

LOCAL AGENCY FORMATION COMMISSION
P.O. Box 1369 132 W. Gabilan Street, Suite 102
Salinas, CA 93902 Salinas, CA 93901
Telephone (831) 754-5838 www.monterey.lafco.ca.gov

Kate McKenna, AICP
Executive Officer

CORRESPONDENCE

Correspondence regarding October 23, 2023, LAFCO Meeting Agenda Item No. 6 – Review of LAFCO’s Policies and Implementation Practices for Agricultural Preservation and Mitigation.

After distributing the agenda packet for the October 23 LAFCO meeting, LAFCO received correspondence from the City of Gonzales.

Attachments:

1. Letter from City of Gonzales
2. Memo to C. Gill re Ag. Mitigation
3. Gonzales Chapter 12.150 Agricultural Resource Mitigation
4. Memo from Rene Mendez re: Affordable Housing

From: Taven Kinison Brown <TKinisonBrown@ci.gonzales.ca.us>
Sent: Monday, October 16, 2023 3:59:46 PM
To: mgourley@sbcglobal.net <mgourley@sbcglobal.net>; kimbleyc@ci.salinas.ca.us <kimbleyc@ci.salinas.ca.us>; 100-District 5 (831) 647-7755 <district5@co.monterey.ca.us>; 100-District 4 (831) 883-7570 <district4@co.monterey.ca.us>; 100-District 2 (831) 755-5022 <district2@co.monterey.ca.us>; mleffel@montereyairport.com <mleffel@montereyairport.com>; ioglesby@ci.seaside.ca.us <ioglesby@ci.seaside.ca.us>; wpoitrasmc@gmail.com <wpoitrasmc@gmail.com>; avelazquez@cityofsoledad.com <avelazquez@cityofsoledad.com>; greenfielddoakpark@gmail.com <greenfielddoakpark@gmail.com>; mike@seatec.us <mike@seatec.us>
Cc: Carmen Gil <cgil@ci.gonzales.ca.us>; Gallogly, Reed <GalloglyRW@co.monterey.ca.us>; aflores <aflores@ci.gonzales.ca.us>; Mary Villegas <mvillegas@ci.gonzales.ca.us>
Subject: For Consideration by the Monterey County LAFCo, from the City of Gonzales

Dear Monterey County, LAFCo Commissioners and Alternates:

The City of Gonzales would like to share a Memo from an active development interest we have in the City who has stuck with the City over many years in hopes of completing a comprehensive Specific Plan for development within the City's Sphere of Influence. This Master Developer (Pembroke) is in support of the City's Agricultural Resource Mitigation Ordinance and believes it to be fair and balanced (including the timing of Ag Mitigation phased with actual land and soil changes, not upon legislative or jurisdictional actions).

As background, I also have attached a memorandum from former City Manager, Rene Mendez who has characterized what the City and developer hope to realize in this well-planned-for sphere of influence area. To support housing on these lands, in this manner, is to support the sustainability of agriculture by providing needed new roofs for our valley-wide agricultural workforce and the children of the parents and grandparents who have hoped to find a way to live in Gonzales and the Salinas Valley.

Thank you, for your time,



Taven M. Kinison Brown

Community Development Director

City of Gonzales

147 Fourth St. | P.O. Box 647

Gonzales, CA 93926

Cell: 831.675.4203

Main: 831.675.5000

Email:

tkinisonbrown@ci.gonzales.ca.us

Small town, big heart! ~ ¡Pueblo chico, corazón grande!

The logo for Hardt Mason Law, featuring the text "Hardt Mason Law" in a white, serif font centered within a dark gray rectangular background.

Memo

To: Carmen Gill, Brent Slama, Taven Kinson Brown

From: Katharine Hardt-Mason

cc: Glenn Pace, David Pace, James Pace

Date: October 6, 2023

Re: Agricultural Mitigation/LAFCo and County Policies

As you know, at the LAFCo meeting on August 28th, the Board agreed to consider the contents of a new Agricultural Mitigation Policy (the “LAFCo Policy”) applicable to the annexation of County land into city limits at its October 2023 meeting. At that meeting, it is likely that LAFCo will consider a number of items, many of which are included in the City of Gonzales Agricultural Resource Mitigation Policy (the “City’s Policy”). The purpose of this Memorandum is to outline the benefits of the City’s Policy and why LAFCo, if it decides not to allow the use of a city’s agricultural mitigation policy for annexation of property into a cities’ limits, should adopt a policy similar to the City’s Policy.

