the project proponent has a mitigation solution with a defined process and cost.

Mitigation banks can be created with a perpetual conservation easement or with acquisition of mitigation land and establishment of an accompanying conservation easement, which together preserves the land in perpetuity for the mitigation purpose. The acquisition process for the conservation easement or mitigation land is the same as any other farmland protection project.

Two types of farmland mitigation banks have emerged in recent years— advanced or pre-planned, and ad hoc banks. Advanced or pre-planned banks are created by for-profit organizations, land trusts or local agencies, and are established in advance of project specific mitigation requirements but in the anticipation that farmland mitigation will be required in a quantity and within a timeframe to make the bank economically viable. Ad hoc mitigation banks occur when excess acres are available as part of an acquisition of farmland via fee title or conservation easement, as part of a voluntary farmland preservation project or as a result of a mitigation project. The credits for these excess acres may then be purchased by other development projects to fulfill their farmland mitigation requirements.

Funding for ad hoc mitigation banks is provided by the project proponent for the development project that is being mitigated. In some instances the funding is supplemented by a local agency or other entity to acquire the additional acres for the bank. The costs of the acquisition of the bank acres are recovered when the credits are sold to mitigate other development projects.

Some farmland mitigation banks also provide mitigation for other resource impacts such as loss of foraging habitat. These “stacked” mitigation banks provide multiple benefits, but as with any stacked mitigation project, require careful consideration and design to allow the various conservation values to coexist and meet their individual mitigation goals over the long term.

Advanced mitigation banks are usually funded by grants or bridge loans, which are then recovered when the credits are sold to mitigate development projects. The recovered acquisition funds are then either repaid to the funder or used for future acquisitions.

Mitigation banks generally serve defined geographic “service areas” within which development projects can participate. Careful consideration must be given to the desirability of allowing development projects from outside of the jurisdiction to mitigate at a bank. Allowing development projects in one county to fulfill their mitigation requirements in another county raises questions about nexus, fiscal neutrality and concerns about “mitigation dumping” by pro-development jurisdictions into surrounding counties.

As with any mitigation bank, when a farmland mitigation bank is established the number and types of credits available must be clearly defined and documented in agreements with local agencies. The use of those credits must be closely tracked and documented so that they are not “oversold”—more credits are used than exist at the bank. Third-party oversight is essential to provide transparency and uphold public trust that the mitigation is real. A mitigation bank agreement documents the local agency’s concurrence on the objectives and administration of the bank.

The mitigation bank agreement should include detailed descriptions of the physical and legal characteristics of the bank, and how the bank will be established and operated. The mitigation bank agreement will be signed by the mitigation bank developer and the participating local agencies. The following information should be addressed, as appropriate, within the mitigation bank agreement:

- Bank goals and objectives
- Ownership of bank lands
- Bank size, classes of soils, and water resources wetlands and/or any other conservation values such as Swainson’s hawk foraging habitat proposed for inclusion in the bank
- Site plan and specifications
- Description of baseline conditions at the bank site
- Geographic service area
- Farmland or other resource impacts suitable for compensation
- Methods for determining credits and debits
- Accounting procedures
- Performance standards for determining credit availability and bank success
- Reporting protocols and monitoring plan
- Contingency and remedial actions and responsibilities
- Financial assurances
- Compensation ratios
- Provisions for long-term management and maintenance.

For regional banking programs developed by a single entity, it may be appropriate to establish an “umbrella” instrument for the establishment and operation of multiple bank sites. In such circumstances, the need for supplemental site-specific information (e.g., individual site plans) should be addressed in the bank agreement.

CONCLUSION

The expanding footprint of transportation, water, and renewable energy infrastructure, along with the resurgence of the housing market is generating pressure on California’s working farms and ranches for development and conversion to non-agricultural uses. As the implementation of farmland mitigation has evolved, there is an increasing need for farmland mitigation programs that will withstand legal challenges. This guidebook is intended as a resource for any local government that is developing mitigation programs for the conservation of farmland in California.

APPENDIX 1:

CONSERVATION EASEMENT ENABLING ACT— CALIFORNIA CIVIL CODE 815 ET SEQ

- 815.** The Legislature finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California. The Legislature further finds and declares it to be the public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations.
- 815.1.** For the purposes of this chapter, “conservation easement” means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.
- 815.2.** (a) A conservation easement is an interest in real property voluntarily created and freely transferable in whole or in part for the purposes stated in Section 815.1 by any lawful method for the transfer of interests in real property in this state.
- (b) A conservation easement shall be perpetual in duration.
- (c) A conservation easement shall not be deemed personal in nature and shall constitute an interest in real property notwithstanding the fact that it may be negative in character.
- (d) The particular characteristics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.
- 815.3.** Only the following entities or organizations may acquire and hold conservation easements:
- (a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.
- (b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant’s granting of a conservation easement pursuant to this chapter.
- (c) A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

- 815.4.** All interests not transferred and conveyed by the instrument creating the easement shall remain in the grantor of the easement, including the right to engage in all uses of the land not affected by the easement nor prohibited by the easement or by law.
- 815.5.** Instruments creating, assigning, or otherwise transferring conservation easements shall be recorded in the office of the county recorder of the county where the land is situated, in whole or in part, and such instruments shall be subject in all respects to the recording laws.
- 815.7.** (a) No conservation easement shall be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed in the instrument creating it as running with the land.
- (b) Actual or threatened injury to or impairment of a conservation easement or actual or threatened violation of its terms may be prohibited or restrained, or the interest intended for protection by such easement may be enforced, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the owner of the easement.
- (c) In addition to the remedy of injunctive relief, the holder of a conservation easement shall be entitled to recover money damages for any injury to such easement or to the interest being protected thereby or for the violation of the terms of such easement. In assessing such damages there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages, the loss of scenic, aesthetic, or environmental value to the real property subject to the easement.
- (d) The court may award to the prevailing party in any action authorized by this section the costs of litigation, including reasonable attorney's fees.
- 815.9.** Nothing in this chapter shall be construed to impair or conflict with the operation of any law or statute conferring upon any political subdivision the right or power to hold interests in land comparable to conservation easements, including, but not limited to, Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of, Chapter 6.5 (commencing with Section 51050), Chapter 6.6 (commencing with Section 51070) and Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of, and Article 10.5 (commencing with Section 65560) of Chapter 3 of Title 7 of, the Government Code, and Article 1.5 (commencing with Section 421) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code.
- 815.10** A conservation easement granted pursuant to this chapter constitutes an enforceable restriction, for purposes of Section 402.1 of the Revenue and Taxation Code
- 816.** The provisions of this chapter shall be liberally construed in order to effectuate the policy and purpose of Section 815.

APPENDIX 2: MODEL AGRICULTURAL MITIGATION ORDINANCE

_____ COUNTY FARMLAND MITIGATION ORDINANCE

1. This [article/chapter] is adopted under [Jurisdiction's] police power to regulate the use of land to protect and promote the public health, safety, and welfare of its residents, as recognized by Article XI, Section 7 of the California Constitution.
2. **Findings.**
 - 2.1 Agriculture is a crucial component of [Jurisdiction's] economy and cultural heritage. Agriculture provides numerous jobs for [Jurisdiction] residents and substantial tax revenue for [Jurisdiction].
 - 2.2 [ADD FINDING ABOUT LOCAL AGRICULTURAL LAND]
 - 2.3 [Jurisdiction]'s agricultural land provides jobs, contributes to our national food security, and is an essential foundation of [Jurisdiction's] agricultural economy.
 - 2.4 [DESCRIBE [Jurisdiction's] AG CONSERVATION POLICY IN GENERAL PLAN]
 - 2.5 [Jurisdiction] is losing agricultural land to development at a rapid rate.
 - 2.6 The loss of agricultural land to development is irreparable and has a negative cumulative impact on the economy and culture of [Jurisdiction].
 - 2.7 New development also benefits from the conservation of agricultural land that supports the overall economy and culture of [Jurisdiction].
 - 2.8 In section 51220 of the Government Code, the state Legislature has found that “the preservation of a maximum amount of the limited . . . agricultural land is necessary . . . to the maintenance of the agricultural economy of the state” and that “discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest.”
 - 2.9 Agricultural land also serves as open space and habitat for numerous species. Protection of agricultural land therefore advances these important public values. Indeed, per CA Civil Code 815 the California Legislature has declared that the land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.
 - 2.10 The most effective means of protecting agricultural land is to prohibit all conversion of agricultural land to other land uses. Such a prohibition would be justified by the important public purposes served by the protection of agricultural land set forth in this section 2. Such a prohibition would therefore be within the scope of [Jurisdiction]'s police power under Article XI, Section 7 of the California Constitution.

- 2.11 Because [Jurisdiction] must balance the need for agricultural land conservation with other public goals, prohibition of the conversion of agricultural land in some circumstances will not be in the best interest of the people of [Jurisdiction]. Those other public goals include the need for housing, commercial, industrial, and infrastructure development, and habitat restoration.
- 2.12 To balance these competing public purposes, the legislative body has determined that it is in the best interest of the people of [Jurisdiction] in some circumstances to allow conversion of agricultural land to proceed, but to also require that such conversion be accompanied by mitigation that provides increased protection for other, comparable agricultural land. This [article/chapter] mandates that mitigation.
- 2.13 Requiring an applicant for conversion of agricultural land to obtain an agricultural conservation easement over an equal area of comparable agricultural land provides additional protection for [Jurisdiction's] stock of agricultural land.
- 2.14 In addition to providing additional protection for mitigation land, the mitigation requirements of this [article/chapter] deter the conversion of agricultural land by increasing the cost of converting agricultural land relative to the cost of redeveloping already urbanized land.
- 2.15 Providing additional protection for comparable agricultural land does not offset the loss of agricultural land to conversion; the conversion still results in a net loss of agricultural land. However, it slows the rate of loss of agricultural land in [Jurisdiction] by ensuring that comparable agricultural land receives additional protection and by increasing the cost of converting agricultural land. Accordingly, the mitigation required by this [article/chapter] serves the same important public purpose—conservation of [Jurisdiction's] agricultural land—that would be served by prohibiting all conversion of agricultural land to other uses.
- 2.16 In some circumstances, it may be appropriate to allow an applicant to elect to implement a method of mitigation other than directly obtaining agricultural conservation easements over comparable agricultural land if the alternative method of mitigation would provide a comparable mitigation benefit. This [article/chapter] accordingly allows applicants to voluntarily request approval of optional mitigation alternatives such as the payment of an in-lieu fee or acquisition of mitigation credits.
- 2.17 Although a conversion of agricultural land may directly affect only a portion of a single legal parcel, the remainder of the affected parcel is typically not suitable for agricultural use due to its size and/or configuration. Furthermore, a conversion may allow later development of the remainder. It is therefore appropriate to require mitigation for the entire legal parcel at the time of the initial conversion.
- 2.18 This [article/chapter] is further intended to foster coordination and cooperation by [Jurisdiction] with [entities] in the conservation of agricultural land. [NOTE POTENTIAL COORDINATION WITH OTHER PROGRAMS AND AGENCIES HERE: E.G., HCP/NCP, WILLIAMSON ACT, DEPT OF CONSERVATION, LAFCO, CITIES]
- 2.19 It is the policy of [Jurisdiction] to work cooperatively with [Other Jurisdictions] and to encourage them to adopt agricultural conservation programs that are consistent with this [article/chapter] to facilitate an integrated and comprehensive regional approach to agricultural land conservation.

3. Definitions.

- 3.1 **Adjustment for inflation.** For costs other than the purchase price of agricultural conservation easements, adjustment for inflation refers to adjustment to reflect increases in the Consumer Price Index applicable to [Jurisdiction]. For the purchase price of agricultural conservation easements, adjustment for inflation refers to adjustment to reflect increases in the House Price Index applicable to [Jurisdiction], as compiled by the Office of Federal Housing Enterprise Oversight.
- 3.2 **Agricultural designation.** [SPECIFY GENERAL PLAN/COMMUNITY PLAN AGRICULTURAL LAND USE DESIGNATIONS]
- 3.3 **Agricultural conservation easement.** A perpetual easement or servitude, comparable to a conservation easement, as provided for in sections 815 to 816 of the Civil Code, or an open space easement, provided for in sections 51070 to 51097 of the Government Code, limiting the use of the encumbered land to agricultural and accessory uses, which easement or servitude is used to satisfy the mitigation obligation imposed by this [article/chapter].

Comment: If a servitude other than a conservation easements as defined by section 815.1 of the Civil Code is used then it must comply in all respects with the requirements of sections 6 and 7 of the ordinance for mitigation land, the contents of the agricultural conservation easement, and the qualified entity holding the easement.
- 3.4 **Agricultural land.** Land that is either currently in agricultural use or substantially undeveloped and capable of agricultural use.
- 3.5 **Agricultural use.** Use of land to produce food, fiber, or livestock for commercial purposes.
- 3.6 **Agricultural zone.** [SPECIFY AGRICULTURAL ZONES]
- 3.7 **Conversion.** Those conversions of land requiring mitigation as identified in section 4.1.
- 3.8 **Legal parcel.** A parcel of land lawfully subdivided in accordance with the Subdivision Map Act, whether or not a Certificate of Compliance has been issued for the parcel. The existence of a distinct Assessor’s Parcel Number for a parcel does not, by itself, demonstrate that it is a legal parcel.
- 3.9 **Legislative body.** The [City Council/Board of Supervisors] of [Jurisdiction].
- 3.10 **Mitigation land.** Land encumbered by an agricultural conservation easement or under an alternative mitigation option approved by the legislative body pursuant to section 5 to satisfy the mitigation obligation imposed by this [article/chapter].
- 3.11 **Prime agricultural land.** Land designated “Prime” or land of “Statewide Importance” by the Department of Conservation as shown on their latest Important Farmland Map.
- 3.12 **Qualified entity.** An entity qualified and approved to hold agricultural conservation easements in compliance with section 7 of this [article/chapter].

4. Mitigation Obligation.

4.1 **Conversion of land requiring mitigation.** Each of the following actions shall require mitigation as described in section 4.2:

- 4.1.1 Redesignation of land subject to an agricultural designation to any designation other than an agricultural designation.
- 4.1.2 Rezoning of land in an agricultural zone to any zone other than an agricultural zone.
- 4.1.3 Conversion to a non-agricultural use of more than ## acres of agricultural land, regardless of the General Plan land use designation or zoning applicable to the land.

Comment: Local governments may decide to set a minimum area to qualify as a conversion under section 4.1.3, keeping in mind that, as drafted, section 4.3.1 exempts conversions of one acre or less.

- 4.1.4 Conversion to a non-agricultural use of any prime agricultural land, regardless of the General Plan land use designation or zoning applicable to the land.

4.2 Required mitigation.

- 4.2.1 As mitigation for the conversion of one acre of land, the applicant shall arrange for the imposition of an agricultural conservation easement on no less than one acre of mitigation land for each acre of land proposed for conversion. The applicant shall convey, or arrange for the conveyance of, such agricultural conservation easement to a qualified entity. The mitigation land shall be comparable to the land proposed for conversion, as provided in section 6.
- 4.2.2 For purposes of calculating the mitigation obligation under section 4.2.1, the area requiring mitigation shall be the full area of the legal parcel affected by conversion and not merely any lesser portion of the parcel that may sought to be developed or converted to another use at the time conversion is proposed.

4.2.3 Administrative fee.

- (a) The applicant shall pay to [Jurisdiction] an administrative fee sufficient to compensate for all administrative costs reasonably necessary for the entity and [Jurisdiction] to acquire and hold the agricultural conservation easement and implement this [article/chapter], including all of the following: :
 - (i) Establishment of an endowment to provide for monitoring, administration, enforcement, and all other services necessary to ensure that the conservation purposes of the agricultural conservation easement are maintained in perpetuity;
 - (ii) The qualified entity's administrative costs in evaluating the mitigation land and reviewing and accepting the agricultural conservation easement; and
 - (iii) [Jurisdiction]'s administrative costs in reviewing and approving the applicant's proposed mitigation.

(b) **Establishment of the administrative fee.**

- (i) The legislative body shall establish the administrative fee on a case-by-case basis unless it has previously adopted the resolution provided for in section 4.2.3(b)(iii).
- (ii) Prior to establishing the administrative fee, [Jurisdiction] shall conduct a study to estimate the amount reasonably necessary to cover the administrative costs of this program as provided for in section 4.2.3(a). Such study shall be prepared in consultation with a qualified entity.
- (iii) As an alternative to establishing an administrative fee on a case-by-case basis, the legislative body may adopt a resolution establishing a generally applicable per-acre administrative fee. Such generally applicable fee shall include an annual adjustment for inflation.

Comment: Local governments are strongly encouraged to adopt an administrative fee by resolution rather than establishing the fee on an ad-hoc basis. Generally applicable fees provide greater certainty to all parties and are likely to receive more deferential judicial scrutiny in the event of a legal challenge

- (c) After receiving the administrative fee, [Jurisdiction] shall remit the portions described in sections 4.2.3(a)(i) and 4.2.3(a)(ii), and any other component of the fee reasonably necessary to compensate the qualified entity for the administrative costs associated with the proposed mitigation, to the qualified entity holding the agricultural conservation easement..

4.2.4 It is the applicant’s responsibility to identify and propose for approval mitigation land that satisfies the requirements of section 6.3. It is also the applicant’s responsibility to arrange for imposition of an agricultural conservation easement that satisfies the requirements of section 6.4.

4.2.5 Nothing in this [article/chapter] shall be construed to compel an applicant for conversion to convey to [Jurisdiction] or to a qualified entity an agricultural conservation easement in property owned by the applicant.

