

THE LOCAL AGENCY FORMATION COMMISSION OF MONTEREY COUNTY

RESOLUTION NO. 24-03

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
AMENDING LAFCO'S POLICY FOR PRESERVATION OF OPEN-SPACE AND
AGRICULTURAL LANDS BY ADDING POLICY IMPLEMENTATION GUIDELINES
REGARDING AGRICULTURAL MITIGATION ACTIONS FOR CITY ANNEXATIONS
OF FARMLAND, AND RELATED POLICY REFINEMENTS

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code section 56000 et seq.) contains provisions granting LAFCOs the authority to consider and provide for the preservation of open space and agricultural lands; and

WHEREAS, a LAFCO is specifically charged in some instances with protecting open space and agricultural land; and

WHEREAS, a LAFCO is charged with considering specific circumstances affecting open space or agricultural land when making a decision; and

WHEREAS, while a LAFCO has considerable authority to provide for the preservation of open space and agricultural land, it may not directly regulate land use; and

WHEREAS, the Commission adopted a Policy on Preservation of Open Space and Agricultural Lands on January 25, 2010; and

WHEREAS, the Commission wishes to augment the existing Policy with Policy Implementation Guidelines to provide guidance on how impacts to farmland should be addressed and mitigated in City annexation applications and their related CEQA documents; and

WHEREAS, LAFCO scheduled a workshop on agricultural preservation and mitigation, with opportunities for public comment, at a noticed special meeting on November 27, 2023 and provided notification to a wide range of interested parties; and

WHEREAS, on November 27, 2023 the Commissioners reviewed and discussed the adopted Policy, a set of staff-prepared options for the Commission to consider as part of developing a set of Policy Implementation Guidelines, recommendations submitted by Salinas Valley City representatives, correspondence from property owners, and other related information; and

WHEREAS, the Commission continued the workshop to the regular December 4, 2023 meeting to allow for additional review and discussions among the Commission; and

WHEREAS, as part of the December 4, 2023 meeting, the Commission provided direction to staff on specific agricultural mitigation-related provisions to be developed by staff into a draft set of Policy Implementation Guidelines for the Commission's consideration at the January 22, 2024 regular meeting; and

WHEREAS, staff prepared draft Guidelines based on the Commission's direction provided at the December 4, 2023 meeting, and publicly circulated the draft Guidelines as part of the meeting packet for January 22, 2024; and

WHEREAS, on January 22, 2024 the Commission reviewed and discussed the draft Guidelines and provided direction to staff requesting several refinements and clarifications; and

WHEREAS, staff has prepared revised draft Guidelines, and related Policy refinements, based on the Commission's direction provided at the January 22, 2024 meeting, and has publicly circulated the draft amendments as part of the meeting packet for February 26, 2024; and

WHEREAS, on February 26, 2024 the Commission reviewed and discussed the revised draft Guidelines and related Policy refinements and determined them to be consistent with the direction provided to staff and with the objective of providing guidance on how the adopted (2010) Policy should be applied to determine mitigation requirements for city annexations of farmland.

NOW, THEREFORE, the Local Agency Formation Commission of Monterey County does HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. This action is exempt under the California Environmental Quality Act Guidelines, which provides that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Adoption of agricultural mitigation guidelines which interpret and guide implementation of LAFCO's previously-adopted Policy for Open-Space and Agricultural Lands for purposes of future annexation proposals is not a project under Guideline 15378 and is therefore exempt.

Section 3. The Commission adopts this resolution amending the adopted Policy on Preservation of Open-Space and Agricultural Lands by adding a new Section III, "Policy Implementation Guidelines: Agricultural Mitigation Actions for City Annexations of Farmland" and related Policy refinements (Exhibit A).

UPON MOTION of Commissioner Craig, seconded by Commissioner Leffel, the foregoing resolution is adopted this 26th day of February, 2024 by the following vote:

AYES: Commissioners: Root Askew, Leffel, Lopez, Oglesby, Poitras, Vice Chair
Craig, Chair Gourley

NOES: Commissioners: None

ALTERNATES: Commissioners: Bikle, Kong, Velazquez (Non-Voting)

ABSENT: Commissioners: Adams

ABSTAIN: Commissioners: None

By: 

Matt Gourley, Chair

Local Agency Formation Commission of Monterey County

ATTEST: I certify that the within instrument is a true and complete copy of the original resolution of said Commission on file within this office.