In summary, the City’s Policy is legally binding on all new development projects which require a discretionary land use permit and have an impact on agriculture, subject to certain exemptions (City Policy Section 12.150.040A and Section 12.150.040D). The City’s Policy requires mitigation to occur when the actual impact occurs and provides several mitigation options (City Policy Section 12.150.080D and Section 12.150.040B). The City’s Policy contains the items that LAFCo identified as appropriate for discussion at their October meeting: Timing of Mitigation, Types of Mitigation, and Exemptions to Mitigation. With that in mind, the following is offered for your consideration in discussing the LAFCo Policy with other interested parties and the LAFCo Commissioners¹:

1. Timing of Mitigation

- Tying Mitigation to Impact. The mitigation of environmental impacts is generally tied to when the impact occurs. In the case of mitigating agricultural impacts, the impact occurs

¹ Please note that this Memorandum is not a legal opinion and is not intended to provide legal advice, rather it is being offered to provide support to the City’s message to the County and LAFCo.

when the property can no longer be used for agricultural purposes. This does not mean that the decision-making body cannot condition approval of a project and the later implantation of agricultural mitigation, but rather the actual mitigation should be tied to the conversion of agricultural land to another purpose.

The City's Policy requires both the Planning Commission and the City Council to approve proposed mitigation for the conversion of agricultural land prior to or concurrent with the request for a permit or other approval of a project involving conversion of land (City Policy Section 12.150.080(A-C)). The mitigation must be completed prior to the start of any activity on the property which will interfere with agricultural practices on the property (City Policy Section 12.150.080(D)). In other words, prior to issuing a grading permit or other approval which would result in the property being removed from agricultural production, the Planning Commission and City Council must approve the proposed mitigation, and no activity can occur on the property which removes the property from agricultural production until the foregoing has occurred. This balanced approach protects against the destruction of agricultural land before mitigation has been put in place, and most importantly, recognizes that until the actual conversion of agricultural land occurs, there is no loss to the agricultural community.

- Problem with Tying Mitigation to Annexation. LAFCo's current policy requires mitigation to occur before property is annexed into city limits. Neither property owners nor developers can afford to mitigate an impact which not only has not occurred at the point of annexation, but may not occur for years into the future. The upfront cost of creating agricultural easements or paying mitigation fees for master planned communities will "kill" most master planned projects before they are even started. Agricultural easements, impact fees, and other types of mitigation for these types of projects will cost millions of dollars, money that the property owners and developers are unlikely to have until the project has been fully approved and development can commence.

The approval of annexation by LAFCo is no different than the approval of a specific plan, a development agreement, or a tentative map by a municipality. None of these actions allow the property owner to change the physical condition of the property, but rather provide an opportunity to change the physical condition of the property at a later date. Not until a grading or building permit is issued does the property owner have the right to physically change the property, which is the point at which agricultural use of the property ceases.

An example of this issue in Gonzales is the D'Arrigo property within city limits. The tentative map approved for the property over ten years ago did not give D'Arrigo the right to physically alter the property, but rather the right to apply for a grading or building permit which would have resulted in the cessation of agricultural use. If D'Arrigo had been required to pay agricultural mitigation fees when the tentative map was approved, the City would have benefitted from the mitigation fees for over ten years while the property continued to be farmed due to a change in the market.

- Certainty. LAFCo’s rationale for requiring mitigation of agricultural impacts before certification of annexation is to ensure that mitigation occurs. LAFCo’s fear appears to be that cities might elect not to enforce their agricultural mitigation policies once properties are annexed into city limits. The City’s Policy, however, prevents this from happening.

As stated above, the mitigation must be complete before any activity can occur on the property contrary to agricultural uses. If a city does not have an agricultural mitigation policy, but the County does, the County should be responsible for enforcement. There is nothing which requires that LAFCo adopt and/or enforce an agricultural mitigation policy. While LAFCo is charged with balancing the interests of agriculture against the need for development, almost all mitigation resulting from development is enforced by the local jurisdiction. There is no reason that agricultural impacts should be treated any differently.

2. Types of Mitigation

- Mitigation Options. There are a range of agricultural mitigation options. The City’s Policy includes not only the payment of in-lieu fees, but acquisition of agricultural easements both on-site and off-site, the purchase of banked mitigation credits, and other approaches as approved by the City (Section 12.150.040).

Although the City has yet to set the in-lieu fee, the City’s Policy states that the in-lieu fee will be set, “updated with other City Impact Fees... and kept current on a regular basis.” (Section 12.150.040(B)(4)). The foregoing ensures that the fees collected will enable the City to acquire agricultural easements, which is what generally these fees are used for. For many reasons (see below), however, agricultural mitigation in-lieu fees may have to be used for other agricultural purposes in the future, which could result in an adjustment to the fee.