4.3 **Exemptions.**

4.3.1 **Small parcels.**

- (a) The mitigation obligation set forth in section 4.2 shall not apply to a legal parcel that is less than one (1) acre in area. However, this exemption shall not apply to a parcel that is one phase or portion of a larger project.
- (b) The legislative body may disallow use of this exemption if it finds that the subject property has been subdivided into one-acre or smaller parcels in whole or in part to avoid the mitigation obligation.

4.3.2 Overriding considerations.

- (a) The legislative body may exempt from this [article/chapter] a conversion for housing which is predominately for persons of low or moderate income as defined in section 50093 of the Health and Safety Code.

Comment: Local governments wishing to include other exemptions may add them to subsection (a).

- (b) The legislative body may exempt the uses identified in subsection (a) only if it finds that the loss of agricultural land caused by the proposed conversion is outweighed by specific overriding economic, legal, social, technological, or other benefits of the conversion, as contemplated by section 21081(b) of the Public Resources Code.

4.3.3 **Public uses.** The following public uses are exempt from the mitigation obligation imposed by this [article/chapter]: Public parks or public recreational facilities, permanent natural open space, and trails and developed open space that are open to the public.

4.3.4 **Habitat conservation.** Projects designed solely to preserve, create, or enhance wildlife habitat on agricultural land shall be exempt from the mitigation obligation in section 4.2.

4.4 Excess mitigation.

4.4.1 At its sole option, an applicant may choose to arrange for the imposition of an agricultural conservation easement on a larger area of land than the area of land proposed for conversion and thereby generate a mitigation credit equal to the excess net acreage encumbered with the easement.

4.4.2 Any excess area encumbered with the agricultural conservation easement shall fully comply with all requirements of this [article/chapter] and shall be comparable to the land proposed for conversion to the same degree as the portion of the land offered to satisfy the mitigation obligation in section 4.2, including, but not limited to, the requirements for mitigation land in section 6.3 and the review and approval process in section 8.

4.4.3 The administrative fee paid by an applicant choosing to create mitigation credits shall include the acreage covered by the mitigation credits. The applicant may pass that fee through to a later purchaser of the credits.

4.4.4 Mitigation credits created under this section 4.4 may be conveyed and used as provided in section 5.2.

4.4.5 **Ledger.** [Jurisdiction Planning Director] shall maintain a ledger indicating the amount of credits created under this section, the holder of those credits, the administrative fees paid by the creator of the credits attributable to the mitigation land covered by the credits, and any subsequent transactions involving those credits.

5. **Optional Mitigation Alternatives.** As an alternative to providing the mitigation required by section 4.2, the applicant may choose to seek approval to implement one of the following alternative mitigation options.

5.1 In-lieu fee.

5.1.1 If authorized by the legislative body, an applicant for conversion may satisfy the mitigation obligation set forth in section 4.2 by paying to [Jurisdiction] a fee in lieu of conveying an agricultural conservation easement.

5.1.2 Qualifications for payment of an in-lieu fee.

(a) Payment of an in-lieu fee is available only for conversion of legal parcels that are smaller than 20 acres..

Comment: The optimal maximum parcel size for payment of an in-lieu fee will vary among jurisdictions based on the local agricultural economy and market for agricultural land.

(b) To obtain authorization to pay an in-lieu fee, the applicant must also demonstrate one of the following:

(i) No qualified entity exists;

(ii) The applicant has met with all qualified entities and all such entities have certified in writing to [Jurisdiction] that they are unable or unwilling to assist with the acquisition of an agricultural conservation easement; or

(iii) Working with a qualified entity, the applicant has made at least one good faith offer to purchase an agricultural conservation easement, but all such offers have been declined by the potential seller or sellers.t

5.1.3 Establishment of in-lieu fees.

(a) The legislative body shall establish the amount of in-lieu fees on a case-by-case basis unless it has previously adopted the resolution provided for in section 5.1.3(e).

(b) Any in-lieu fee shall include each of the following components:

(i) The purchase price of an agricultural conservation easement in mitigation land that complies with all of the requirements in section 6. This component shall be adjusted for inflation based on estimate of the time required to acquire mitigation land following payment of the fee.

(ii) All transaction costs associated with acquisition of the agricultural conservation easement.

(iii) An amount sufficient to endow the cost of monitoring, administering, and enforcing the agricultural conservation easement in perpetuity.

(iv) The applicant's pro rata share of [Jurisdiction]'s administrative costs in implementing the in-lieu fee program, including the cost of the study required by section 5.1.3(c).

- (v) A reasonable amount to cover additional contingencies.
- (c) **Study.** [Jurisdiction] shall conduct a study to estimate the amount of the in-lieu fee components provided for in section 5.1.3(b). Such study shall be prepared in consultation with a qualified entity.
- (d) In no event shall the in-lieu fee established pursuant to this section 5.1 exceed a reasonable estimate of the total of (i) the cost of acquiring and managing the agricultural conservation easement that the applicant would otherwise be required to create to satisfy its mitigation obligation under this [article/chapter], and (ii) the cost of administering the in-lieu fee.
- (e) **Resolution.** As an alternative to case-by-case establishment of in-lieu fees, the legislative body may adopt a resolution establishing a generally applicable per acre in-lieu fee to be applied in all cases in which an applicant seeks to pay an in-lieu fee as mitigation. Such a generally applicable fee shall comply with the requirements of this section 5.1.3 and shall include an annual adjustment for inflation.

Comment: Local governments are strongly encouraged to adopt any in-lieu fee by resolution rather than establishing the fee on an ad-hoc basis. Generally applicable fees provide greater certainty to all parties and are likely to receive more deferential judicial scrutiny in the event of a legal challenge.

5.1.4 Use of in-lieu fees.

- (a) In-lieu fees received by [Jurisdiction] shall be maintained in a separate account.
- (b) In-lieu fees shall be expended solely for the purpose of acquiring and managing agricultural conservation easements in mitigation land that meet the criteria set forth in section 6 and funding [Jurisdiction's] cost of implementing the in-lieu fee program.
- (c) [Jurisdiction] may either expend the in-lieu fees directly to acquire and manage agricultural conservation easements or remit the fees to a qualified entity for that purpose.

5.2 Mitigation credits.

- 5.2.1 If authorized by the legislative body, an applicant for conversion may choose to satisfy the mitigation obligation set forth in section 4.2 by acquiring mitigation credits created under section 4.4.
- 5.2.2 [Jurisdiction] shall make available to any applicant who requests it the ledger of mitigation credits provided for in section 4.4.5. [Jurisdiction] shall have no further responsibility for facilitating any private transaction involving mitigation credits.
- 5.2.3 Mitigation credits may be used to satisfy the mitigation obligation created by this [article/chapter] only after the legislative body has made the findings required by section 6 with respect to the land proposed for conversion and the mitigation land covered by the mitigation credits.

5.2.4 An applicant choosing to use mitigation credits to comply with this [article/chapter] shall pay [Jurisdiction] a fee in the amount equivalent to the inflation adjustment on the administrative fee that the creator of the mitigation credits originally paid pursuant to section 4.4.3.

5.3 Applicant-designed mitigation options.

5.3.1 The applicant proposing conversion may propose an alternative method of mitigation for review and approval by the legislative body subject to the requirements of this section 5.3.

5.3.2 To qualify as mitigation under this [article/chapter], proposed alternative mitigation must satisfy all of the following criteria:

- (a) The proposed mitigation must result in permanent protection of mitigation land;
- (b) The applicant must bear all costs of reviewing, approving, managing, and enforcing the mitigation;
- (c) The proposed mitigation must be in substantial compliance with the requirements for mitigation land and agricultural conservation easements set forth in section 6; and
- (d) The proposed mitigation must be in all respects at least as protective of agricultural land as the mitigation required by this [article/chapter].

5.4 The mitigation obligation imposed by this [article/chapter] is that set forth in section 4. Each alternative mitigation option in this section 5 is wholly optional and made available solely for the applicant's convenience. Under no circumstances shall [Jurisdiction] require any applicant to implement any such alternative mitigation option.

6. Requirements for Mitigation Land and Agricultural conservation easements.

6.1 Agricultural conservation easements in mitigation land shall be held in perpetuity by a qualified entity [Jurisdiction].

6.2 Mitigation land shall be comparable to the agricultural land proposed for conversion.

6.3 The legislative body may not approve proposed mitigation for conversion unless it finds that the mitigation land complies with each of the following requirements:

6.3.1 **Location.** Either (a) the mitigation land is located within [Jurisdiction] [or the sphere of influence of [Jurisdiction] adopted by the Local Agency Formation Commission]; or (b) the mitigation land is within five (5) miles of [Jurisdiction's] boundary, the applicant has demonstrated that the mitigation land contributes to [Jurisdiction's] agricultural economy, and the city council or board of supervisors, as appropriate, of the jurisdiction in which the mitigation land is located has adopted a resolution approving of the use of the land as mitigation.

- 6.3.2 **Land uses.** The mitigation land is subject to an agricultural designation in the General Plan and zoned for agricultural use. Any legal nonconforming use of the mitigation land has been or will be abandoned prior to execution of the agricultural conservation easement, or if maintained, will not interfere with agricultural use of the mitigation land.
- 6.3.3 **Parcel size.** The mitigation land consists of one or more legal parcels of at least 10 net acres in size, exclusive of the area occupied by any existing home and the area of any road or right-of-way easement, unless the land proposed for conversion is smaller than 10 acres.
- 6.3.4 **Conservation value.** An appraisal shows that the value of the agricultural conservation easement in the mitigation land is at least as high as that of an agricultural conservation easement in the land proposed for conversion. Appraisal shall be prepared by a licensed appraiser with experience in agricultural land appraisal.
- 6.3.5 **Soil quality.** The soil quality of the mitigation land has the agricultural productive capacity at least equal to that of the land proposed for conversion.
- 6.3.6 **Water supply.** The available water supply for the mitigation land is at least equal to that of the land proposed for conversion in terms of quantity, quality, and security.
- 6.3.7 **Existing interests and encumbrances.** The mitigation land is not already subject to an encumbrance or interest that would legally or practicably prevent converting the land, in whole or in part, to a nonagricultural use, such as a conservation easement, open space easement, flowage easement, avigation easement, long term agricultural lease, profit, or an interest in the subsurface estate that would preclude development of the surface estate. A contract entered pursuant to the Land Conservation Act, Government Code section 51200 et seq (Williamson Act) shall not constitute an encumbrance for purposes of this section 6.3.7.
- 6.3.8 **Physical limitations.** There are no physical conditions or contamination on the mitigation land that would legally or practicably prevent converting the land, in whole or in part, to a nonagricultural use.
- 6.3.9 **Existing home.** The mitigation land has no existing home, unless the land proposed for conversion includes an existing home.
- 6.3.10 **Public ownership.** The mitigation land is not owned by any public agency.
- 6.4 The legislative body shall not approve proposed mitigation unless it finds that the agricultural conservation easement complies with each of the following requirements:
- 6.4.1 The type of agricultural related activity allowed on the mitigation land is specified in the easement and is at least as restrictive as the requirements of [ZONING DISTRICT].
- 6.4.2 The agricultural conservation easement prohibits all residential, commercial, or industrial development and other any land uses or activities that substantially impair or diminish the agricultural productive capacity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this [article/chapter].

- 6.4.3 The agricultural conservation easement prohibits the landowner from entering into any additional easement, servitude, or other encumbrance that could prevent or impair the potential agricultural use of the mitigation land.
- 6.4.4 The agricultural conservation easement limits the construction of structures to those designed to facilitate agricultural use of the property, except that this subsection shall not prohibit replacement of an existing home allowed by section 6.3.9.
- 6.4.5 The easement provides that the mitigation land will retain water rights at least equal to that of the land proposed for conversion in terms of quantity, quality, and security.
- 6.4.6 The agricultural conservation easement will be either obtained from a willing seller or voluntarily conveyed by the applicant.
- 6.4.7 Any existing easement, other than a right of way easement; deed of trust; or other servitude or encumbrance on the mitigation land shall be subordinated to the agricultural conservation easement.
- 6.4.8 The agricultural conservation easement shall be approved by the qualified entity that will hold the easement and executed by all parties with an interest in the mitigation land.
- 6.4.9 The agricultural conservation easement is in recordable form and contains an accurate legal description of the mitigation land.
- 6.4.10 The agricultural conservation easement names [Jurisdiction] as an intended third party beneficiary and authorizes it to enforce all terms of the easement.
- 6.4.11 The agricultural conservation easement recites that it is intended to satisfy the mitigation obligation imposed by this [article/chapter] and that it is subject to the requirements set forth in this [article/chapter].
- 6.4.12 If the agricultural conservation easement is an instrument other than a conservation easement created under sections 815 to 816 of the Civil Code or an open space easement created under sections 51070 to 51097 of the Government Code, both the qualified entity and [Jurisdiction Counsel] have certified that the easement will run with the land and bind successor owners of the mitigation land in perpetuity.
- 6.4.13 The agricultural conservation easement provides that if the qualified entity holding the easement ceases to exist, ownership of the easement shall pass to another qualified entity, or if no other qualified entity is available, to [Jurisdiction].
- 6.4.14 The agricultural conservation easement has been approved as to form by [Jurisdiction Counsel].
- 6.5 Section 6.4 does not prevent inclusion in an agricultural conservation easement of requirements that are more protective of agricultural use than the requirements set forth in that section.

- 6.6 Before approving any alternative mitigation option, the legislative body shall determine that such option is consistent with the requirements set forth in sections 6.3 and 6.4.
- 6.7 **Amendments.** After the legislative body has approved an agricultural conservation easement, the easement shall not be amended without further approval by the legislative body and compliance with any approval requirements imposed by the Attorney General of the State of California for the amendment.
- 6.8 **Extinguishment.** If a court issues a judgment declaring that the purposes of this [article/chapter] and of an agricultural conservation easement can no longer be fulfilled by enforcement of that easement, the qualified entity holding that easement may extinguish the easement by selling it to the fee owner of the mitigation land, if the following requirements are met:
- 6.8.1 Either (a) the action was contested and the judgment was not entered pursuant to stipulation, or (b) [Jurisdiction] was a party to the action and stipulated to the judgment; and
- 6.8.2 The qualified entity shall use the proceeds of sale to acquire an agricultural conservation easement in other mitigation land in compliance with this [article/chapter].
7. **Requirements for Qualified Entities.**
- 7.1 To be considered a qualified entity, an entity must (a) be a nonprofit public benefit corporation operating within [Jurisdiction] that is qualified to hold conservation easements under section 815.3 of the Civil Code and in compliance with the requirements of section 65965 et seq. of the Government Code, and (b) be approved by the legislative body for the purpose of holding and managing agricultural conservation easements.
- 7.2 **Approval criteria.** In considering whether to approve an entity as a qualified entity, the legislative body shall consider the following criteria:
- 7.2.1 Whether the entity's principal purpose includes holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
- 7.2.2 Whether the entity has an established record of holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
- 7.2.3 The extent and duration of the entity's involvement in agricultural land conservation within [Jurisdiction]; and
- 7.2.4 Whether the entity has been accredited by the Land Trust Accreditation Commission; and
- 7.2.5 Whether the entity is a member in good standing of an established and widely recognized California statewide association of land trusts.
- 7.3 Although [Jurisdiction] may hold agricultural conservation easements, it is the intent of [Jurisdiction] to transfer most, if not all, of the easements that are received under this [article/chapter] to a qualified entity for monitoring, management, and enforcement.

- 7.4 No qualified entity shall sell, lease, hypothecate, or encumber any interest in any mitigation land without the prior approval of the legislative body.
- 7.5 **Expenditure of fees.** A qualified entity shall use fees provided by [Jurisdiction] solely for purposes of acquiring, administering, monitoring, and enforcing agricultural conservation easements acquired pursuant to this [article/chapter].
- 7.6 **Termination of qualified entity.** If a qualified entity intends or reasonably expects to cease operations, it shall assign any agricultural conservation easements it holds to another qualified entity or to [Jurisdiction].
- 7.7 **Monitoring and enforcement.** The qualified entity shall monitor the use of all mitigation land subject to agricultural conservation easements held by the entity and enforce compliance with the terms of those agricultural conservation easements.
- 7.8 **Reporting.** On or before December 31 of each year after a qualified entity is approved by the legislative body, the entity shall provide to the [Jurisdiction Planning Director] an annual report describing the activities undertaken by the entity under this [article/chapter]. That report shall describe the status of the mitigation land and/or agricultural conservation easements held by the entity, including a summary of all action taken to enforce its agricultural conservation easements, and an accounting of the use of administrative and in-lieu fees remitted to it by [Jurisdiction].

8. Approval and Completion.

- 8.1 All mitigation proposed by an applicant to comply with this [article/chapter], including any alternative mitigation option proposed by the applicant, shall be reviewed by the Planning Commission for consistency with the terms and purposes of this [article/chapter]. The Planning Commission shall recommend approval, conditional approval, or disapproval to the legislative body. The Planning Commission shall not recommend approval of the proposed mitigation unless it finds that mitigation to be consistent with the requirements for mitigation land and agricultural conservation easements set forth in section 6.
- 8.2 The legislative body shall consider the Planning Commission’s recommendation and shall either approve, conditionally approve, or disapprove the proposed mitigation.
- 8.3 [Jurisdiction] shall not issue any permit or other approval for any project involving a conversion subject to the mitigation obligation under this [article/chapter] unless the legislative body has previously approved proposed mitigation in compliance with this [article/chapter]. Issuance of any such permit or approval shall be conditioned on the applicant’s completion of mitigation in compliance with section 8.4.
- 8.4 **Completion of mitigation.**
 - 8.4.1 The applicant for conversion must complete all required mitigation prior to the earliest of (a) approval of any parcel map or final subdivision map or (b) issuance of any building, grading, or encroachment permit.

8.4.2 Mitigation shall be deemed complete when the approved agricultural conservation easement has been recorded and the applicant has paid the required administrative fee. However, if the applicant elects to seek approval of an alternative mitigation option, mitigation shall be deemed complete when [Jurisdiction] provides the applicant with a letter indicating that mitigation is complete.

9. Miscellaneous.

- 9.1 The provisions of this [article/chapter] shall not be applicable to the extent, but only to the extent, that their application would violate the constitution or laws of the United States or of the State of California. The legislative body shall apply the [article/chapter] to avoid such unconstitutionality or illegality.
- 9.2 If any portion of this [article/chapter] is held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the [article/chapter]. The legislative body declares that it would have enacted this [article/chapter] and each section, subsection, paragraph, sentence, clause, or phrase thereof even if a portion of the [article/chapter] were declared unconstitutional.
- 9.3 Nothing in this [article/chapter] shall be construed to abridge or narrow [Jurisdiction's] police power. The legislative body retains its full power and discretion to deny a proposed conversion on the basis that the proposed conversion is inconsistent with the public health, safety, or welfare because of the loss of agricultural land or otherwise.

APPENDIX 3: MODEL MEMORANDUM OF UNDERSTANDING BETWEEN LOCAL GOVERNMENT AND A LAND TRUST

AGREEMENT BETWEEN

_____ AND [JURISDICTION] OF _____ FOR THE ACQUISITION

AND MANAGEMENT OF CONSERVATION EASEMENTS

This Agreement (“Agreement”), dated February 1, 2013, for reference purposes, effective as of the last date of execution by the parties, and is between the _____, a California nonprofit public benefit corporation (“Land Trust”) and the [JURISDICTION] _____, a general law [jurisdiction] under California law (“[Jurisdiction]”).

RECITALS

WHEREAS, the [Jurisdiction] holds funds designated for mitigating the impacts of development on agricultural lands; and

WHEREAS, LAND TRUST is a California publicly supported nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3, whose primary purpose is the preservation and protection of land in its agricultural and/or open space condition and meets the requirements of California Government Code 65965.h; and

WHEREAS, LAND TRUST is a land trust accredited by the Land Trust Accreditation Commission and/or a member in good standing of the California Council of Land Trusts; and

WHEREAS, the [Jurisdiction] intends to fund LAND TRUST’s purchase of an agricultural conservation easement on an approximately ___ acre portion of _____ County APN _____, described in Exhibit A attached hereto and incorporated herein (“_____ Easement”), and such _____ Easement is to be acquired and held by LAND TRUST pursuant to the terms of this Agreement; and

WHEREAS, the [Jurisdiction] may, in the future, agree to fund additional purchases by LAND TRUST of agricultural conservation easements; and

WHEREAS, the [Jurisdiction] wishes for LAND TRUST to assist [Jurisdiction] in carrying out its efforts to mitigate for the impacts of development on agricultural lands through the acquisition and stewardship of agricultural conservation easements on lands in _____ County; and

WHEREAS, the parties intend that any easement whose purchase is funded by the [Jurisdiction] and any easement transferred from the [Jurisdiction] to LAND TRUST be maintained in a manner consistent with maintaining the land in productive agricultural use by preventing uses of the property that will impair or interfere with the property’s agricultural productive capacity, its soils, water rights, and its agricultural character, values, and utility; and

THEREFORE, LAND TRUST and the [Jurisdiction], for the consideration and upon the terms and conditions hereinafter specified, agree as follows:

1. Recitals. The above stated recitals are true and correct and are incorporated herein.

2. Purpose of Agreement. The purpose of this Agreement is to set forth the terms under which the [Jurisdiction] will fund LAND TRUST's acquisition and management of the _____ Easement and, in the event the [Jurisdiction] agrees to fund the acquisition of additional agricultural conservation easements, this Agreement will additionally govern the acquisition and management of those additional agricultural conservation easements. Agricultural conservation easements funded by the [Jurisdiction], including the _____ Easement, shall be referred to generally as "Easements."

3. Purpose of Easements. The purpose ("Purpose") of each Easement is to enable the property over which the Easement is created ("Property") to remain predominately in productive agricultural use by preventing uses of the Property that will significantly impair or interfere with the Property's agricultural productive capacity, its soils, water rights, and its agricultural character, values, and utility.

4. Acquisition of Easements. LAND TRUST will identify for [Jurisdiction] approval, process, carry out appropriate due diligence and acquire the Easements in the manner set forth in this Agreement. [Jurisdiction] will fund the relevant costs of the projects and Easement acquisitions as set forth in this Agreement. LAND TRUST and [Jurisdiction] agree to follow the processing, approval, acquisition, funding and Easement stewardship and monitoring procedures as set forth in this Agreement. The Easements shall be substantially in the form of the boilerplate easement attached to this Agreement as Exhibit B.

5. Identification and Approval of Potential Easement Projects. LAND TRUST will contact the [Jurisdiction] to determine if funds are available to acquire an Easement. LAND TRUST will conduct outreach and investigations to identify appropriate and viable Easement projects. LAND TRUST will give the [Jurisdiction] written notice of the potential Easement acquisition project ("Potential Project Notice"), describing the project, in summary form, identifying the Property, its ownership, soil quality and current agricultural use. Within two (2) weeks of receipt of said Project Notice, the [Jurisdiction] shall notify LAND TRUST in writing of its approval ("Potential Project Approval") or rejection of the proposed project, with an explanation of the reasons if the response is a rejection of the proposal. From the date of LAND TRUST's receipt of a Potential Project Approval from the [Jurisdiction], LAND TRUST's project and transactional costs for the approved potential project shall be reimbursed and/or paid by the [Jurisdiction] as set forth in this Agreement. [Jurisdiction] shall not be responsible for any project or transactional costs associated with any proposed project not expressly approved by a Potential Project Approval.

6. Acquisition Process. After the [Jurisdiction's] Potential Project Approval, LAND TRUST will pursue the acquisition of an Easement by generally following the process and steps noted below:

- a) meeting with the landowner(s) of the subject Property ("Landowner") to discuss project details and process, initiating title and site inspection research to confirm viability, and obtaining from Landowner a signed, non-binding letter of intent to proceed, including an outline of the restrictions on the future use of the Property that will be set forth in the Easement;
- b) Should an appraisal be required, LAND TRUST requests and Landowner pays for the appraisal of the market value of the Easement, to be performed by a State-licensed appraiser who is qualified to appraise the specific property based upon verifiable education, experience, and knowledge of

appropriate methodologies, techniques, and the real estate market relevant to the specific property and the appraiser's education must include advanced-level educational courses or certifications in the valuation of conservation easements ("Appraisal"); the Appraisal is reviewed by LAND TRUST and provided to [Jurisdiction] for approval to proceed with the Easement acquisition and, within two (2) weeks of receipt of the Appraisal, [Jurisdiction] shall review the Appraisal and [Jurisdiction] shall notify LAND TRUST in writing of its approval ("Appraisal Approval") or rejection, with an explanation of the reasons for the response if [Jurisdiction] rejects the Appraisal;

- c) Upon receipt of the Appraisal Approval, LAND TRUST shall proceed with the Easement acquisition, by drafting the Easement, signing a more detailed letter of intent with the Landowner and negotiating a binding Purchase and Sale Agreement with the Landowner;
- d) Upon signing a Purchase and Sale Agreement with the Landowner, LAND TRUST will open escrow with _____ Title Insurance Company (unless Landowner requests and LAND TRUST and the [Jurisdiction] approve of a different escrow/title company) and complete appropriate due diligence investigations of the subject Property;
- e) Upon finalizing the form of the draft Easement with the Landowner, LAND TRUST will submit the draft Easement to the [Jurisdiction] for review and approval and within two (2) weeks of receipt of the draft Easement, the [Jurisdiction] shall provide LAND TRUST any comments it may have on the draft Easement;
- f) LAND TRUST will work with the Landowner and the [Jurisdiction] to finalize the form of the Easement and obtain their respective approvals (such approval by the [Jurisdiction] may be referred to as the "Easement Approval") and LAND TRUST will work with the Landowner in the preparation of a baseline conditions report on the subject Property;
- g) LAND TRUST will draft escrow instructions for closing the Easement transaction and will provide the [Jurisdiction] with a draft for review and approval and, upon LAND TRUST's written request and after the [Jurisdiction]'s approval of the final form of the Easement, escrow instructions and a Buyer's Estimated Settlement Statement ("Closing Approval"), the [Jurisdiction] will deposit directly in escrow, by wire transfer, sufficient funds to pay for the items specified in Section 8(b), below (the "Closing Payment"); and
- h) Upon the deposit of all necessary funds and documents, the transaction will close escrow and within sixty (60) days after the closing, LAND TRUST will provide a final written project report to the [Jurisdiction], including copies of the recorded Easement, the baseline conditions report, Buyer's Final Settlement Statement, and a final invoice for the project, covering project costs and expenses not previously invoiced ("Final Report and Invoice").

The Potential Project Approval, Appraisal Approval, Easement Approval and Closing Approval may collectively be referred to in this Agreement as the "[Jurisdiction] Approvals." Notwithstanding the list of specific steps noted hereinabove, the [Jurisdiction] and LAND TRUST acknowledge and agree that the Easement acquisition process might not follow precisely the sequence or steps noted above, but that the [Jurisdiction] will, in any event, retain their right to give the [Jurisdiction] Approvals at the same approximate stage as identified above in any project undertaken under this Agreement.

7. Easement Acquisition and Management. LAND TRUST agrees to carry out Easement acquisition and management in accordance with the terms of this Agreement. LAND TRUST agrees that the work performed pursuant to this Agreement either by LAND TRUST or at its direction shall be rendered in accordance with the accepted practices and standards for LAND TRUST's land conservation business and that LAND TRUST shall work diligently towards completion of Easement transactions. Notwithstanding any other provision of this Agreement, [Jurisdiction] recognizes that the entering into and recordation of an Easement is a voluntary transaction on the part of the Landowner whose property would be encumbered by the Easement, and that LAND TRUST is not required by this Agreement to compel any Landowner by an action for specific performance or by any other means to enter into and record an Easement, and LAND TRUST disclaims any warranty or representation that it will be able to enter into any Easement pursuant to this Agreement.

8. Payment of Easement Project Costs.

- a) **Monthly Payments.** The [Jurisdiction] agrees to pay LAND TRUST's project costs on a monthly basis, including, but not limited to the costs referenced herein below (based on LAND TRUST invoices; the "Monthly Payments"). Each invoice shall contain a description of the services performed and costs incurred which are covered by the invoice. The [Jurisdiction] acknowledges and agrees that if costs are incurred by LAND TRUST, and invoiced and paid by the [Jurisdiction] and the Easement transaction does not close escrow, LAND TRUST will not be obligated to reimburse the [Jurisdiction] for those costs. Each invoice shall be due and payable within thirty (30) days of receipt by the [Jurisdiction]. The [Jurisdiction] and LAND TRUST agree that the [Jurisdiction] shall not be responsible for Monthly Payments on any one project, cumulatively, exceeding Thirty Thousand Dollars (\$30,000.00), without prior [Jurisdiction] approval. The Monthly Payments shall cover the following costs:
- i) LAND TRUST staff time at \$125.00 / hour (subject to an annual increase not to exceed 10.0%), based on project specific time sheets;
 - ii) Outside consultant services (e.g. for land planning/project management and legal services) based on written invoice(s), provided at varied hourly rates;
 - iii) Land surveys, geological and environmental reports (when necessary and appropriate); and
 - iv) Baseline conditions report preparation and production
- b) **Closing Payments.** At the time of closing on LAND TRUST's purchase of an Easement, the [Jurisdiction] agrees to pay and deposit in escrow, by wire transfer, the project, transaction and closing costs, including, but not limited to the costs referenced hereinbelow (based on LAND TRUST's written request for disbursement; the "Closing Payment"):
- i) the purchase price for the Easement (including any reimbursement to LAND TRUST for purchase deposit(s) paid) (based on the approved Appraisal);
 - ii) all of LAND TRUST's closing costs, which may include, but are not limited to: escrow fees, title insurance premium, recording fees, documentary transfer taxes;
 - iii) payment for stewardship, management and legal defense/enforcement of the Easement (based on 5% of the Appraisal's value of the Easement);
 - iv) the cost of the Appraisal (paid up front by the Landowner and reimbursed by the [Jurisdiction] at closing); and

- v) LAND TRUST's administrative overhead to hold, account for, and maintain Easement records in perpetuity (based on 10% of the Appraisal's value of Easement).

The Closing Payment shall be deposited in escrow within one (1) week of LAND TRUST's request for disbursement, provided the [Jurisdiction] has approved the final form of the Easement, escrow instructions and a Buyer's Estimated Settlement Statement for the closing.

9. _____ Easement Project. The [Jurisdiction] hereby gives LAND TRUST its Potential Project Approval of the _____ Easement project. LAND TRUST agrees to carry-out the acquisition process outlined in Section 6 and the [Jurisdiction] agrees to make the Monthly Payments and Closing Payment with respect to that project, subject to and in accordance with the terms of this Agreement.

10. Stewardship of Easements. LAND TRUST shall be the owner and steward of each Easement acquired by LAND TRUST under the terms of this Agreement, ensuring the use of each Property is consistent with the Purpose hereof and the terms of each Easement. LAND TRUST's responsibilities include ensuring the use of each Property is consistent with the Easement encumbering that Property; prohibiting any use or activity that would significantly diminish or impair the agricultural productive capacity and open space character of the Property or that would cause significant soil degradation or erosion. LAND TRUST's responsibilities further include annual monitoring, such additional monitoring as circumstances may require, record keeping, and enforcing the terms of the Easement. LAND TRUST will provide annual monitoring and reporting in accordance with the requirements of Sections 13 and 14 of the boilerplate easement attached as Exhibit B, which provisions are express requirements of this Agreement and are incorporated herein by this reference.

11. Rights of the [Jurisdiction]. In the event LAND TRUST fails to enforce any material term, condition, covenant or restriction of any Easement, as reasonably determined by the [Jurisdiction] of _____ Planning Director ("Planning Director"), after notice to LAND TRUST and a reasonable opportunity under the circumstances for LAND TRUST to resolve the problem, the Planning Director and his or her successors and assigns shall have the right to enforce the terms of the Easement. The enforcement provisions set forth in Section 14(f) of the boilerplate easement attached as Exhibit B to this Agreement are express requirements of this Agreement and are incorporated herein by this reference.

12. Amendments. This Agreement may not be amended or modified in any respect except by a further agreement in writing executed by the parties.

13. Transfer of Easement. LAND TRUST shall obtain the [Jurisdiction's] consent prior to transferring its interest in any Easement, which consent shall not be unreasonably withheld, and LAND TRUST shall only transfer its interest in an Easement in accordance with the terms of Section 16 of the boilerplate easement attached as Exhibit B to this Agreement and said provisions are express requirements of this Agreement and are incorporated herein by this reference.

14. Transfer of Property. Any time LAND TRUST receives notice pursuant to the terms of an Easement that the fee simple interest in the Property is to be transferred to a third party; LAND TRUST shall notify the [Jurisdiction] in writing within thirty (30) days of receiving notice thereof from the Landowner.

15. Termination of Agreement. Either party shall have the right to terminate this Agreement at any time, with respect to matters pertaining to Easements not yet acquired by LAND TRUST, upon giving the other party written notice of its intention to terminate ninety (90) days prior to the effective date of said termination. Upon termination, the [Jurisdiction] shall pay LAND TRUST for all costs incurred pursuant to this Agreement up to the date of termination. The parties' post-closing rights and obligations under this Agreement with respect to Easements *already acquired* by LAND TRUST shall survive the termination of this Agreement. In the event of any such termination, the [Jurisdiction] may pursue the acquisition of agricultural conservation easements for mitigation on its own behalf, provided however, LAND TRUST shall retain any and all rights in and to any existing acquisition negotiations and agreements for the purchase of agricultural conservation easements entered into under the auspices of this Agreement and may proceed with the work on its own behalf to carry out its agricultural land conservation mission.

16. Independent Contractor. Nothing in this Agreement shall be interpreted so as to cause LAND TRUST to be considered an employee of the [Jurisdiction]. LAND TRUST is an independent contractor and is responsible for all obligations consistent with that status.

17. Attorney's Fees. The parties agree to cooperate in good faith to attempt to amicably resolve any issues or disputes arising under this Agreement. Any claims, disputes, or controversies arising out of, or in relation to, the interpretation, application or enforcement of this Agreement may be submitted to non-binding mediation through the auspices of the American Arbitration Association prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties. In the event that legal action is brought by either party against the other, each party shall bear its own legal costs for the interpretation and enforcement of this Agreement. That includes, without limitation, court costs, expert fees, expenses of suit and reasonable attorneys' fees, incurred in any enforcement action related to this Agreement.

18. Assignment. LAND TRUST shall neither assign nor delegate its rights and/or duties under this Agreement without first obtaining the [Jurisdiction's] written consent to the assignment and/or delegation. Any such assignment or delegation made by LAND TRUST without prior written consent of [JURISDICTION] will render this Agreement voidable at sole discretion of the [Jurisdiction]. Contracts between LAND TRUST and third parties (including, but not limited to, appraisers, project managers, attorneys, and accountants) to perform certain services related to the services to be performed under this Agreement shall not be deemed an assignment or delegation of rights or duties and will not require the [Jurisdiction's] consent.

19. Notices. Any notices to the parties required by this Agreement shall be in writing and shall be personally delivered, facsimile transmission, sent by certified or registered mail, or by any nationally recognized overnight carrier that routinely issues receipts, to the following addresses, unless a party has been notified in writing by the other of a change of address.