As suggested in the Memorandum of Agreement between the City and the County, in-lieu fees should be available for uses other than the acquisition of agricultural easements (Memorandum of Agreements Section 6.3.6). If the intent of collecting this fee is to ensure the long-term viability of agricultural production, why not use the fees for the “other approaches” as may be approved by the City, such as high school classes focused on the future of farming or a satellite CSUMB campus which offers programs in agricultural land management?

Providing a range of agricultural mitigation options recognizes the need for flexibility as the economy and environment changes. The options offered by the City provide a well-balanced approach to protecting and promoting agricultural production while at the same time ensuring housing for the agricultural community.

- Limited Options. Presently, LAFCo allows only for the acquisition and dedication of agricultural easements by the property owner/applicant which must be in place prior to certification by LAFCo of any annexation. As discussed during the LAFCo meeting and

above, not only is the timing an issue, but there is concern with the lack of land available which can be encumbered by agricultural easements.

In order for an agricultural easement to be put in place, the property owner must be willing to permanently encumber their property and agreeable to the sum offered for the same. As seen with the Soledad annexation, many property owners are simply not willing to permanently encumber their property with an easement which restricts use of their land. While the land may not ever be used for a purpose other than agriculture, an easement in perpetuity forever limits use of the land to agricultural purposes. Although there is abundant agricultural land within the County, the acquisition of easements takes a tremendous amount of time, is costly, and is becoming more and more difficult to negotiate due to there not being an interest by property owners to encumber their property.

3. Exemptions

- The City's Policy: Exemptions. The City's Policy includes three categories of exemptions: Affordable Housing, Land Converted for Public Uses, and City Projects (Section 12.150.040D). The reasons for exempting each of these categories from the obligation to comply with the City's Policy are clear: these uses provide a public benefit which addresses a public need that outweighs the need to protect agriculture. Although exemptions are not required, without certain exemptions it is unlikely that certain facilities will be constructed.
- Affordable Housing. The State of California has mandated the construction of new housing, which through the Association of Monterey Bay Area Governments trickles down to individual municipalities. Unfortunately, State funding for affordable housing is limited and often covers only the cost of construction. As a result, affordable housing builders do not have the funds to cover the acquisition of land or impact fees. To encourage affordable housing, many municipalities waive impact fees and encourage the donation of land by property owners. The City's Policy does not exempt all affordable housing from the obligation to mitigate agricultural impacts, but rather only for Very-Low Income and Low Income housing projects (Section 12.150.040.D1). Without this support, meaning exemptions to certain municipal costs, affordable housing construction is less likely to occur.

While LAFCo's demand is to balance the interests of agriculture to the need for housing and other development, to date LAFCo has shown a bias towards the protection of agricultural land to the detriment of new housing. Large scale housing projects are unlikely to occur in the County; through its general plan, the County has directed new housing developments to the cities. Given that cities are tasked with providing sites for all new housing, including affordable housing, and the lack of funding for affordable housing, this exemption is crucial to the construction of new affordable housing units.

- Public Uses and City Projects. The purpose of agricultural mitigation is to ensure the long term production of agricultural crops. While the acquisition of agricultural land is the best

way to do this (and the only form of agricultural mitigation that is currently recognized by the courts as providing one for one mitigation), there are other ways to protect agriculture, including creating buffers and barriers between development, and open space, trails and other open spaces for the public (which keep people off of agricultural land). The County requires barriers and buffers between new development and agricultural land and encourages more open spaces for people to walk. In other words, these types of uses will mitigate impacts to adjacent and nearby agricultural land. Property owners and developers should not be required to mitigate agricultural impacts twice.

As for schools and other city projects, which the City's Policy also exempts from the obligation to mitigate agricultural impacts, schools and public facilities are necessary for a healthy and vibrant community, all of which benefit farm workers and their families. Along with these facilities often comes the need for new or upgraded infrastructure. Adding an obligation to mitigate for agricultural impacts would only create additional barriers to the construction of these needed facilities.

Finally, it is important to note that LAFCo is not required to have an agricultural mitigation policy. Instead, when considering an annexation LAFCo could require compliance by the property owner with either the agricultural mitigation policy of the city into which the property is being annexed or, if the city did not have an agricultural mitigation policy, the agricultural mitigation policy of the County.

Projects which are proposed for annexation into a city which has an agricultural mitigation policy should not be held at bay while both LAFCo and the County work on this issue. The City and the County agreed per the Memorandum of Agreement that the City would prepare an agricultural mitigation policy to be used for annexation of property into city limits, which it did. LAFCo approved the City's Sphere of Influence request in 2014 based on the Memorandum of Agreement, and should honor the Memorandum of Agreement entered into between the City and County, by allowing for application of the City's Policy to all proposed annexations into city limits. To disregard the agreed upon direction set forth in the Memorandum of Agreement will further chill development, resulting in a continued lack of housing in Monterey County.