To LAND TRUST:

To [Jurisdiction]:

Notices delivered by hand or by commercial express courier service shall be deemed given when received, as evidenced by written receipt. Notices delivered by registered or certified mail shall be deemed given upon mailing. Notices transmitted by facsimile shall be deemed given on the date of successful transmission.

20. Severability. If any term, provision, covenant, condition or restriction of this Agreement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of the agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

21. Construction. Headings in this Agreement are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

22. Entire Agreement. All exhibits attached to this Agreement are hereby incorporated into this Agreement by this reference. This Agreement constitute the entire agreement between the [Jurisdiction] and LAND TRUST pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or amendment is sought to be enforced.

23. Waivers. No waiver or breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party.

24. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments and documents reasonably necessary, expedient, or proper to complete all conveyances, transfers, sales, and agreements under this Agreement. Each party shall also do any other acts and execute, acknowledge, and deliver all requested documents and funds needed to carry out the intent and purpose of this Agreement.

25. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and assigns, any rights or remedies under this Agreement.

26. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the heirs, successors, agents, representatives, and assigns of the parties.

27. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

RESOURCES

PUBLIC AGENCIES

California Department of Conservation's Land Resource Protection Division Williamson Act

<http://www.conservation.ca.gov/dlrp/lca/Pages/Index.aspx>

California Farmland Mapping and Monitoring Program

<http://www.conservation.ca.gov/dlrp/fmmp/Pages/Index.aspx>

Land Evaluation Site Assessment (LESA)

http://www.conservation.ca.gov/dlrp/Pages/qh_lesa.aspx

California Farmland Conservancy Program

<http://www.conservation.ca.gov/dlrp/cfcp/Pages/Index.aspx>

Model Agricultural Conservation Easement

http://www.conservation.ca.gov/dlrp/cfcp/overview/Pages/cfcp_model_easement.aspx

California Office Attorney General's Office of Charitable Trusts Division

<http://oag.ca.gov/charities>

- Use listing of registered charities to confirm status of potential conservation easement holder per requirements of CA Civil Code 815.3(a)
- <http://rct.doj.ca.gov/MyLicenseVerification/Search.aspx?facility=Y>
- Amendments, terminations, and extinguishments of conservation easements require review and approval by the Attorney General

Natural Resources Conservation Service (NRCS) – California

<http://www.nrcs.usda.gov/wps/portal/nrcs/site/ca/home/>

NRCS Web Soil Survey and Mapping

<http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

- Customized, site specific soil reports can be generated and downloaded from this site.

LAND CONSERVATION ORGANIZATIONS

California Council of Land Trusts (CCLT)

<http://www.calandtrusts.org/>

An umbrella organization for California land trusts. California Council of Land Trusts' (CCLT) members have been vigorously reviewed for professional practices. CCLT's mission is to build a statewide land trust community equal to the challenge and privilege of conserving our extraordinary land and water resources for all Californians. CCLT serves as a unified voice for more than 150 land trusts working in local communities throughout California.

CCLT's program portfolio is organized into three categories: policy advocacy, education and training, and communication. CCLT is dedicated to building programs that are responsive to the needs of the land trust community and relevant to the current challenges and opportunities facing land and resource conservation. Our current programs cover a wide variety of topics including, but not limited to, agricultural mitigation, land trust accreditation, and appraisals. CCLT just launched an exciting new initiative *Conservation Horizons*, which is designed to ensure that conservation's future is as successful as our past has been.

CCLT can provide technical assistance with:

- Identifying qualified mitigation partners
- Best practices for land protection and mitigation
- Best practices for conservation strategies
- Updated information on current or recent legislation, court cases and policies and practices for land protection and mitigation.

Land Trust Alliance (LTA)

<http://www.landtrustalliance.org/>

A national advocacy and education organization for land trusts and land conservation. Maintains the national land trust accreditation program; find out more at <http://www.landtrustaccreditation.org>

Attachment B



1029 K Street, Suite 48 • Sacramento, CA 95814 • 916.497.0272

www.calandtrusts.org

Sec. 8-2.404. Agricultural Conservation and Mitigation Program.

(a) *Purpose.*

(1) The purpose of this section is to implement the agricultural land conservation policies contained in the Yolo County General Plan with a program designed to permanently protect agricultural land located within the unincorporated area.

(b) *Definitions.*

Agricultural land or farmland

Those land areas of unincorporated Yolo County, regardless of current zoning, that are either currently used for agricultural purposes or that are substantially undeveloped and capable of agricultural production. Land that is determined to be incapable of supporting the production of agricultural commodities is excluded from this definition and does not require agricultural mitigation under this section. Any such determination shall be made by the deciding authority on a permit (or other) application in consultation with the Agricultural Commissioner, whose recommendation shall be given substantial weight unless unsupported by evidence.

Agricultural mitigation land

Agricultural land encumbered by a farmland conservation easement.

Agricultural use

Those principal, accessory, and conditional uses and structures defined in Section 8-2.304 of this title, excluding "covered habitat mitigation projects" as defined in Section 8-2.307 of this title but including other projects involving restoration or conversion to habitat, so long as the restoration or conversion is incidental to or ancillary to the agricultural uses on the parcel, and excluding. Medium-sized, large, and very large solar energy systems, which are subject to Section 8-2.1104 and 8-2.1105 of this Title, are also excluded from this definition unless the approving authority reasonably determines a medium-sized solar energy project generates energy solely to offset agricultural equipment demands (e.g., irrigation pumps) on the project site and on any contiguous lands of the applicant or, alternatively, that the project will be implemented in a manner that does not substantially diminish the agricultural productive capacity of the project site. Permits issued for surface mining, which are subject to Section 10-5.525 of Title 10, are also excluded from this definition.

Farmland conservation easement

An easement encumbering agricultural land for the purpose of restricting its use to agricultural activities.

Predominantly non-agricultural use

Any use not defined or listed as a principal, accessory, and conditional use allowed in the agricultural zones, as defined and listed in Sections 8-2.303 and 8-2.304. Predominantly non-agricultural use specifically does not include the restoration or conversion to habitat, so long as the restoration or conversion is incidental to or ancillary to the agricultural uses on the parcel, but the definition does include "covered habitat mitigation projects" as defined in Section 8-2.307 of this title.

Prime farmland

Prime farmland shall generally mean farmland that meets the criteria applied by the Farmland Mapping and Monitoring Program of the United States Department of Agriculture. Farmland shall also be considered prime farmland for purposes of this section if it meets the definition of "prime agricultural land" in Government Code Section 51201. Additionally, land that is not currently in production shall also be considered prime farmland under this section if, in the reasonable judgment of

the approving authority, it would be considered prime farmland under either of the foregoing definitions if it was in active production.

Qualifying entity

A nonprofit public benefit 501(c)(3) corporation or other entity eligible to hold a conservation easement for mitigation purposes under California law, including but not limited to Government Code Sections 65965-65968, operating in Yolo County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The County will consider the following criteria when considering a proposed agricultural conservation entity for these purposes, and when monitoring the performance of qualifying entities over time:

- (1) Whether the proposed entity is a non-profit organization or other entity eligible to hold a conservation easement for mitigation purposes under California law that is either based locally, is statewide, or is a regional branch of a national non-profit organization whose principal purpose is holding and administering agricultural conservation easements for the purposes of conserving and maintaining lands in agricultural production;
- (2) Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
- (3) Whether the entity has a history of holding and administering easements in Yolo County for the foregoing purposes;
- (4) Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
- (5) Any other information that the County finds relevant under the circumstances.

A local public agency may be an easement co-holder if that agency was the lead agency during the environmental review process or if otherwise authorized by the Board of Supervisors to co-hold a conservation easement. The County also favors that applicants transfer easement rights directly or indirectly (i.e., through a transaction involving a third party) to the qualifying entity in accordance with that entity's procedures. The County retains the discretion to determine whether the proposed agricultural conservation entity identified by the applicant has met the criteria delineated above. Qualifying entities may be approved by the Board of Supervisors from time to time in its reasonable discretion in accordance with this section.

Small project

A development project that is less than twenty (20) acres in size. A small project does not include one phase or portion of a larger project greater than twenty (20) acres that is subject to a master, specific, or overall development plan approved by the County.

(c) Mitigation requirements.

- (1) Agricultural mitigation shall be required for conversion or change from agricultural use to a predominantly non-agricultural use prior to, or concurrent with, approval of a zone change from agricultural to urban zoning, permit, or other discretionary or ministerial approval by the County.

Except as provided in subsection (d)(2) below, relating to adjustment factors, for projects that convert prime farmland, a minimum of three (3) acres of agricultural land shall be preserved in the locations specified in subsection (d)(1) for each acre of agricultural land changed to a predominantly non-agricultural use or zoning classification (3:1 ratio). For projects that convert non-prime farmland, a minimum of two (2) acres of agricultural land shall be preserved in the locations specified in subsection (d)(1) for each acre of land changed to a predominantly non-agricultural use or zoning classification (2:1) ratio. Projects that convert a mix of prime and non-prime lands shall mitigate at a

blended ratio that reflects for the percentage mix of converted prime and non-prime lands within project site boundaries.

(2) The following uses and activities shall be exempt from, and are not covered by, the Agricultural Conservation and Mitigation Program:

(i) Affordable housing projects, where a majority of the units are affordable to very low or low income households, as defined in Title 8, Chapter 8 of the Yolo County Code (Inclusionary Housing Requirements);

(ii) Public uses such as parks, schools, cultural institutions, and other public agency facilities and infrastructure that do not generate revenue. The applicability of this exemption to public facilities and infrastructure that generate revenue shall be evaluated by the approving authority on a case-by-case basis. The approving authority may partly or entirely deny the exemption if the approving authority determines the additional cost of complying with this program does not jeopardize project feasibility and no other circumstances warrant application of the exemption;

(iii) Gravel mining projects regulated under Title 10, Chapters 3-5 of the Yolo County Code, pending completion of a comprehensive update of the gravel mining program (anticipated in January 2017); and

(iv) Projects covered by an approved specific plan which includes an agricultural mitigation program.

(3) Applications deemed complete prior to the effective date of the ordinance shall provide mitigation at a 1:1 ratio in compliance with all other requirements of this Agricultural Conservation and Mitigation Program.

(d) *Agricultural Mitigation Implementation.* Agricultural mitigation required by this section shall be implemented as follows:

(1) Location, Generally. Mitigation lands shall be located within two (2) miles of sphere of influence of a city or within two (2) miles of the General Plan urban growth boundary of the town of Esparto ("Esparto Urban Growth Boundary"). Mitigation may also occur in any other area designated by the Board of Supervisors based on substantial evidence demonstrating that the parcel at issue consists predominantly of prime farmland and/or is subject to conversion to non-agricultural use in the foreseeable future. Any such designation shall be made by resolution and shall specify whether the designated area is a priority conservation area subject to a 1:1 mitigation ratio. For all other designated areas, the resolution shall specify the mitigation ratio for any mitigation occurring in the covered area, which may exceed the applicable base ratio.

(2) Adjustment Factors. The following adjustment factors shall be applied, where relevant, to modify the base ratio:

(i) Priority Conservation Areas. Mitigation occurring within a priority conservation area shall occur at a reduced 1:1 ratio unless otherwise specified below. The following areas shall be deemed priority conservation areas for purposes of this section:

(A) Parcels partly or entirely within one-quarter (0.25) mile of the sphere of influence of a city or the Esparto Urban Growth Boundary, or, for projects that convert primarily non-prime farmland, one (1) mile of the sphere of influence of a city or the Esparto Urban Growth Boundary. For the purposes of this subsection, the word "primarily" shall mean greater than fifty (50) percent.

(B) Parcels lying partly or entirely within the area bounded by County Roads 98 and 102 on the west and east, respectively, and by County Roads 29 and 27 on the north and south, respectively. For mitigation of impacts to prime farmland, the ratio shall be 2:1 within this area.

(3) Other Factors.

(i) If the area to be converted is twenty (20) acres or more in size, subject to the exception in (iii), below, by granting, in perpetuity, a farmland conservation easement to a qualifying entity with the County as a third party beneficiary, together with the provision of funds sufficient to compensate for all administrative costs incurred by the qualifying entity and the County as well as funds needed to establish an endowment to provide for monitoring, enforcement, and all other services necessary to ensure that the conservation purposes of the easement or other restriction are maintained in perpetuity.

(ii) If the area to be converted is a small project less than twenty (20) acres in size, by granting a farmland conservation easement as described in subsection (i), above, or payment of the in-lieu fee established by the County to purchase a farmland conservation easement consistent with the provisions of this section; and the payment of fees in an amount established by the County to compensate for all administrative costs incurred by the County inclusive of endowment funds for the purposes set forth in subsection (i), above. The in-lieu fee, paid to the County, shall be used for agricultural mitigation purposes only (i.e. purchases of conservation easements and related transaction and administrative costs).

(iii) If Yolo County or a qualifying entity establishes a local farmland mitigation bank and sufficient credits are available at a total cost not exceeding the in lieu fee (and all related transactional and similar costs), small projects shall satisfy their farmland mitigation requirement by purchasing credits from the mitigation bank in a quantity sufficient to discharge the mitigation obligations of the project under this section. Other local projects converting twenty (20) or more acres of farmland may also purchase credits to discharge their farmland mitigation requirements, in lieu of providing an easement under subsection (i), above.

A farmland mitigation bank must be approved by the Board of Supervisors for local (i.e., within Yolo County) mitigation needs based upon a determination that it satisfies all of the farmland mitigation requirements of this section.

Landowners and project applicants that conserve more farmland than necessary to satisfy their mitigation obligations may seek approval of a farmland mitigation bank through an application process to be developed by the Planning, Public Works, and Environmental Services Department.

(iv) Agricultural mitigation shall be completed as a condition of approval prior to the acceptance of a final parcel or subdivision map, or prior to the issuance of any building permit or other final approval for development projects that do not involve a map.

(e) *Eligible lands.* Land shall meet all of the following criteria in sections (1) through (6), below, to qualify as agricultural mitigation:

(1) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;

(2) The property is of adequate size, configuration and location to be viable for continued agricultural use;

(3) The equivalent class of soil, based on the revised Storie index or NRCS soil survey maps, for the agricultural mitigation land shall be comparable to, or better than, the land which is converted;

(4) The land shall have an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses;

(5) The mitigation land shall be located within the County of Yolo in a location identified for mitigation in accordance with this section;

(6) It is the intent of this program to work in a coordinated fashion with the habitat conservation objectives of the Yolo Habitat Conservancy joint powers agency and the developing Habitat

Conservation Plan/Natural Communities Conservation Plan. The mitigation land may not overlap with existing habitat conservation easement areas; the intent is to not allow "stacking" of easements, except for habitat conservation easements protecting riparian corridors, raptor nesting habitat, wildlife-friendly hedgerows, or other restored or enhanced habitat areas so long as such areas do not exceed five percent (5%) of the total area of any particular agricultural conservation easement.

(f) *Ineligible lands.* A property is ineligible to serve as agricultural mitigation land if any of the circumstances below apply:

(1) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

(2) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the County or other public agency; or

(3) The property is subject to physical conditions that legally or practicably prevent converting the property to a nonagricultural use.

(g) *Minimum conservation requirements.* The following minimum requirements shall be incorporated into all conservation easements recorded to satisfy the requirements of this mitigation program. Nothing in this subsection is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of this mitigation program are achieved.

(1) It is the intent of the County to transfer most, if not all, of the easements that are received from this program to a qualifying entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions. Estimated costs of any such transfer may be recovered from the applicant at the time of easement acceptance by the County.

(2) All farmland conservation easements shall be acceptable to County Counsel and the qualifying entity that will receive the easement, and signed by all owners with an interest in the mitigation land.

(3) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land, except for the restoration or conversion to habitat uses of up to five percent (5%) of the total easement land, or that are otherwise inconsistent with the conservation purposes of this mitigation program. The instrument shall protect the existing water rights and retain them with the agricultural mitigation land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two (2) years in any ten (10) year period) to other agricultural uses within the County, so long as sufficient water remains available to continue reasonable and customary agricultural use of the mitigation land.

(4) The instrument shall prohibit the presence, construction, or reconstruction of homes or other non-agricultural uses except within a development envelope designated in an exhibit accompanying the easement. Any such development envelope(s) shall not count toward the acreage totals of the conservation easement for mitigation purposes. The easement shall specify that ancillary uses must be clearly subordinate to the primary agricultural use.

(5) Conservation easements held by a qualifying entity shall name the County as a third party beneficiary with full enforcement rights.

(6) Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the County in perpetuity. The qualifying entity or the County shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire except in accordance with the terms of the conservation easement.

(7) The conservation easement can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the agricultural mitigation

land is received and used or otherwise dedicated to acquire interests in other agricultural mitigation land in Yolo County, as approved by the County and provided in this chapter.

(8) If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the County or other qualifying entity as acceptable and approved by the County.

(Ord. 1445, eff. August 14, 2014; as amended by Ord. 1456, eff. August 27, 2015; as amended by § 4, Ord. 1468, eff. May 13, 2016; as amended by § 2, Ord. 1486, eff. March 23, 2017)

Sec. 8-2.405. In-Lieu Agricultural Mitigation Fee.

(a) *Purpose.* This section establishes certain fees that, pursuant to Section 8-2.404, are required to be paid by new development that converts less than twenty (20) acres of agricultural lands to nonagricultural uses. The fees established by this section are estimated to be equal to the cost of conserving one (1) acre of agricultural land for every acre developed. Specifically, this section establishes and sets forth regulations relating to the imposition, collection, and use of fees for the conservation of agricultural lands through purchase of conservation easements.

(b) *In-Lieu Agricultural Mitigation Fee.*

(1) Section 8-2.404, the Agricultural Conservation and Mitigation Program, sets forth the details and requirements of the Program. The Program requires agricultural mitigation for the conversion or change from agricultural use to a predominantly non-agricultural use prior to, or concurrent with, approval of a permit or other land use entitlement or approval, including but not limited to zone change, by the County.

(2) The Agricultural Conservation and Mitigation Program specifies that development projects that result in the conversion of less than twenty (20) acres of agricultural land may pay an in-lieu fee, instead of purchasing a conservation easement, based on a per acre calculation of the conversion amount.

(3) The formula for determining the amount of the per-acre in-lieu fee to be paid shall be as follows, and as updated according to Subsection (5), below:

Table 1

In-Lieu Agricultural Mitigation Fee

Cost Component	Per Acre Fee
Easement Acquisition Cost	\$8,400
Transaction Cost	\$420
Monitoring Endowment	\$880
Administrative Costs	\$280
Contingency	\$115
Total (rounded)	\$10,100

Source: Table 7, Yolo County Agricultural Mitigation Fee Analysis,

(4) The fees collected pursuant to this ordinance shall be used to pay the costs associated with acquiring and maintaining agricultural conservation easements, including the specific costs identified in Table 1, above.

(5) The In-Lieu Agricultural Mitigation Fee may be updated quarterly based on two (2) separate indices. The non-acquisition related costs may be updated based on changes in the Consumer Price Index (CPI), a typical measure of inflation. The acquisition costs may be updated based on changes in the Office of Federal Housing Enterprise Oversight (OFHEO) housing price index for the Sacramento Metropolitan Statistical Area, which is proxy for land costs. This index is published four (4) times a year, in early December, March, June, and September.

(c) *Payment of Fees.* For any development project subject to this ordinance, fees levied hereunder shall be paid to the County of Yolo prior to the acceptance of any final subdivision map, issuance of a conditional use permit or approval of a site plan, or issuance of building permit(s), or such other ministerial or discretionary approval that triggers the fee requirement, whichever occurs first. The Planning, Public Works and Environmental Services Department shall not accept any final subdivision map, issue any conditional use permit or approve any site plan, or issue any building permit(s) or any other ministerial or discretionary approval to any development subject to this ordinance without first receiving payment of the required fees from the applicant.

(d) *Accounting and Register of Payment.*

(1) The fees collected pursuant to this ordinance shall be placed by the Planning, Public Works and Environmental Services Department in a separate interest bearing account for the In-Lieu Agricultural Fee Program, as further described in Subsection (f), below.

(2) The Planning, Public Works and Environmental Services Department shall maintain a register for each account indicating the date of payment of each fee, the amount paid, Assessor's Parcel Number and the name of the payor.

(3) Pursuant to Government Code section 66006(b)(1), within one hundred eighty (180) days after the last day of each fiscal year, the Planning, Public Works and Environmental Services Department shall prepare an accounting of all fees paid into and withdrawn from the account during the prior fiscal year. This accounting shall include all of the information required by subdivision (b)(1) of section 66006, including but not limited to the source and amounts collected, the beginning and ending balance of the account, the interest earned during the prior fiscal year, the amounts expended from the account, and the projects for which such expenditures were made.

(e) *Independent Fee Calculations.*

(1) Following a request made by an affected party, if in the judgment of the Director of the Planning, Public Works and Environmental Services Department ("Director") none of the fee amounts set forth in the schedule in Table 1, above, appears to accurately correspond with the impacts resulting from issuance of the requested building permit (or certificate of occupancy if no building permit is required), the applicant shall provide to the Planning, Public Works and Environmental Services Department for its review and evaluation an independent fee calculation, prepared by a consultant approved by the Director. The independent fee calculation shall show the basis upon which it was made and shall include, at a minimum, the costs of recent easement transactions in Yolo County. The Director may require, as a condition of the issuance of the requested permit, payment of an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the Planning, Public Works and Environmental Services Department an administrative processing fee of seven hundred and sixty eight (\$768) dollars per calculation or such amount that may be set in the County's Master Fee Resolution in effect at the time the project is submitted.

(2) While there is a presumption that the calculation set forth in the In-Lieu Agricultural Mitigation Fee study (as may be adjusted from time to time in accordance with this ordinance) is correct, the Director shall consider the documentation submitted by the applicant. The Director is not required to accept as true the facts contained in such documentation. If the Director reasonably deems the facts in such documentation to be inaccurate or not reliable, he or she may require the applicant to submit additional or different documentation or, alternatively, refuse to accept any further documentation and apply the formula set forth in Subsection (b), above, to the development at issue. The Director is authorized to adjust the fee on a case-by-case basis based on the independent fee calculations or the specific characteristics of the permit (or certificate of occupancy if no building permit is required), provided the amount of the adjusted fee is consistent with the criteria set forth in Government Code section 66001(a)-(b) and other applicable legal requirements.

(f) *Establishment of In-Lieu Fee Account.*

(1) An interest-bearing account shall be established for the fees collected pursuant to this ordinance and shall be entitled "In-Lieu Agricultural Mitigation Fee Account". Impact fees shall be earmarked specifically and deposited in this account and shall be prudently invested in a manner consistent with the investment policies of the County. Funds withdrawn from this account shall be used in accordance with the provisions of this ordinance. Interest earned on impact fees shall be retained in the account and expended for the purpose for which the impact fees were collected.

(2) On an annual basis, the Director shall provide a report to the Board of Supervisors on the account showing the source and amount of all moneys collected, earned, or received, and system improvements that were financed in whole or in part by impact fees. This report may be identical in format and content with the report or other document prepared pursuant to Subsection (d)(3), above, and Government Code Section 66006(b)(1).

(3) In accordance with Government Code section 66001(d), for the fifth fiscal year following the first deposit of fees into the account and every five (5) years thereafter, if some or all of the collected fees have not been expended, the Board of Supervisors shall make the findings set forth in Government Code Section 66001(d) or take other measures provided in Subdivisions (d) and (e) of Section 66001, including a refund of any unexpended moneys pursuant to Subsection (g), below.

(g) *Refunds.*

(1) Except where the Board of Supervisors has timely made the findings set forth in Government Code Section 66001(d), upon application of the property owner made pursuant to (3) through (5) of this subsection (g), the County shall refund that portion of any impact fee which has been on deposit over five (5) years, whether committed or uncommitted. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects, as reflected on the last equalized assessment roll.

(2) The County may refund by direct payment, by offsetting the refund against other impact fees due for development projects by the owner on the same or other property, or otherwise by agreement with the owner. A person who receives a refund under this provision shall not commence construction of the land development for which the refund was made without repaying the required fees.

(3) If the County fails to expend the fees within five (5) years of payment, or where appropriate findings have been made, such other time periods pursuant to Section 66000 et seq. of the Government Code, the current owner of the property for which impact fees have been paid may receive a refund of the remaining amount of the fee payment. In determining whether fees have been expended, impact fees shall be considered expended on a first in, first out basis.

(4) The County shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants.

(5) Property owners seeking a refund of impact fees must submit a written request for a refund of the fees to the Director of Planning, Public Works and Environmental Services within one (1) year of the date that the right to claim the refund arises or the date the notice described in Subsection (4) of this section is given, whichever is later.

(6) Any impact fees for which no application for a refund has been made within the one (1) year period shall be retained by the County and expended on the appropriate purchases of easements.

(7) Refunds of impact fees under this ordinance shall include any interest earned on the impact fees by the County.

(8) When the County terminates the impact fee program established by this ordinance, all unexpended and unencumbered funds, including interest earned, shall be refunded pursuant to this ordinance. The County shall publish notice of the determination and the availability of refunds in a newspaper of general circulation at least two (2) times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one (1) year after the second publication. At the end of one (1) year, any remaining funds shall be retained by the County, but must be expended for the appropriate public facilities. This notice requirement shall not apply if there are not unexpended or unencumbered balances within the account.

(9) The County shall also refund the impact fee paid plus interest to the current owner of property for which the impact fee had been paid if the development was never completed or occupied; provided, that if the County expended or encumbered the impact fee in good faith prior to the application for a refund, the Director may decline to provide the refund. If within a period of three (3) years, the same or subsequent owner of the property proceeds with the same or substantially similar development, the owner can petition the Director for an offset against the fees previously paid to, and expended or encumbered by, the County. The petitioner shall provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof.

(h) *Use of Funds.*

(1) The fees collected pursuant to this ordinance may be spent for the conservation of agricultural lands through purchase of conservation easements, including any related administrative, monitoring, stewardship, and legal costs.

(2) It is the intent of the County to transfer most, if not all, of the fees that are collected to a qualifying entity, that will purchase and maintain easements.

(3) In-Lieu fees may be used to recoup costs for conservation easement purchases previously incurred by the County, provided the costs recouped by the County were incurred in connection with the Agricultural Conservation and Mitigation Program.

(4) In the event that bonds or similar debt instruments are or have been issued for the advanced purchase of conservation easements, In-Lieu fees may be used to pay debt service on such bonds or similar debt instruments to the extent that purchases are consistent with the Agricultural Conservation and Mitigation Program and this section.

(i) *Protests and Appeals.* Protests shall be filed in accordance with Sections 66020 and 66021 of the Government Code. At the time any fees are imposed pursuant to this ordinance, County staff shall provide the project applicant written notice of the imposition of the fees, a statement of the amount of the fees, and notification of the commencement of the ninety (90) day period for filing a protest under Government Code section 66020(d)(1).

(Ord. 1445, eff. August 14, 2014; as amended by § 4, Ord. 1468, eff. May 13, 2016)

Sec. 8-2.406. Transfer of Development Rights Program. (reserved)

Sec. 8-2.407. Williamson Act Land Use Contracts.

See "Yolo County Williamson Act Program and Guidelines," a separate document which is not a part of the County Code.

(Ord. 1445, eff. August 14, 2014)

Attachment B

Ordinance No.

AN ORDINANCE OF THE COUNTY OF BUTTE
ADDING ARTICLE II, ENTITLED "AGRICULTURE MITIGATION,"
TO CHAPTER 35, ENTITLED "PROTECTION OF AGRICULTURAL LAND,"
OF THE BUTTE COUNTY CODE

The Board of Supervisors of the County of Butte ordains as follows:

SECTION 1. Article II is hereby added to Chapter 35 of the Butte County Code to read as follows:

ARTICLE II. AGRICULTURE MITIGATION

35-50 Title.

This article shall be known and may be cited as the "AGRICULTURE MITIGATION ORDINANCE" of Butte County.

35-51 Purpose and Intent of the Agriculture Mitigation Ordinance.

The purpose and intent of this ordinance is to:

(a) Protect Butte County's agricultural lands from conversion to non-agricultural uses (Agriculture Element Goal AG-2)

(b) Implement General Plan policy which directs that an agricultural mitigation ordinance be developed that requires development to permanently protect agricultural land of equal or greater value in place of land that is redesignated from Agriculture to a non-agricultural designation (Agricultural Element Action AG-A2.1).

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1 (c) Establishes provisions for agricultural conservation
2 easements granted in perpetuity as a means of mitigating
3 loss of agricultural land.

4 (d) Mitigation is achieved by requiring the permanent
5 protection of agricultural land based on a 2:1 ratio to
6 the amount of agricultural land converted to a non-
7 agricultural use.

8 (e) The intent of this ordinance is to establish
9 standards for the acquisition and long-term oversight of
10 agricultural conservation easements.

11 **35-52 Applicability.**

12 (a) Areas of the County where the Agriculture Mitigation
13 Ordinance would be applicable:

14 (1) Areas designated Agriculture by the Butte County
15 General Plan.

16 (b) Areas of the County where the Agriculture Mitigation
17 Ordinance would not be applicable:

18 (1) Areas designated and zoned Agriculture by the
19 Butte County General Plan but identified as a
20 "Specific Plan to be Developed" under the General
21 Plan 2030 Land Use Map, adopted November 6, 2012.

22 (c) Activities subject to this article:

23 (1) A General Plan Amendment and Rezone from the
24 Agriculture General Plan designation to a non-
25 agricultural General Plan designation and/or zone
26 (e.g., Commercial, Industrial or Residential).

27 (d) Activities not subject to this article:

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1 (1) Subdivision of agricultural land consistent with
2 the minimum parcel size imposed by the Agriculture
3 Zone (e.g., AG-20, AG-40, AG-80, and AG-160)

4 (2) Ministerial Permits consistent with the
5 Agriculture Zone

6 (3) Uses under the zoning ordinance, both permitted
7 and conditional, that are consistent with the
8 Agriculture Zone

9 (4) A change from one Agriculture Zone to a
10 different Agriculture Zone (e.g., AG-160 rezoned to
11 AG-20)

12 (5) Habitat conservation that does not require a
13 General Plan Amendment.

14 **35-53 Definitions.**

15 Except where the context otherwise requires, the following
16 definitions shall govern the construction of this article. The
17 definition of a word or phrase applies to any of that word's or
18 phrase's variants.

19 (a) **Accessory Use:** A use that is incidental, related,
20 appropriate, and clearly subordinate to the primary use
21 of the parcel or zone, which does not alter the primary
22 use of such parcel or zone, nor serve property other
23 than the parcel of land on which the primary use is
24 located.

25 (b) **Agricultural land:** Those land areas of the
26 Unincorporated Planning Area of Butte County designated
27 by the General Plan and zoned 'Agriculture'.

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1 (c) **Agricultural mitigation land:** Agricultural land
2 encumbered by an agricultural conservation easement or
3 other conservation mechanism acceptable to the County.

4 (d) **Agricultural use:** Those primary and accessory uses
5 and structures, and conditional uses listed in the Butte
6 County General Plan and Zoning Ordinance.

7 (e) **Agricultural conservation easement:** An easement over
8 agricultural land for the purpose of restricting its use
9 to agriculture consistent with these guidelines. The
10 interest granted pursuant to an agricultural
11 conservation easement is an interest in land, which is
12 less than fee simple. Agricultural conservation
13 easements acquired in accordance with these guidelines
14 shall be established in perpetuity.

15 (f) **Building envelope:** An area delineated by the
16 agricultural conservation easement within which existing
17 structures may remain or future structures may be
18 permitted to be built.

19 (g) **Development interest:** The property owner, developer,
20 proponent, and/or sponsor of an agricultural conversion
21 project subject to these guidelines.

22 (h) **Qualifying entity:** A nonprofit public benefit 501(c)
23 (3) corporation operating within the State of
24 California for the purpose of conserving and
25 protecting land in agriculture. The County will
26 consider the following criteria when considering the
27 Qualifying Entity for these purposes, and when

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1 monitoring the performance of qualifying entities
2 over time:

3 (1) Whether the entity is a non-profit organization
4 that is either based locally, is statewide, or is a
5 regional branch of a national non-profit
6 organization whose principal purpose is holding and
7 administering agricultural conservation easements
8 for the purposes of conserving and maintaining lands
9 in agricultural production.

10 (2) Whether the entity has a long-term proven and
11 established record for holding and administering
12 easements for the purposes of conserving and
13 maintaining lands in agricultural production.

14 (3) Whether the entity is accredited by the Land
15 Trust Alliance.

16 (4) Any other information that the County finds
17 relevant under the circumstances.

18 **35-54 Mitigation Requirements.**

19 (a) Agricultural mitigation shall be required prior to,
20 or concurrent with, approval of a General Plan Amendment
21 and/or a rezone from Agriculture to a non-agricultural
22 designation and/or zone. A minimum of two (2) acres of
23 agricultural land shall be preserved for each acre of
24 agricultural land changed to a non-agricultural zoning
25 classification (2:1 ratio). Mitigation shall be
26 completed on a like-for-like basis (e.g., loss of prime
27 farmland must be mitigated by placing an agricultural

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1 conservation easement on prime farmland; loss of non-
2 prime or grazing land would be mitigated by placing an
3 agricultural conservation easement on non-prime or
4 grazing land). Agricultural land mitigation at a 2:1
5 ratio shall be satisfied by using one of the following
6 techniques:

7 (1) **Easement Acquisition or Mitigation Bank**

8 **Purchase.** Agricultural land mitigation shall be
9 satisfied by: 1) direct acquisition of an
10 agricultural conservation easement or, 2) purchase
11 of banked mitigation credits as set forth by these
12 guidelines.

13 (2) **In-Lieu Fee.** Where the total land area subject
14 to a General Plan Amendment and zone change is less
15 than 5-acres in size payment of an in-lieu
16 mitigation fee may be authorized by the Board of
17 Supervisors. In-lieu fees may be authorized for
18 parcels 5-acres or greater in size, or to make-up
19 the difference in available agricultural
20 conservation easement land and the total required
21 under this ordinance, when the development interest
22 can demonstrate to the Board of Supervisors that a
23 diligent effort to obtain an agricultural
24 conservation easement or banked mitigation credits
25 has been made without success. The in-lieu fee, paid
26 to the Qualifying Entity, shall be used for
27 agricultural mitigation purposes only (i.e.,

Attachment B

1 purchases of agricultural conservation easements and
2 related administrative, monitoring and enforcement
3 costs). Facts the Board may want to consider in
4 making a decision regarding a request for payment of
5 an in-lieu fee include, but are not limited to a
6 showing of multiple good faith offers to purchase an
7 agricultural easement or banked mitigation credit
8 having been declined by seller(s).

9 35-55 Methods of Mitigation.

10 (a) **Direct Acquisition of Conservation Easement** (In-Kind
11 Acquisition):

12 (1) The location and characteristics of the
13 agricultural mitigation land shall comply with the
14 provisions of these guidelines, as set forth under
15 Section 35-56 Eligible Lands.