CHAPTER 12.150
AGRICULTURAL RESOURCE MITIGATION

SECTION:

[12.150.010: Purpose And Findings](#)

[12.150.020: Title Of Chapter](#)

[12.150.030: Definitions](#)

[12.150.040: Mitigation Obligation](#)

[12.150.050: Reserved](#)

[12.150.060: Requirements For Agricultural Mitigation Easements](#)

[12.150.070: Requirements For Qualified Entities](#)

[12.150.080: Approval And Completion](#)

[12.150.090: Miscellaneous](#)

12.150.010 PURPOSE AND FINDINGS:

A. This chapter is adopted under the city'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.

B. Agriculture is a crucial component of the city's economy and cultural heritage. Agriculture provides numerous jobs for city residents and substantial tax revenue for the city.

C. Agricultural lands within and adjacent to the city contribute to our national food security and are an essential foundation of the city's agricultural economy.

D. Most of the nonurbanized soils within the Gonzales planning area are classified as "prime" based on the State Department of Conservation's Important Farmlands Inventory and as "Class I" or "Class II" based on the SCS Land Capability System. These classifications are based on a variety of factors, such as drainage, salinity, slope, thickness, permeability, and susceptibility to erosion. Those local soils not classified as prime are classified as "soils of statewide significance." In Gonzales, the yields per acre are comparable on both the prime soils and the soils of statewide significance. (City of Gonzales General Plan Conservation and Open Space Section, January 2011)

E. Requiring agricultural conservation easements over an equal area of comparable agricultural land to compensate for those that are to be developed, provides protection for the stock of agricultural land.

F. New development also benefits from the conservation of agricultural land that supports the overall economy and culture of the city.

G. As the city must balance the need for agricultural land conservation with other public goals, prohibiting the conversion of agricultural land in some circumstances will not be in the best interest of the people of the city. An overriding consideration in balancing other public goals may include the city's needs to facilitate housing, commercial, industrial, and infrastructure development, and habitat restoration.

H. To balance these competing public purposes, the city council has determined that it is in the best interest of the people of the city to allow some 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 proximate to the city.

I. Policy COS 4.2 of the City of Gonzales General Plan – Agricultural Easements includes Implementing Action COS-4.2.1. Require new development to contribute to the cost of purchase of permanent agricultural easements beyond the permanent agricultural edges identified in the Land Use Diagram.

J. Policy COS 4.3 of the City of Gonzales General Plan – No Urbanization Outside of Growth Area includes Implementing Action COS-4.3.3 – Agricultural Impact Fund. Establish an agricultural impact mitigation fund structured to purchase agricultural easements on lands shown on the Land Use Diagram as adjacent to but outside the general plan growth area boundary.

K. In some circumstances, it may be appropriate to implement a method of mitigation other than directly obtaining agricultural conservation easements over comparable agricultural land or paying in-lieu fees, if the alternative method of mitigation would provide a comparable mitigation benefit. This chapter accordingly provides development applicants alternatives.

L. This chapter is further intended to foster coordination and cooperation by the city with the county of Monterey as embodied in the March 25, 2014 Memorandum of Agreement (2014 MOA) that requires that these two (2) entities work cooperatively on common planning, growth, and development issues in the city.

M. The 2014 MOA was signed by both parties and demonstrates basic agreements with the

county regarding future planning, growth and development issues in and around the city.

N. The 2014 MOA demonstrated agreement along eight (8) major principles in several sections, including Section 6 – Agricultural Land Conservation Program.

O. In Section 6 – Agricultural Land Conservation Program of the 2014 MOA, the city agreed to implement an agricultural land conservation program for development of land within the city's urban growth boundary/sphere of influence (UGB/SOI).

P. This chapter satisfies components of the city's agricultural land conservation program. (Ord. 2023-136, 4-17-2023)

12.150.020 TITLE OF CHAPTER:

This chapter shall be entitled "Chapter [12.150](#) Agricultural Resource Mitigation." References herein to "ordinance" shall refer to this chapter. (Ord. 2023-136, 4-17-2023)

12.150.030 DEFINITIONS:

A. "Development project or discretionary land use approval" means any project requiring a discretionary land use permit from the city including but not limited to a subdivision, conditional use permit, design review permit, or sign permit.