16 (2) It shall be the development interest's sole
17 responsibility to obtain the required agricultural
18 conservation easement.

19 (3) An agricultural conservation easement shall be
20 required prior to, or concurrent with, approval of a
21 General Plan Amendment and/or a rezone from
22 Agriculture to a non-agricultural designation and/or
23 zone.

24 (b) **In-Lieu Fees:** The payment of an in-lieu fee shall be
25 subject to the following provisions:

26 (1) Purpose - The purpose of establishing a method
27 of providing an in-lieu fee for smaller conversion

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1 projects is to equalize the imbalance between
2 agricultural land suitable, and available, for
3 purchase of agricultural conservation easements and
4 the amount of acreage required to meet a 2:1 ratio.

5 (2) The amount of the in-lieu fee shall be
6 determined case-by-case in consultation with the
7 Qualifying Entity(s) approved by the Board of
8 Supervisors. In no case shall the in-lieu fee be
9 less than 35% of the average per acre price for five
10 (5) comparable land sales in Butte County, or the
11 average price per acre offered at a Mitigation Bank.

12 The factored per acre price determined under this
13 method shall then be applied at a 2:1 ratio to
14 determine the final in-lieu fee.

15 (3) The in-lieu fee shall include the costs of
16 managing the easement, including the cost of a
17 stewardship endowment used to administer, monitor
18 and enforce the agricultural conservation easement,
19 and the payment of the estimated transaction costs
20 associated with acquiring the easement. The costs
21 shall be approved by the Board of Supervisors based
22 on information relating to the costs provided by the
23 Qualifying Entity.

24 (4) The Planning Commission shall review the final
25 in-lieu fee proposal for consistency with these
26 guidelines prior to approval by the Board of
27 Supervisors. The Commission shall make a formal

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1 recommendation to the Board for consideration.

2 (5) The Board of Supervisors shall approve the final
3 amount and other terms of the in-lieu fee.

4 (6) Use of In-lieu Fees - In-lieu fees shall be
5 administered by the Qualifying Entity in fulfillment
6 of its programmatic responsibilities. These
7 responsibilities cover, without exception, ensuring
8 that in-lieu fees are held in an endowment account
9 adequate to cover the cost of inflation for
10 acquiring the agricultural conservation easement and
11 administering, monitoring and enforcing their long
12 term use for agricultural land mitigation purposes.

13 (7) Records - All participating Qualifying Entities
14 shall provide the Department of Development Services
15 a record for each transaction that demonstrates the
16 amount of the in-lieu fee collected for the
17 particular transaction, the total of in-lieu fees
18 collected to date, and how the fees will be managed.

19 (b) **Mitigation Credit Banking:** Mitigation credits may be
20 purchased from a mitigation bank and utilized in
21 accordance with the following provisions:

22 (1) Process - Any project requiring the acquisition
23 of an agricultural conservation easement in
24 accordance with these guidelines may be approved by
25 the Board of Supervisors to purchase mitigation
26 credits from a Qualifying Entity (mitigation bank)
27 **on the acreage equal to the 2:1 ratio** required for

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1 mitigation of the original conversion project.

2 (2) Credit Value - Each acre in excess of the
3 required 2:1 ratio for mitigation may be utilized to
4 satisfy the mitigation requirements of another
5 conversion project.

6 (3) Negotiations - Negotiations to purchase
7 mitigation credits shall not involve the County, and
8 shall be subject to free market values. The sale of
9 banked agricultural credits shall not alter the
10 terms of the original agricultural conservation
11 easement which generated the credits.

12 (4) Responsibility - It shall be the development
13 interest's sole responsibility to obtain the
14 required mitigation credits from a Qualifying
15 Entity.

16 (5) Authorization - The County shall approve
17 purchased credits upon receipt of a sales agreement.

18 (6) Records - All participating Qualifying Entities
19 shall provide the Department of Development Services
20 a record for each transaction that demonstrates the
21 balance between purchased credits and banked credits
22 remaining.

23 **35-56 Eligible Lands.**

24 Land shall meet all of the following criteria in sub-
25 sections (a) through (h), below, to qualify for an Agricultural
26 Conservation Easement.

27 (a) Agricultural conservation easements resulting from

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1 this program shall be acquired from willing sellers.

2 (b) Current **California Farmland Mapping and Monitoring**
3 **Program land classification** shall be equivalent to, or
4 better than, the land which is being converted to a non-
5 agricultural designation and/or zone.

6 (c) Location - **Agricultural mitigation land shall be:**

7 (1) **Located in Butte County.**

8 (2) **Designated Agriculture by the Land Use Element**

9 **of the General Plan and zoned Agriculture by the**

10 **Zoning Ordinance.**

11 (3) Located outside of the Biggs-Gridley Area of
12 Concern as adopted by the Butte Local Agency
13 Formation Commission (LAFCO).

14 (4) Located outside of any "Specific Plans to be
15 Developed" areas as shown on the General Plan 2030
16 Land Use Map adopted November 6, 2012.

17 (a) Allowable Uses - The uses allowed on agricultural
18 mitigation land shall be in conformance with the
19 Agriculture Zone. Any legal nonconforming use of the
20 property shall not be credited as acreage conserved
21 under a conservation easement or be allowed to expand
22 once a conservation easement has been established. The
23 type of agricultural-related activity allowed on
24 mitigation land shall be specified as part of the
25 agricultural conservation easement and shall not be less
26 restrictive than the Agriculture Zone.

27 (b) **Maintenance of Agricultural Use** - Farmed areas,

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1 including orchards, field and row crops, and grazing
2 land, shall remain under active use in 5 out of every 7
3 years; fallowing of the agricultural use may occur in 2
4 out of every 7 years.

5 (c) **Water Supply** - The agricultural mitigation land
6 shall have an adequate water supply to support the
7 agricultural use of the land. The water rights on the
8 agricultural mitigation land shall be protected by the
9 agricultural conservation easement.

10 (d) **Previous Encumbrances** - Land already encumbered by a
11 conservation, flood, or other type of easement or deed
12 restriction that prevents converting the property to a
13 nonagricultural use is not eligible to qualify as
14 agricultural mitigation land. Habitat conservation
15 easements may be stacked onto an agricultural
16 conservation easement if they do not conflict with each
17 other (per Section 35-60, **Stacking of Conservation**
18 **Easements**).

19 **35-57 Final Approval.**

20 Agricultural mitigation (payment of an in-lieu fee, purchase
21 of a conservation easement or purchase of banked mitigation
22 credit) for any development project subject to this ordinance
23 shall be completed to the satisfaction of the County of Butte
24 prior to, ~~the recordation of any final subdivision map, issuance~~
25 ~~of a conditional use permit, issuance of building permit(s), or~~
26 ~~such other ministerial or discretionary approval, whichever~~
27 ~~occurs first. The Department of Public Works shall not record any~~
~~final subdivision map, nor shall the Department of Development~~

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1 ~~Services issue any conditional use permit, issue any building~~
2 ~~permit(s) or any other ministerial or discretionary approval for~~
3 ~~any development subject to this ordinance without the completion~~
4 ~~of the required agricultural mitigation, or concurrent with,~~
5 approval of a General Plan Amendment and/or a rezone from
6 Agriculture to a non-agricultural designation and/or zone. The
7 Board of Supervisors may issue a tentative approval of a General
8 Plan Amendment and/or a rezone by means of a motion of intent.
9 The final approval of a General Plan Amendment and/or a rezone
10 shall not occur until proof of agricultural mitigation as set
11 forth in this article has been provided to the Department of
12 Development Services. The Department of Development Services
13 shall report the satisfactory completion of the mitigation
14 requirement to the Board of Supervisors to allow it to make the
15 final approval.

16 **35-58 Agricultural Conservation Easement Requirements.**

17 (a) All owners of the agricultural mitigation land shall
18 execute the easement.

19 (b) The easement shall be in recordable form and include
20 a legal description of the agricultural mitigation land.
21 The easement shall be recorded.

22 (c) The easement shall prohibit any activity which may
23 potentially impair or diminish viable agricultural use
24 of the agricultural mitigation land.

25 (d) All water and mineral rights shall be intact prior
26 to easement execution, and the easement shall protect
27 and retain these rights, in full, with the agricultural

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1 mitigation land in perpetuity.

2 (e) The easement shall be held in trust by the
3 Qualifying Entity and/or the County in perpetuity.

4 (f) If the Qualifying Entity ceases to exist, the duty
5 to hold, administer, monitor, and enforce the interest
6 shall pass to the County to be retained until a new
7 Qualifying Entity is located.

8 / / /

9 **35-59 Administration, Monitoring, Enforcing, and Reporting.**

10 (a) The Butte County Department of Development Services
11 is authorized to administer the Agricultural Mitigation
12 Ordinance. Development Services staff shall review all
13 development and mitigation proposals for compliance with
14 this article and shall notify applicants when the
15 requirements set forth under this article apply.

16 (b) Qualifying Entity - The Department of Development
17 Services shall ensure that the Qualifying Entity (s)
18 chosen by the landowner conforms to the requirements set
19 forth under the definition of a "Qualifying Entity",
20 under Section 3, Definitions.

21 (c) Monitoring and Enforcing - The Qualifying Entity
22 shall monitor all lands and easements, mitigation bank
23 credits, and in-lieu fees acquired in accordance with
24 these guidelines and shall review and monitor the
25 implementation of all management and maintenance plans
26 for these lands and easement areas. It shall also
27 enforce compliance with the terms of the agricultural

Attachment B

1 conservation easement.

2 (d) Reporting by the Qualifying Entity - Annually,
3 beginning one year after the adoption of this article,
4 Qualifying Entities participating in this program shall
5 provide to the County Director of Development Services
6 an annual report delineating the activities undertaken
7 pursuant to the requirements of these guidelines and
8 assessment of these activities, including the
9 disposition of in-lieu fees. The report(s) shall
10 describe the status of all lands and easements acquired
11 in accordance with these guidelines, including a summary
12 of all enforcement actions. Mitigation banks shall
13 additionally provide a report of total available credit
14 inventory and total credits sold. The report shall
15 specify the amount of the in-lieu fees collected and how
16 they are being managed.

17 (e) The development interest shall provide a stewardship
18 endowment equal to cover the costs of administering,
19 monitoring and enforcing the agricultural conservation
20 easement. The fee amount shall be determined by the
21 Qualifying Entity.

22 **35-60 Stacking of Conservation Easements.**

23 It is the intent of this program to work in a coordinated
24 fashion with the habitat conservation objectives of the Butte
25 Regional Conservation Plan. Stacking of easements for habitat
26 conservation on top of existing agricultural easements granted
27 in accordance with these guidelines may be allowed if approved

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1 by the Board of Supervisors provided the habitat needs of the
2 species addressed by the conservation easement shall not
3 restrict the active agricultural use of the land.

4 (a) The Planning Commission, with input from all other
5 easement holders in interest, and including the
6 California Department of Fish and Wildlife, shall review
7 all stacking proposals to insure the stacking will not
8 be incompatible with the maintenance and preservation of
9 economically sound and viable agricultural activities
10 and operations. The recommendation of the Commission
11 shall be considered by the Board of Supervisors.

12 **35-61 Agricultural Conservation Easements on lands subject to**
13 **Williamson Act Contracts.** Specify easement overlays for Williamson Act Contracts

14 Agricultural Conservation Easements on lands subject to a
15 Williamson Act Contract shall be reviewed by the Butte County
16 Land Conservation Act Committee to ensure compliance with the
17 terms of the applicable Williamson Act Contract.

18 **Section 2. Severability.**

19 If any provision of this Ordinance or the application
20 thereof to any person or circumstances is for any reason held to
21 be invalid by a court of competent jurisdiction, such provision
22 shall be deemed severable, and the invalidity thereof shall not
23 affect the remaining provisions or other applications of the
24 Ordinance which can be given effect without the invalid
25 provision or application thereof.

26 **Section 3. Effective Date and Publication.**

27

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1 This Ordinance shall take effect thirty (30) days after
2 the date of its passage. The Clerk of the Board of Supervisors
3 is authorized and directed to publish this ordinance before the
4 expiration of fifteen (15) days after its passage. This
5 Ordinance shall be published once, with the names of the members
6 of the Board of Supervisors voting for and against it, in the
7 _____, a newspaper of general circulation published in the
8 County of Butte, State of California.

9 / / /

10 PASSED AND ADOPTED by the Board of Supervisors of the County
11 of Butte, State of California, on the _____ day of
12 _____, 2014, by the following vote:

13 AYES:

14 NOES:

15 ABSENT:

16 NOT VOTING:

17 _____
18 Doug Teeter, Chair of the
19 Butte County Board of Supervisors

20 ATTEST:

21
22 Paul Hahn, Chief Administrative Officer
23 and Clerk of the Board

24
25 By _____
26 Deputy

Agricultural Conservation Mitigation Program (REF220044)

Attachment B



**Agricultural Advisory Committee
July 28, 2022 – Workshop**

Action

- Provide feedback to staff on proposed policy options for the development of agricultural mitigation program policies

Presentation Overview



Policy Framework



What is Agricultural Conservation Mitigation?



Process & Timeline



Engagement & Input



Discussion

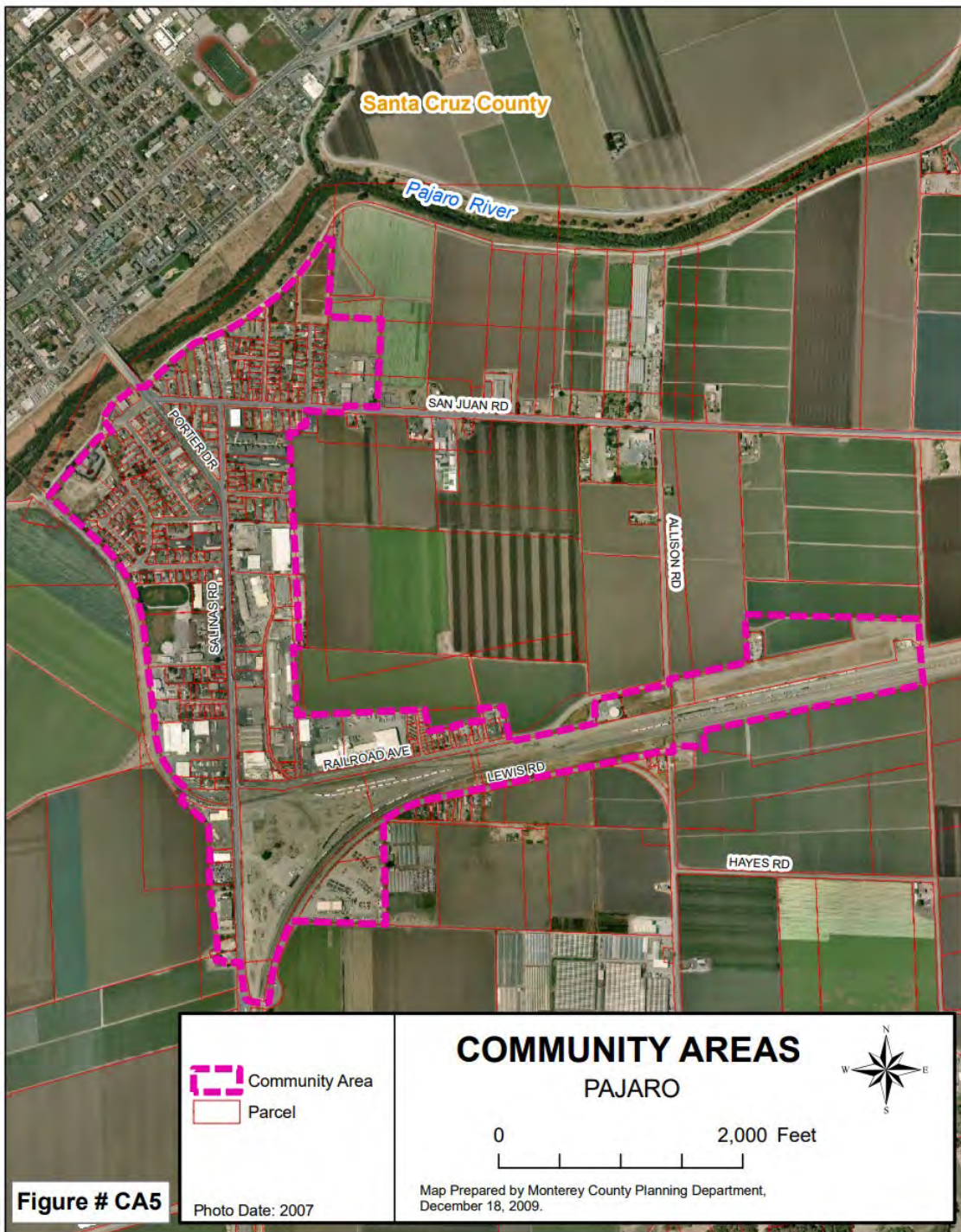
Policy Framework

- 2010 General Plan: Policies that address existing and future land use for the large rural areas that are predominantly for agricultural purposes and for diversity of unincorporate communities
- Land Use Element: Creates a general framework that encourages growth within or near developed/developing areas in order to reduce impacts to agricultural production, natural resources, or public services
- Community Areas & Rural Centers