B. "Permanent agricultural edge" means the area depicted in the Gonzales 2010 General Plan at page II-47 which the city intends to permanently protect for agricultural use.

C. "Agricultural mitigation easement" means a perpetual easement or servitude, comparable to a conservation easement, as provided for in sections 815 through 816 of the Civil Code, or an open space easement, provided for in sections 51070 through 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 chapter.

D. "Agricultural land" means land that is either currently in agricultural use or substantially undeveloped and capable of agricultural use.

E. "Agricultural use" means use of land to produce and process food, fiber, or livestock for commercial purposes. For purposes of this chapter, farm worker housing is considered an agricultural use in keeping with state law.

F. "Conversion" means conversion of agricultural land to a nonagricultural use. Conversion includes but is not limited to: "rough" and formal grading for development for nonagricultural uses including the installation of roads anticipated for new development, the installation of utility

structures and conveyances, the preparation of building pads and supporting infrastructure systems, and the removal of soil cover or the contamination of those soils. Conversion to a nonagricultural use includes those activities and uses that will result in the physical inability to farm the protected soils of the property.

G. "Qualified entity" means an entity qualified to hold agricultural conservation easements in compliance with this chapter, including but not limited to an agricultural land trust, which entity has been approved by the city council concurrently with approval of a development project's agricultural mitigation required by this chapter or which has been approved by the city council for a different development project in the past five (5) years. A qualified entity must demonstrate sufficient background and experience in holding and maintaining agricultural or other conservation easements. (Ord. 2023-136, 4-17-2023)

12.150.040 MITIGATION OBLIGATION:

A. Conversion Of Land Requiring Mitigation:

1. The city shall require agricultural mitigation as a condition of approval of any development project or discretionary land use approval that proposes conversion of agricultural land to a nonagricultural use, regardless of the land use designation or zoning applicable to the land.

2. Temporary Uses Of Agricultural Land: The need for agricultural mitigation for temporary uses of agricultural land will be considered by the city of Gonzales on a case-by-case basis. Such uses may include the parking of vehicles, trailers, equipment, baker tanks, rigs, and other accessory activities in general support of farming practices, or special events as may be approved by the city. In determining the need for mitigation, the city will consider whether the proposed temporary use allows for the timely, purposeful and deliberate return of the property to its farmland utility.

B. Required Mitigation: Where agricultural mitigation is required pursuant to subsection A of this section, the following mitigations shall be available to a project applicant, subject to final approval by the city:

1. Offer on-site agricultural mitigation easements. Agricultural mitigation easements may be offered on the development project site consistent with the requirements of section [12.150.060](#).

2. Purchase and/or otherwise provide agricultural mitigation easements off site. Agricultural mitigation easements may be offered at a location other than the development project site consistent with the requirements of section [12.150.060](#).

3. Purchase agricultural banked mitigation credits. A development project can purchase agricultural mitigation credits from a qualified entity or the city, if available. Purchased credits must ensure that the amount of land preserved via the credit (in acres) is equivalent to the amount of land converted by the development project.
4. Pay a fee in lieu of preserving agricultural land. This amount shall be verified through appropriate independent city appraisal funded by the development project. In-lieu fees for agricultural mitigation will be updated with other city impact fees and schedules and kept current on a regular basis by the city. In-lieu fees will be collected and deposited into the agricultural impact mitigation fund. Fees in lieu will be collected by the city and used for city-sponsored programs in support of agriculture.
5. Implement another approach as approved by the city. A development project may propose another approach to be approved by the city council, or combination of the above options, that:
 - a. Results in the preservation of the same acreage of agricultural land that is converted which is proximate to the city of Gonzales; or
 - b. Includes agricultural mitigation easements in the permanent agricultural edge.

C. Development Projects Responsible For Compliance: Development project applicants must comply with this chapter. It is the development project's responsibility to secure agricultural mitigation pursuant to this chapter, and/or to pay fees in lieu that satisfy the requirements of this chapter.

Nothing in this chapter shall be construed to compel a development project to convey to the city or to a qualified entity an agricultural conservation easement on property owned by the applicant.

D. Exemptions:

1. Affordable Housing: The city council shall exempt from the requirements to mitigate the conversion of prime farmland those specific land areas reserved to house persons of very low income (less than fifty percent (50%) of AMI) and low income (fifty to eighty percent (50 to 80%) of AMI).
2. Land Converted For Public Uses: Agricultural land converted for the following public uses are exempt from the mitigation obligation imposed by this chapter: schools, public parks or public recreational facilities, permanent natural open space, trails and developed open spaces that are open to the public. (Fenced detention or retention basins are not exempt.)

3. City Projects: City projects and city-initiated zoning and/or general plan amendments are exempt from the mitigation obligation imposed by this chapter.

E. Excess Mitigation And Credits:

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.

2. Any excess area encumbered with the agricultural conservation easement shall fully comply with all requirements of this 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 subsections A and B of this section.

3. The city's community development 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. (Ord. 2023-136, 4-17-2023)

12.150.050 RESERVED:

(Ord. 2023-136, 4-17-2023)

12.150.060 REQUIREMENTS FOR AGRICULTURAL MITIGATION EASEMENTS:

A. Agricultural mitigation easements shall be held in perpetuity by a qualified entity, as defined in this chapter.

B. Per the 2014 MOA with the county of Monterey, priority areas for the establishment of agricultural mitigation easements to perfect the permanent agricultural edge, including those eight (8) properties depicted in the Gonzales 2010 General Plan at page II-47.

C. Agricultural mitigation easements shall be comprised of the type and quality of soil comparable to the agricultural land converted and shall consist of a minimum of the same acreage of land converted and may include more.

D. The city shall not approve proposed agricultural mitigation easements unless it finds that the easements comply with each of the following requirements:

1. Location: Either:

- a. The agricultural mitigation easement is located within the planning area of the city as shown in land use maps of the city's general plan as may be amended from time to time;
or
 - b. The agricultural mitigation easement is within five (5) miles of the city's boundary, and the applicant has demonstrated that the mitigation land contributes to the city's agricultural economy.
2. Existing Interests And Encumbrances: The agricultural mitigation easement 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.
 3. Public Ownership: The mitigation land is not owned by any public agency.
 4. Activity Specified: The type of agricultural related activity allowed on the agricultural mitigation easement is specified in the easement, and the easement prohibits land uses or activities that substantially impair or diminish the agricultural productive capacity of the land.
 5. Declaration Of Mitigation Intent: The agricultural mitigation easement declares that it is intended to satisfy the mitigation obligation imposed by this chapter and that it is subject to the requirements set forth in this chapter.
 6. Runs With The Land: The agricultural mitigation easement must run with the land and bind successor owners of the land in perpetuity. The agricultural mitigation easement must also provide 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 the city.
- E. Amendments To Agricultural Mitigation Easements: After the city has approved an agricultural mitigation easement, the easement shall not be amended without further approval by the city council and compliance with any approval requirements imposed by the Attorney General of the State of California for the amendment.
- F. Extinguishment: If a court issues a judgment declaring that the purposes of this chapter can no longer be fulfilled by enforcement of an agricultural mitigation easement, the qualified entity holding

that easement may extinguish the easement by selling it to the fee owner of the mitigation land, if (1) the action was contested, and the judgment was not entered pursuant to stipulation, or (2) the city of Gonzales was a party to the action and stipulated to the judgment. In the event of such a sale, the qualified entity shall use the proceeds of sale to acquire an agricultural conservation easement or other mitigation land in compliance with this chapter. (Ord. 2023-136, 4-17-2023)

12.150.070 REQUIREMENTS FOR QUALIFIED ENTITIES:

A. To be considered a qualified entity, an entity must (1) be a nonprofit public benefit corporation operating within the county of Monterey 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 (2) be approved by the city for the purpose of holding and managing agricultural conservation easements.

B. Approval Criteria: In considering whether to approve an entity as a qualified entity, the city shall consider the following criteria:

1. Whether the entity's principal purpose includes holding and administering easements for the purposes of conserving and maintaining lands in agricultural production; and
2. Whether the entity has an established record of holding and administering easements for the purposes of conserving and maintaining lands in agricultural production; and
3. The extent and duration of the entity's involvement in agricultural land conservation within the county of Monterey; and
4. Whether the entity has been accredited by the Land Trust Accreditation Commission; and
5. Whether the entity is a member in good standing of an established and widely recognized California statewide association of land trusts.

C. Although the city may hold agricultural conservation easements, it is the intent of the city to transfer most, if not all, of the easements that are received under this chapter to a qualified entity for monitoring, management, and enforcement.

D. No qualified entity shall sell, lease, hypothecate, or encumber any interest in any agricultural mitigation easement within the sphere of influence of the city without the prior approval of the city council.

E. 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 the city.

F. **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.

G. **Reporting:** On or before December 31 of each year after a qualified entity is approved by the city council, the entity shall provide to the city of Gonzales community development director an annual report describing the activities undertaken by the entity under this 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 the city. (Ord. 2023-136, 4-17-2023)

12.150.080 APPROVAL AND COMPLETION:

A. All mitigation proposed by an applicant to comply with this chapter shall be reviewed by the planning commission for consistency with the terms and purposes of this chapter. The planning commission shall recommend approval, conditional approval, or disapproval to the city council. 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 [12.150.060](#).