Pajaro Community Area

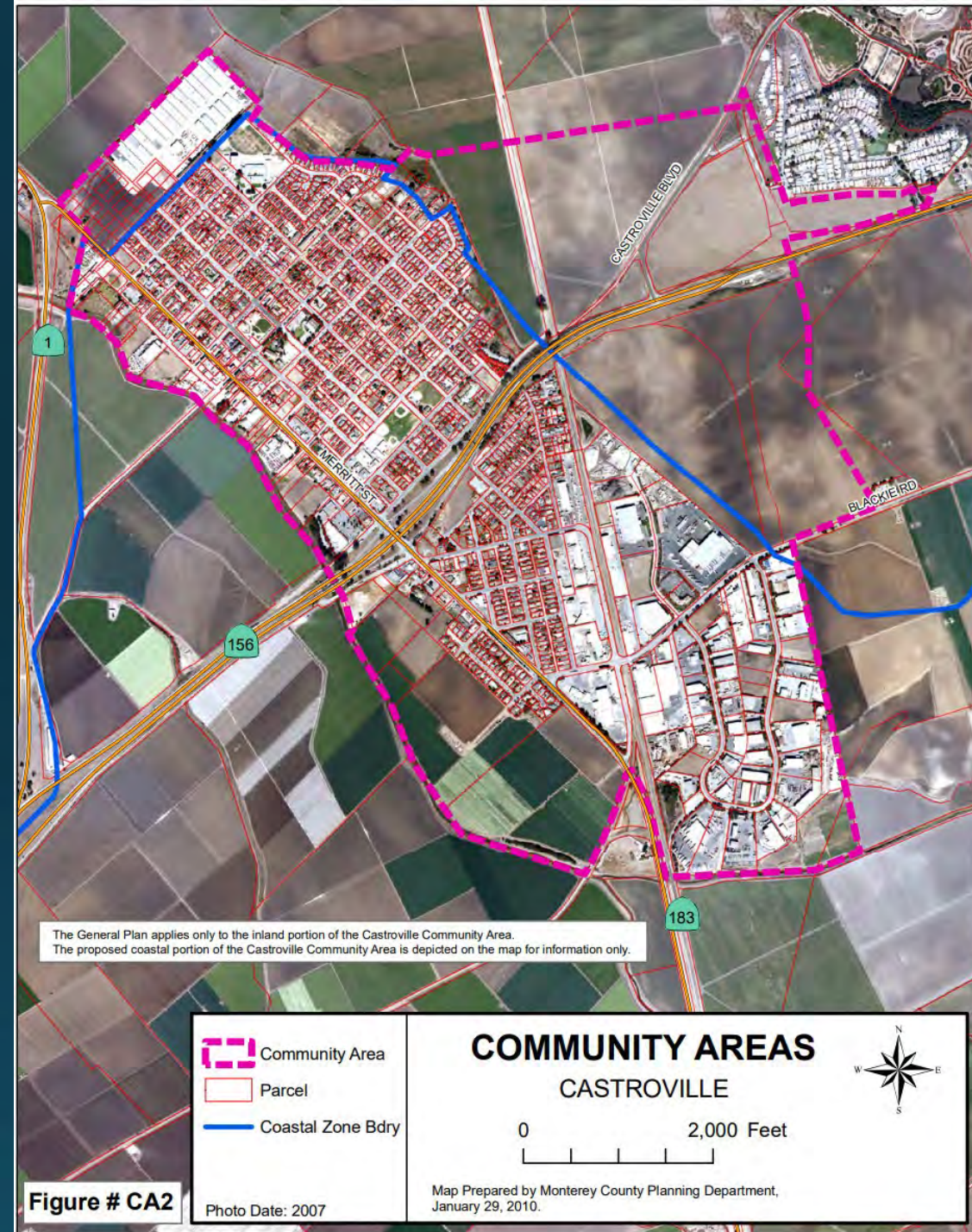
The priority for future growth in Pajaro shall be established and emphasized to occur within the Community Area boundary.



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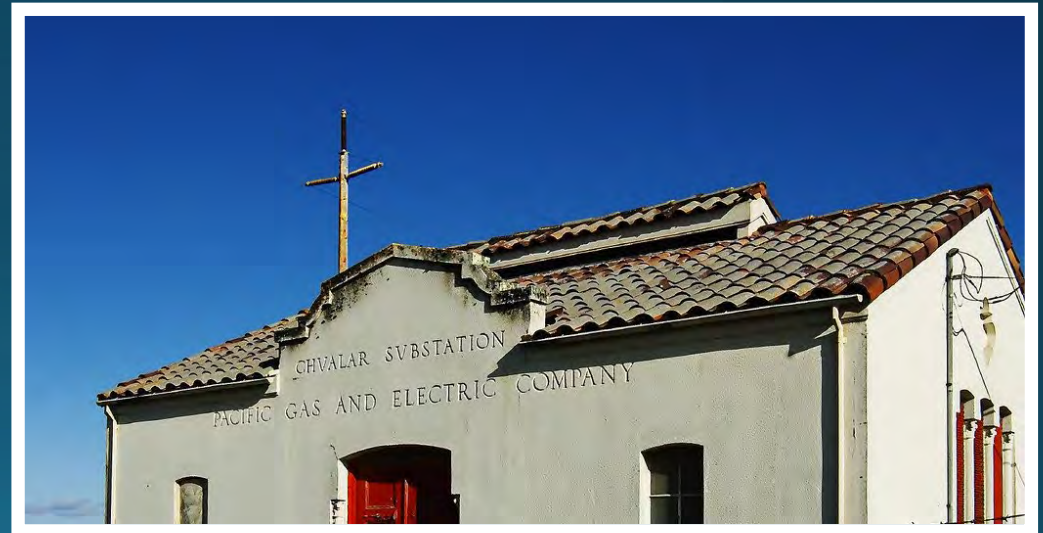
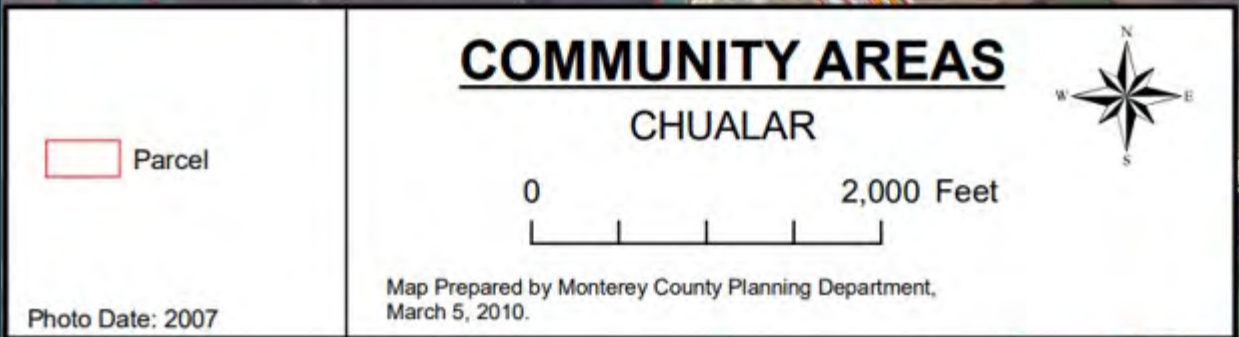
Castroville Community Area

Future growth in the Castroville Community Area will be directed to infill development and within the Community Area boundaries.



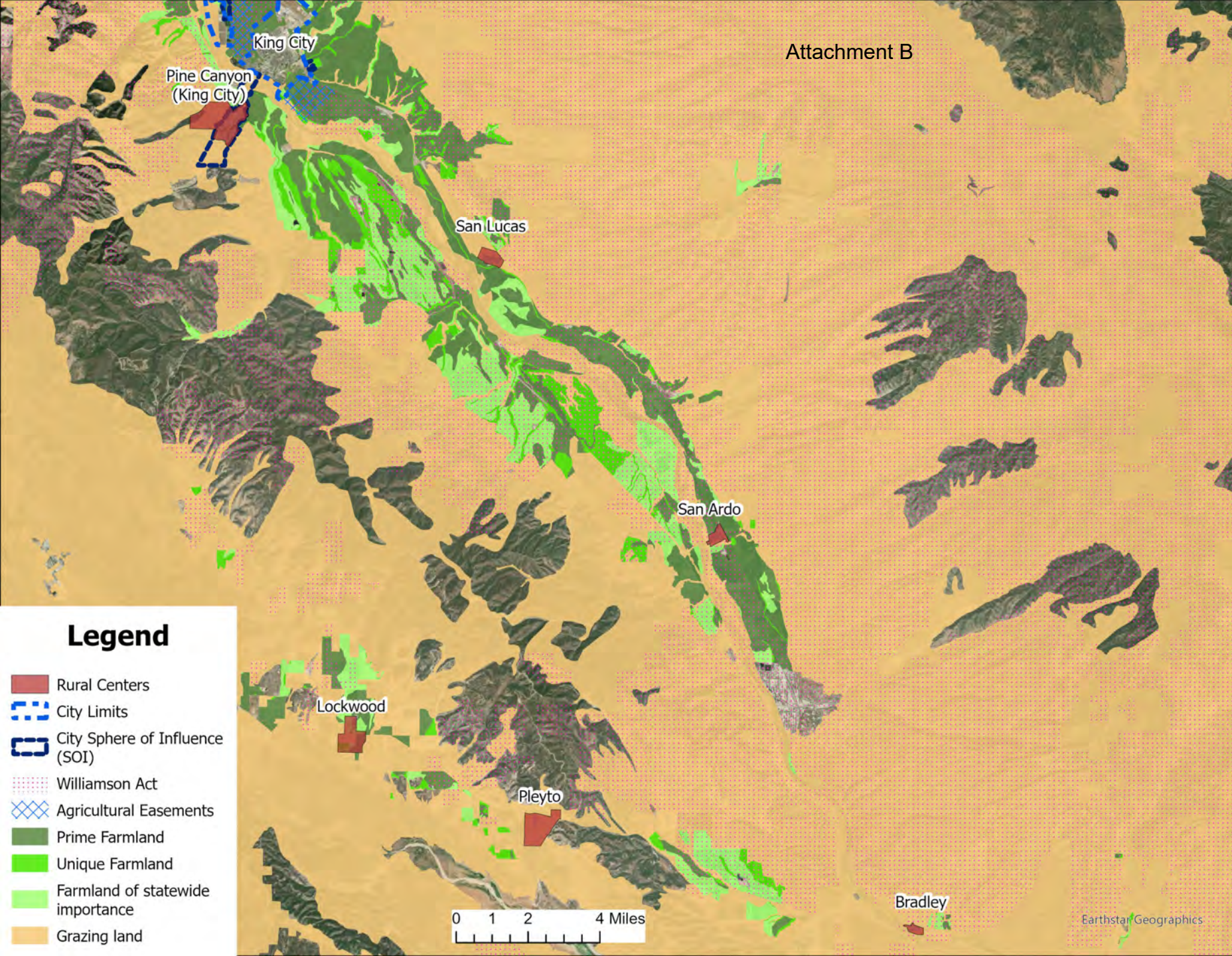
Chualar Community Area

The County shall establish and emphasize Community Areas as the preferred location and the priority for additional development in the County.



Rural Centers – South County

- Rural Centers in South County are Pine Canyon, San Lucas, San Ardo, Lockwood, Pleyto, and Bradley.
- Rural Centers are a secondary planning priority for the County.

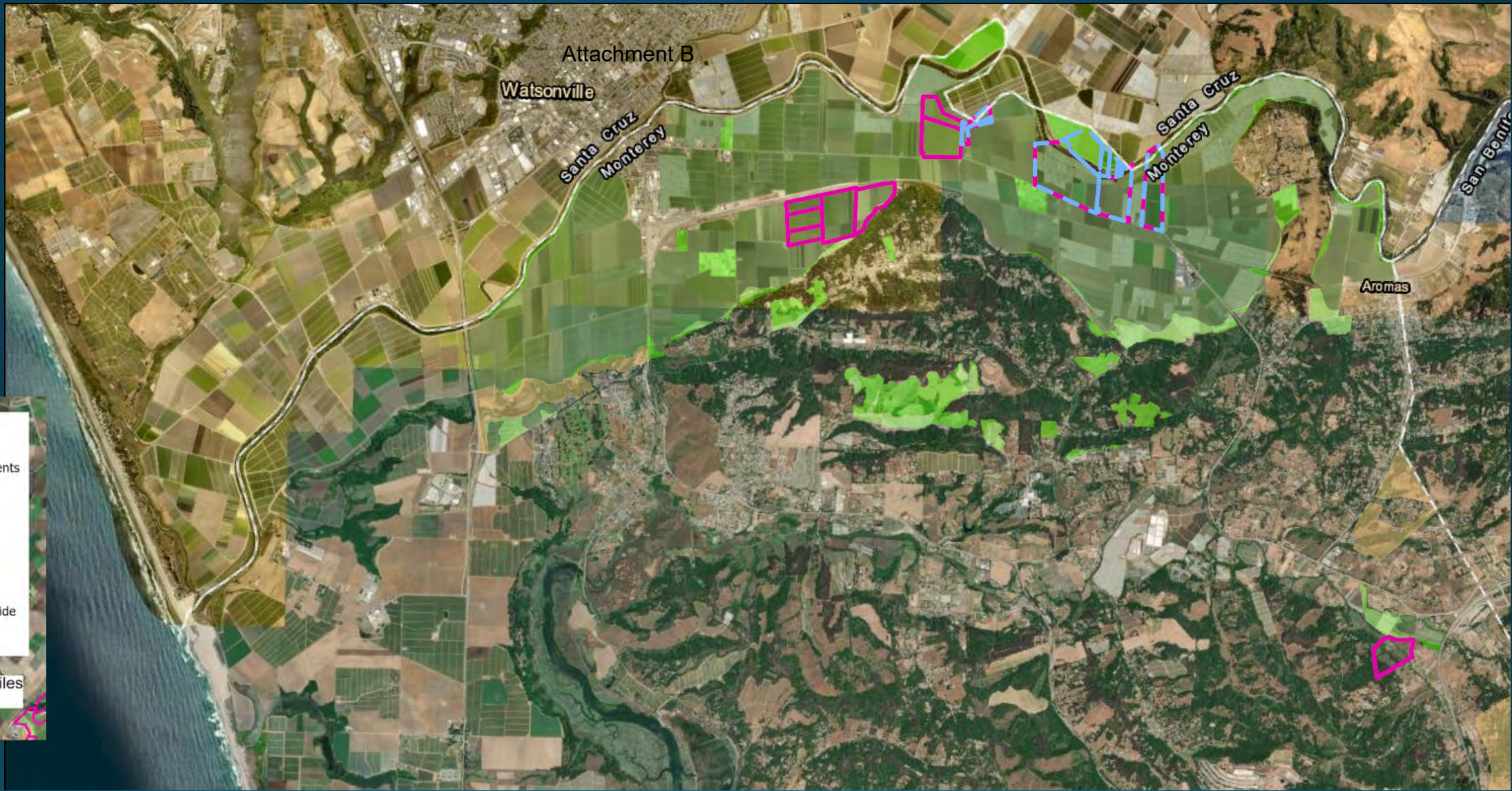


Policy Framework

- 2010 General Plan: Preserve, protect, and enhance farmland in order to maintain the productivity and viability of the County's agricultural industry.
- Agricultural Element: Promote the long-term protection, conservation and enhancement of productive and potentially productive agricultural lands.
- Agricultural Conservation Mitigation Program: Mitigate loss of farmland to development