B. The city council shall consider the planning commission's recommendation and shall either approve, conditionally approve, or disapprove the proposed mitigation.

C. The city shall not issue any permit or other approval for any project involving a conversion subject to the mitigation obligation under this chapter unless the city council has previously approved proposed mitigation in compliance with this chapter.

D. **Completion Of Mitigation:**

1. The applicant for conversion must complete all required mitigation prior to initiating any activity resulting in interference with agricultural practices on the property subject to conversion. The city shall not issue any building, grading, or encroachment permits until mitigation has been completed.

2. Mitigation shall be deemed complete when the approved agricultural mitigation 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 the city provides the applicant with a letter indicating that mitigation is complete. (Ord. 2023-136, 4-17-2023)

12.150.090 MISCELLANEOUS:

- A. The provisions of this 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 city shall apply the chapter to avoid such unconstitutionality or illegality.
- B. If any portion of this chapter is held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter. The city council declares that it would have enacted this chapter and each section, subsection, paragraph, sentence, clause, or phrase thereof even if a portion of the chapter were declared unconstitutional.
- C. Nothing in this chapter shall be construed to abridge or narrow the city's police power. The city 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. (Ord. 2023-136, 4-17-2023)

City Affordable Housing Background

Through the sound planning principles set forth in the existing and prior General Plans, including the Housing Elements, the City of Gonzales has continually strived to meet the affordable housing demands of its residents. Currently, within city limits there are 1,985 dwelling units: 190 dwelling units are owned or rented by extremely low income households, 175 are owned or rented by very low income households, and 590 dwelling units are owned or rented by low income households. (City of Gonzales 2015-2023 Housing Element, Page IV-21, Table IV-14)

To create a balanced approach to housing in the future, the City initiated the “Neighborhood-Centered Growth” concept (City of Gonzales 2010 General Plan, Chapter II: Land Use, Page II-19), which focused on “affordability by design.” (City of Gonzales 2010 General Plan, Chapter IV: Housing, Page IV-55) The goal of these concepts is to build neighborhoods comprised of “a variety of housing types that create an interesting residential character suited to a variety of living situations and income status.” Within a 3/8 mile radius, each neighborhood should include a school, a central park, neighborhood-serving commercial, and civic/public uses, all of which are intended to provide those services needed to support housing for all income levels.

These concepts require that all new development results in an overall minimum average density of 7 dwelling units per acre. (City of Gonzales 2010 General Plan, Chapter II: Land Use, Page II-38) To reach this goal, the City requires that at least 15% of all new development be zoned high density (15-24 du/acre of attached housing), at least 15% be zoned medium-high density (9-15 du/acre of attached and detached housing), and at least 15% be zoned medium density (6-9 du/acre) (City of Gonzales 2010 General Plan, Chapter II: Land Use, Page II-38). At these zoning densities, low and very low income households will be served by dwelling units constructed within the high density category (primarily rental units), low and moderate income households will be served by dwelling units constructed in the medium-high density category (rental and for-sale units), and workforce (above moderate) income households will be served by dwelling units constructed within the medium density category (primarily for-sale units).

Vista Lucia Affordable Housing Plan

Vista Lucia has been designed to not only meet, but exceed, the goal of providing commercial and public services and a mix of residential housing to serve residents of every income status within each Neighborhood. Both of the Vista Lucia Neighborhoods include at least one school site, a neighborhood green, a central park, and multiple smaller parks and walkways, a neighborhood commercial center, and the option for several civic and public facilities. In general, the housing closest to the community core of each Neighborhood is the densest, which is intended to serve those households with limited means to access commercial and public facilities, and is less dense towards the perimeter of the Project where alternative transportation might be needed to access these types of facilities. Several miles of planned landscape corridors and promenades, however, will link the entire community, creating a sense of place and connectivity for all residents. Using the “affordable by design” concept, Vista Lucia will provide up to 3,498 residential dwelling units:

- 724 dwelling units are projected to be multi-family units within both the Vista Lucia Neighborhood Residential High density zoning district (15-24 dwelling units per acre) and the Vista Lucia Neighborhood Commercial/Mixed Use density zoning district (7-15 dwelling units per acre).
 - 620 dwelling units are projected as traditional multi-family units and approximately 104 dwelling units will be mixed-use residential units in the commercial areas.