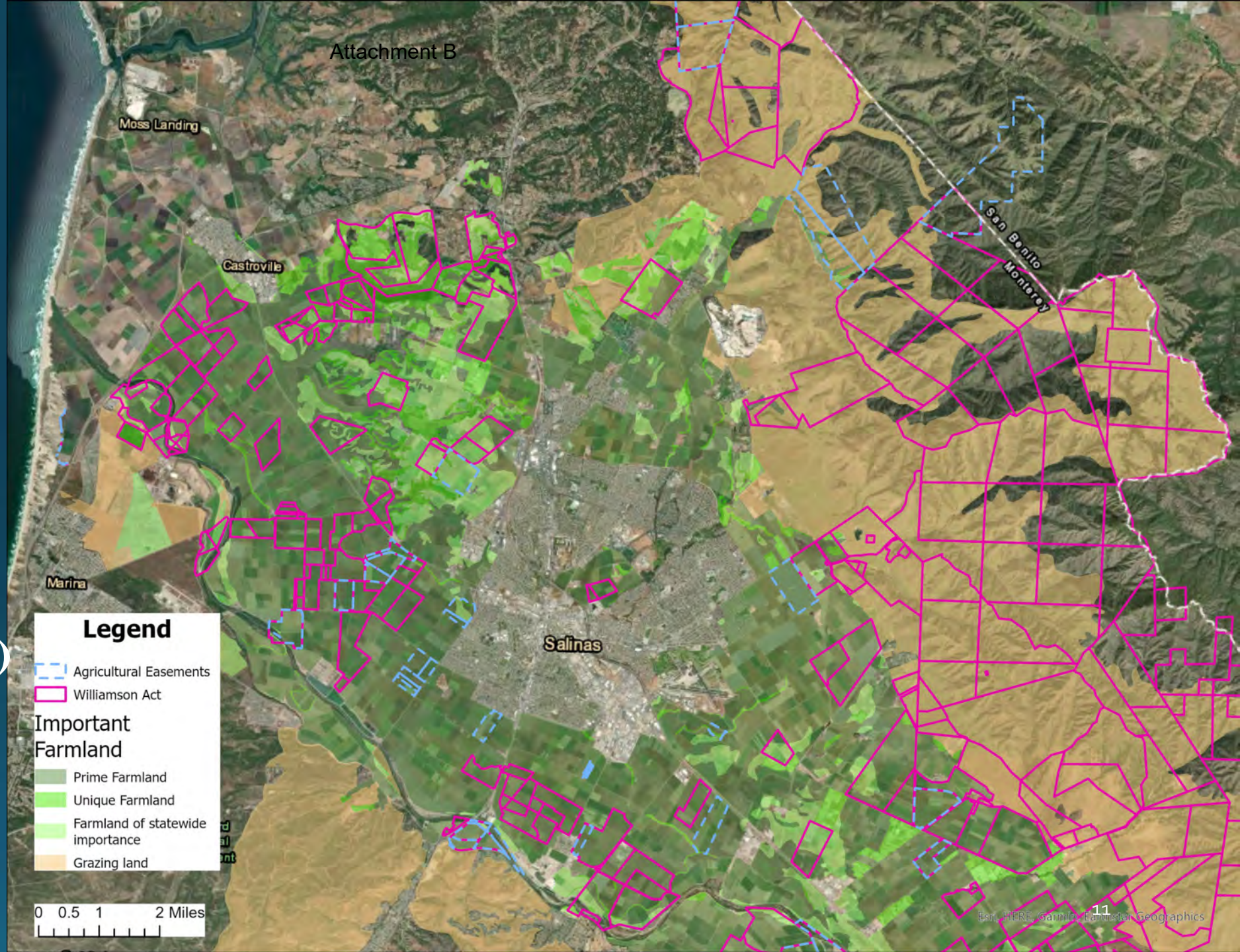
Attachment B



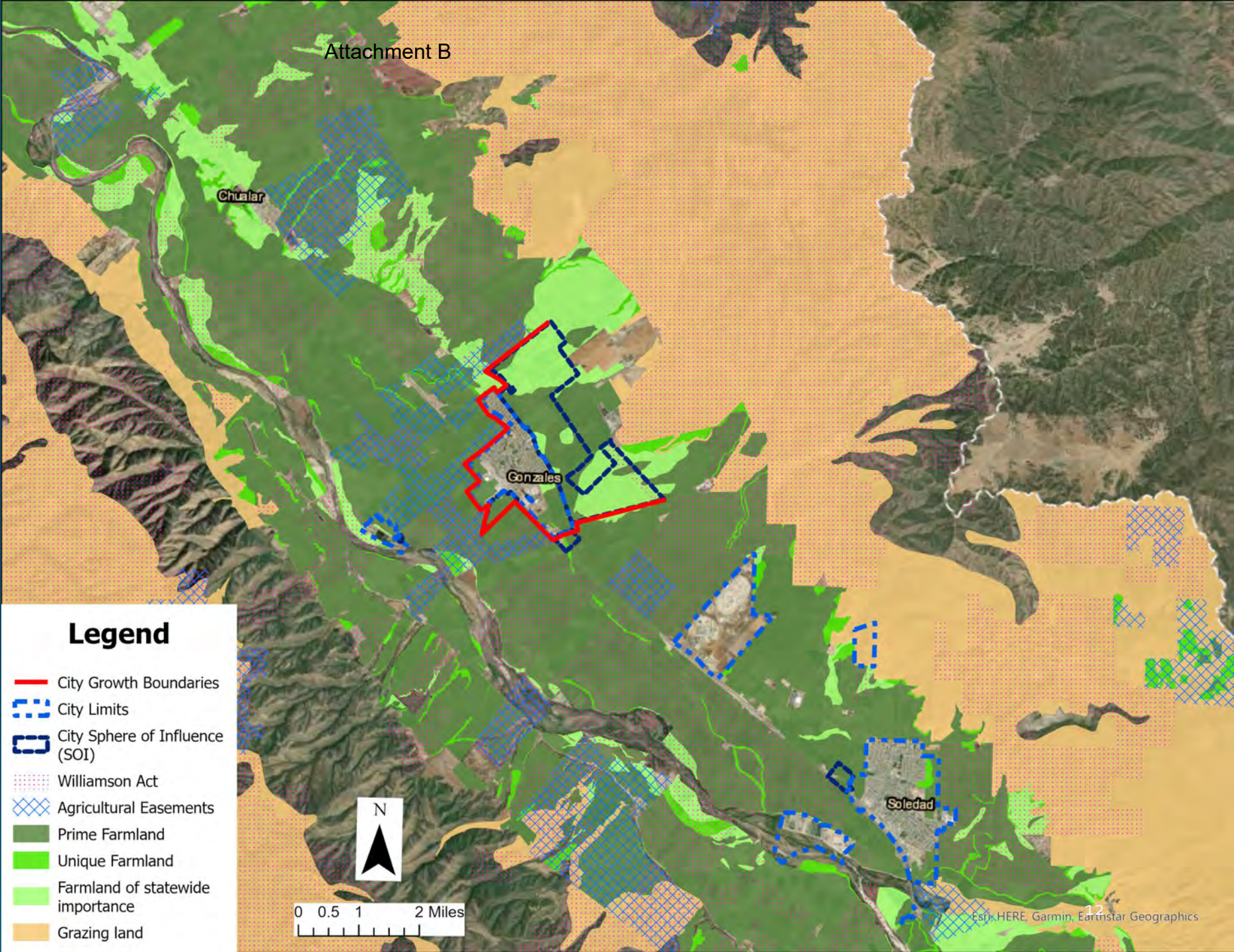


Protected Agricultural Lands – Pajaro Valley

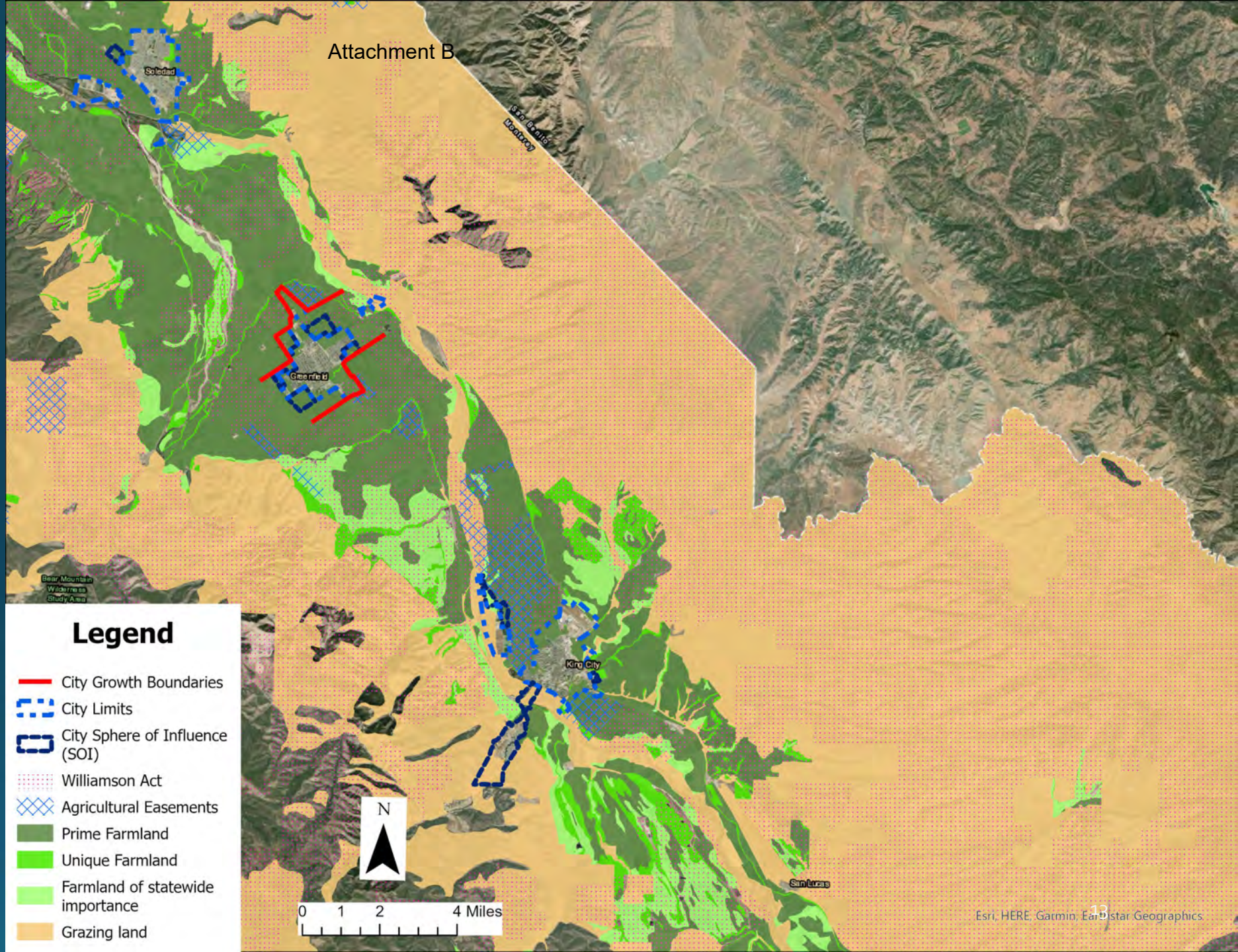
Protected Agricultural Lands – Salinas Valley (Moss Landing to Salinas)



Protected Agricultural Lands – Salinas Valley (Chualar to Soledad)



Protected Agricultural Lands – Salinas Valley (Soledad to King City)



What does mitigation look like?

- Purchase of Permanent Agricultural Conservation Easement
- Payment of In-Lieu Fees
- Other Mitigation Tools
 - Conservation of Soil at Development Sites
 - Improve or Create Farmland via Preservation of Prime Soils

Policy Process

**Staff Research
and Analysis**

**Community
Meetings &
Workshops**

**Drafting
Policies**

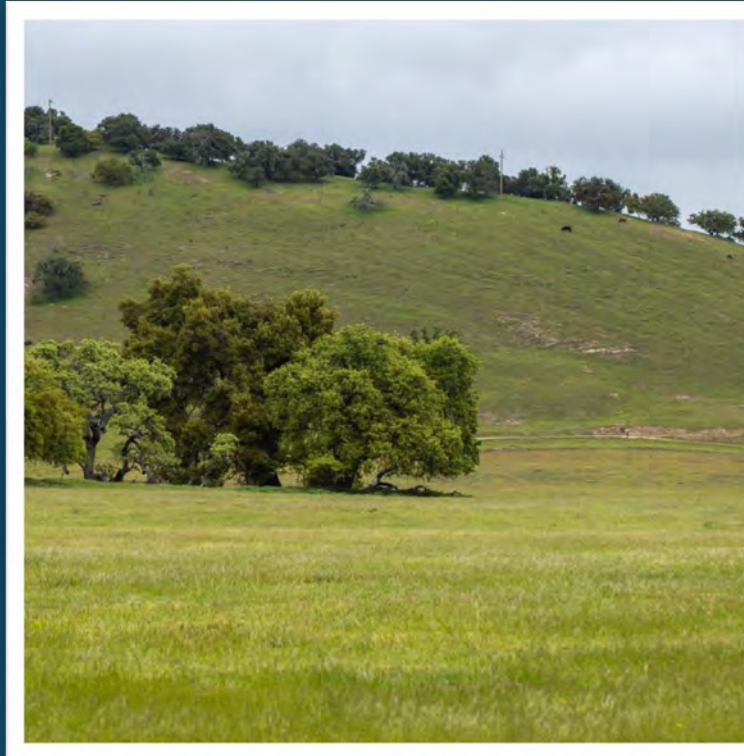
**Environmental
Analysis**

**Public
Hearings**

Final Approval

Timeline

- Meetings & Workshops
 - 5/26 - AAC
 - 7/5 – North County
 - 7/14 – Salinas Valley Cities
 - 7/18 – South County (Sp)
 - 7/28 – AAC Workshop
 - 7/29 – Countywide (Sp)
 - TBD – Building Industry Association
- Planning Commission Workshop (Sp) – 8/2022



Policy Input

- Agricultural Conservation Mitigation Program Purpose (Draft)
- Meaningful Measure or “Value” of Loss of Agricultural Land
- Eligibility Criteria of Mitigation Receiving Site
- Exceptions or Special Considerations
- Alternative Protection Measures

Join the Discussion

To follow the policy development, provide comment and feedback:

Sign In today – include your email & check the box

Or email - hcdcomments@co.monterey.ca.us

Questions?

Contact Melanie Beretti, AICP, Principal Planner

Phone | 831-755-5285 Email | berettim@co.monterey.ca.us

Action

- Provide feedback to staff on proposed policy options for the development of agricultural mitigation program policies

Program Purpose & Goals (Draft)

Purpose

- Provide clear and consistent policies to mitigate the loss of agricultural land due to development or conversion to non-agricultural uses

Goals

- Promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural lands
- Ensure the commercial viability of Monterey County's agricultural industry
- Support growth management policies that encourage growth in or near developed or developing areas and away from valuable agricultural land

Attachment B Policy Input

- Meaningful Measure or “Value” of Loss of Agricultural Land
- Eligibility Criteria of Mitigation Receiving Site
 - Fair Market Appraised Value
 - Easement diminution value as agricultural conservation
 - Important Farmland
 - Gradient: (1)Prime; (2)Statewide Importance; Unique; Locally Important; and (3) Grazing/Rangeland)
 - Clear definition of “Prime” farmland
 - Location
 - All – Mitigate within Planning Area
 - Annexations, Community Areas, Rural Centers – Prioritize mitigate at urbanized/ag boundary
 - Blanco Drain Area – Prioritize mitigation in Blanco Drain Area
 - Quality & Character
 - Water source and quality
 - Other?

Policy Input

- Exceptions or Special Considerations
 - Exemptions - Required by AG-1.12
 - Acreage within project/annexation utilized for inclusionary housing
 - Community Plan or Rural Center Plan that includes a mitigation program
 - Exemptions – Other
 - Agricultural Support Services/Facilities
 - Agricultural Worker and Families Housing
 - Thresholds for Requiring Easement (“good faith”) versus In-Lieu Fees versus Other
 - Easement Required (“good faith offer(s)”) – 40 acres minimum
 - In-lieu Fee - Option to Easement = <40 to 10 acres; Only = <10 acres
 - Others?

Policy Input

- County encourage the following additional protection measures
 - Conservation of Soil at Development Sites
 - Improve or Create Farmland via Preservation of Prime Soils
- Other methods
 - Development (density)-dependent
 - Mitigation of Condemned Conservation Properties
 - Discourage County-sponsored conversion of agricultural lands

Attachment C

MONTEREY COUNTY
HOUSING AND COMMUNITY DEVELOPMENT
Erik V. Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

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MEMORANDUM

Scheduled Date: December 1, 2022

To: Agricultural Advisory Committee (AAC)

From: Melanie Beretti, AICP, Principal Planner *MSB*

Subject: **Agricultural Conservation Mitigation Program** – Consider establishing a Special Ad Hoc Committee or adding members to the existing Ad Hoc Subcommittee to work with staff to refine a Draft Agricultural Mitigation Ordinance.

cc: REF220044 Public Distribution List

ACTION:

Consider 1) Establishing a Special Ad Hoc Committee and appointing members to the Special Ad Hoc Committee or 2) Working with the existing Ad Hoc Subcommittee and adding members to the existing Ad Hoc Subcommittee to work with staff to refine policy options further so staff can return to the Agricultural Advisory Committee (AAC) and Planning Commission with a Draft Agricultural Mitigation Ordinance (draft ordinance).

SUMMARY:

Staff conducted a workshop with the Planning Commission (Commission) on October 26, 2022, with policy recommendations regarding the development of an Agricultural Conservation Mitigation Program (Program) to mitigate for the loss of agricultural lands due to development in the unincorporated inland areas of Monterey County (Staff report and attachments available at [County of Monterey - File #: PC 22-090 \(legistar.com\)](#)). At that meeting, staff presented policy recommendations and options for the Commission.

The Commission provided staff with general input and direction regarding the policy recommendations, and the Commission directed staff to return to the AAC to work through the draft policy prior to returning to the Commission in early 2023 with a draft ordinance. The Commission and staff discussed the possibility that the AAC could form a Special Ad Hoc Committee or utilize the existing Ad Hoc Subcommittee, which will work with staff from December 2022 through February 2023 to refine policy options that will form the draft ordinance. Staff would then present the draft ordinance to the AAC in early 2023 for a recommendation to the Planning Commission.

During the Planning Commission workshop, some members of the public requested that if the existing Ad Hoc Subcommittee is utilized, it should include participants with

Attachment C

experience working in production row-crop agriculture.

AAC INPUT AND/OR COMMENTS:

Staff recommends that the AAC consider one of the two (2) options below:

1. Establish a Special Ad Hoc Committee that is temporary and which would last for a duration that is less than six (6) months. Appoint members to the Special Ad Hoc Committee, which should have at most five (5) members (less than a quorum of the AAC). One (1) member should be a participant with experience working in production row-crop agriculture.
2. Recommend that staff work with the existing Ad Hoc Subcommittee of the AAC and begin reconvening regular meetings on the second Monday of the month, from 3:00 to 5:00 p.m. Staff recommends adding additional members to the Ad Hoc Subcommittee, specifically a participant with experience working in production row-crop agriculture. The existing Ad Hoc Subcommittee should have at most five (5) members (less than a quorum of the AAC).

Staff recommends that the AAC establish a Special Ad Hoc Subcommittee (temporary, for less than six [6] months) and appoint members to the Special Ad Hoc Subcommittee or add members to the existing Ad Hoc Subcommittee to work with staff to refine policy options further so staff can return to the AAC and Planning Commission with a draft ordinance.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti, AICP, Principal Planner, at (831) 755-5285 or at berettim@co.monterey.ca.us

NEXT STEPS:

Based on feedback from the AAC, staff will work with a Subcommittee of the AAC according to one (1) of the options described above as selected by the AAC, from December 2022 through February 2023 to prepare a Draft Agricultural Mitigation Ordinance for consideration by the Planning Commission in early 2023.