- One of the goals of this zoning district is to provide housing opportunities to very low and low income households.
- These dwelling units will be primarily “for rent.”
- These dwelling units account for approximately 21% of the total project.
- 540 dwelling units will be multi-family and single family attached and detached units on small lots within the Vista Lucia Neighborhood Residential Medium-High density zoning district (9-15 dwelling units per acre).
 - One of the goals of this zoning district is to provide housing opportunities to moderate income households.
 - These dwelling units are expected to be both “for rent” and “for sale.”
 - These dwelling units account for approximately 15% of the total project.
- 1,239 dwelling units will be single family detached units on small to medium size lots within the Vista Lucia Neighborhood Residential Medium density zoning district (6-9 dwelling units per acre).
 - One of the goals of this zoning district is to provide housing opportunities to Workforce (above moderate) income households.
 - These dwelling units are expected to be both “for rent” and “for sale.”
 - These dwelling units account for approximately 35% of the total project.
- 995 dwelling units will be single family detached units on medium to large size lots within the Vista Lucia Neighborhood Residential Low density zoning district (3-6 dwelling units per acre).
 - Depending on the affordability limits established by Monterey County Housing, some of these units will provide affordable housing opportunities for workforce (above moderate) income households.
 - These dwelling units are expected to be “for sale.”
 - These dwelling units account for 29% of the total project.

The foregoing demonstrates Vista Lucia’s compliance with the City’s “affordability by design” concept. At each zoning density, Vista Lucia meets or exceeds the percentage of dwelling units required within each density type. More importantly, assuming the Association of Monterey Bay Area Governments assigns the City an obligation to provide 800 very low and low income affordable housing units, Vista Lucia will provide over 50% of the dwelling units needed to meet all of the City’s obligation to provide dwelling units to very low and low income households and more dwelling units will be available to moderate income and workforce households than are required to meet all of the City’s obligation to provide the same. In other words, the City’s “affordability by design” concept will achieve the goal of providing a “variety of housing types” for a “variety of living situations and income status.”

To ensure that the needs of very low and low income households are met, 19.2 acres within the high density zoning category will be donated to qualified affordable housing builders or the City. Dedication of this land will provide affordable housing builders the opportunity to construct up to 422 multi-family dwelling units which will be made available to households which qualify as meeting the very low and low income criteria. Within Neighborhood One, approximately 12 acres has been identified for this purpose. The land to be dedicated within Neighborhood One is near the community core and close to the first phase of development. This approximately 12 acre parcel will be dedicated to an affordable housing builder or the City when the infrastructure necessary for development of the parcel is in close proximity and upon request for dedication from an affordable housing builder or the City. The second parcel, approximately 7 acres will be dedicated concurrent with development of Neighborhood 2.

Additionally, to provide housing for which moderate and workforce households will qualify, a tentative map for property within the medium density category will be submitted to the City following approval of the first two tentative maps, both of which will be processed with this Specific Plan. This third tentative map for medium density housing will provide for approximately 123 lots and is intended to produce housing for which moderate and workforce households will qualify.

The planning elements set forth in the General Plan, which will be implemented through the Specific Plan, are but one way to address affordable housing. Outside of providing affordable housing opportunities, the City will work with the Master Developer and builders in preparing a program to market and assist with financing the affordable housing opportunities created by Vista Lucia to residents of Gonzales. The Vista Lucia Affordable Housing Program will include:

- a homebuyer education program;
- a targeted marketing campaign to alert households which are eligible for affordable housing of housing units to be constructed within Vista Lucia;
- the obligation of the City to keep a list of households which are eligible and interested in affordable housing, a copy of which will be provided by the City to all builders constructing dwelling units for which affordable housing households are eligible;
- the obligation of builders constructing units for which affordable housing households qualify to notify such households on the list maintained by the City of such housing units prior to opening the same to the general public; and
- a pre-qualification and lending program for affordable housing households, to the extent a local bank/mortgage broker is available to provide the same.

The Vista Lucia Affordable Housing Program will be prepared and implemented by the City, with the assistance of the Master Developer and builders, prior to the first affordable housing units being available to the public.

Through implementation of the planning principles set forth in the Vista Lucia Specific Plan, the City's General Plan, the City's Housing Element, and the Vista Lucia Affordable Housing Program, affordable housing opportunities will be provided within Vista Lucia.

Development of the remaining property within the City, assuming that these same principles are applied, will result in more than double the number of affordable housing units which the development of Vista Lucia will include. Collectively, the planned residential development within the City will create a more balanced mix of housing which provides rental and ownership opportunities to a variety of income levels; all of which is being planned consistent with the Neighborhood Centered Growth and Affordable by Design concepts set forth in the City's 2010 General Plan and the City's 2015-2023 Housing Element, and general principles of sound land planning for socially integrated and economically thriving communities.