Witness my hand this 26th day of February, 2024

By: 

Kate McKenna, AICP, Executive Officer

PART E. PRESERVATION OF OPEN-SPACE AND AGRICULTURAL LANDS¹⁹

I. INTRODUCTION

Significant debate exists concerning the authority of a local agency formation commission to adopt policies, rules, regulations, guidelines, or conditions regarding the establishment of “agricultural buffers” or other methods to address the preservation of open space and agricultural lands. The Cortese – Knox – Hertzberg Local Government Reorganization Act (the “Act”), California Government Code section 56000, et seq., is replete with provisions that grant to a local agency formation commission the authority to consider and provide for the preservation of open space and agricultural lands. “Among the purposes of a [local agency formation commission] are discouraging urban sprawl [and] preserving open-space and prime agricultural lands, . . . ” Section 56301. Furthermore, “[i]t is the intent of the Legislature that each commission, . . . , shall establish written policies and procedures and exercise its powers pursuant to this part in a manner . . . that encourages and provides planned, well-ordered, efficient urban development patterns *with appropriate consideration of preserving open-space and agricultural lands* within those patterns.” Section 56300 (a) (emphasis added). The Legislature has also declared that the preservation of open-space and prime agricultural lands is a “state interest” to be balanced against the promotion of orderly development. Section 56001.

A local agency formation commission is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land. Section 56375.3 (b)(5). A local agency formation commission may not approve a change to a Sphere of Influence where the affected territory is subject to a farmland security zone or Williamson Act contract, unless certain conditions exist. Sections 56426 and 56426.5.

In other situations, a local agency formation commission is charged with considering specific circumstances affecting open space or agricultural land when making a decision. For example, when considering a proposal that could reasonably be expected to lead to the conversion of open space lands to non-open space uses, a local agency formation commission must consider guiding such conversion away from prime agricultural land towards non-prime lands. Section 56377s (a) and 56668 (d). In addition, a local agency formation commission should encourage the conversion of open space lands within the jurisdiction or Sphere of Influence of a local agency before approving any proposal that would lead to such conversion outside the jurisdiction or Sphere of Influence of that agency. Sections 56377 (b) and 56668 (d). Finally, a

¹⁹ Part E of the Policies and Procedures was first adopted on January 25, 2010 and was amended to add Section III (Policy Implementation Guidelines for Agricultural Mitigation) on January 22, 2024. This Part replaces the “Agricultural Lands Preservation Policy” adopted on November 27, 1979 (Resolution 79-30).

local agency formation commission must consider the “effect of [a] proposal on maintaining the physical and economic integrity of agricultural lands,... ” Section 56668 (e).

While a local agency formation commission has considerable authority to provide for the preservation of open space and agricultural land, it may not directly regulate land use: “A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.” Section 56375. A local agency formation commission may, however, require that property sought to be annexed be rezoned, although it may not specify how it shall be rezoned. *Id.*

In order to implement the intent and purposes of the Act with respect to the preservation of open-space and agricultural lands, the Local Agency Formation Commission of Monterey County (“LAFCO”) adopts the following policy.

II. POLICY (*Amended by the Commission on February 26, 2024; Resolution 24-03*)

It is the policy of LAFCO that, consistent with section 56300 (a) of the Act, applications or proposals for a change in organization or reorganization, or for the establishment or any change to a Sphere of Influence or urban service area (hereinafter, “Proposal” or “Proposals”), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns. To implement this policy, it is the further policy of LAFCO that:

1. A Proposal must discuss how it balances the state interest in the preservation of open space and prime agricultural lands against the need for orderly development. (Government Code section 56001.) Proposals that fail to discuss this balance, in the analysis of the executive officer, will be deemed incomplete.¹ Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the need for orderly development is balanced against the preservation of open space and prime agricultural lands.
2. A Proposal must discuss its effect on maintaining the physical and economic integrity of agricultural lands. (Government Code section 56668 (a).) Proposals that fail to discuss their effect, in the analysis of the executive officer, will be deemed incomplete.¹ Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the physical and economic integrity of agricultural lands is maintained.
3. A Proposal must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space land to uses other than open-space uses. (Government Code section 56377.) Proposals that fail to discuss potential conversion, in the analysis of the executive officer, will be deemed incomplete.¹ Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that: a) they guide development or use of land for other than open-space uses

¹ Pursuant to Government Code Section 56658, the Executive Officer shall determine an application to be complete or incomplete within 30 days of an application being submitted. The Executive Officer’s determination that an application is incomplete, with regard to the Commission’s Policy for Preservation of Open Space and Agricultural Lands, may be appealed to the Commission.

away from existing prime agricultural lands in open-space use and toward areas containing nonprime agricultural lands (Government Code section 56377 (a)); and b) development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the Sphere of Influence of a local agency will occur prior to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing Sphere of Influence of the local agency (Government Code section 56377 (b)).

4. A Proposal must, if applicable, provide for pre-zoning (Government Code section 56375 (a)), and must demonstrate that it is consistent with the General Plans and Specific Plans of the existing local agency and any immediately adjacent local agency (Government Code sections 56375 (a) and 56668 (g)). Proposals may be denied if they are not consistent with such plans, or, if not pre-zoned, if the Proposal does not demonstrate to the satisfaction of the Commission that the existing development entitlements are consistent with the local agency's plans.

To further these policies, it is the position of LAFCO that agricultural buffers provide an important means to preserve open-space and agricultural lands and preserve the integrity of planned, well-ordered, efficient urban development patterns. Such buffers may be permanent, temporary, or rolling, and may take many forms; easements, dedications, appropriate zoning, streets, or parks, for example. How agricultural buffers are used to further the state policy of preserving open-space and agricultural lands within patterns of planned, well-ordered, efficient urban development is left to the discretion of each local agency; however, Proposals will be judged on how state-wide policies under the Act, and LAFCO adopted policies, with respect to the preservation of open-space and agricultural lands are furthered. Agreements between neighboring local agencies with regard to the preservation of open-space and agricultural lands are encouraged, and such agreements may be incorporated by LAFCO into a Proposal as a condition of approval, or may be required as a condition precedent to approval.

III. POLICY IMPLEMENTATION GUIDELINES: Agricultural Mitigation Actions for City

Annexations of Farmland *(Added by the Commission on February 26, 2024; Resolution 24-03)*

To achieve the intention of the adopted policy's directives, the Commission has developed the following Policy Implementation Guidelines. The intention of the Guidelines is to provide guidance – particularly to Cities, property owners, and preparers of environmental documents pursuant to the California Environmental Quality Act (CEQA) – on how impacts to farmland should be addressed in City annexation applications and their related CEQA documents.

A brief restatement of LAFCO's role under CEQA

CEQA requires consideration of a project's potential impacts to agricultural resources and related mitigation measures, along with other types of environmental impacts. For annexation proposals, the applicant City is typically the CEQA lead agency – i.e., the public agency that has the primary responsibility for carrying out or approving the development project for which annexation is requested. LAFCO typically serves as a CEQA responsible agency, meaning a public agency with discretionary authority over some aspects of a project for which a CEQA document is being prepared – the City boundary change, in LAFCO's case. *(State CEQA Guidelines Section 15381.)*

A responsible agency complies with CEQA by considering the environmental impact report or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved. As a responsible agency, LAFCO will continue to consult with Cities and other lead agencies to assist them in preparing adequate environmental documents for a project, and provide comments on their draft CEQA documents. Following consultation, comments, and revisions, the lead agency prepares a final document. As a responsible agency, LAFCO is charged with exercising its independent discretion to determine whether or not a City's final EIR or negative declaration adequately addresses agricultural impacts and mitigation such that LAFCO can rely on the City's document's analysis and conclusions when considering an annexation. LAFCO may reject a legally insufficient environmental document that does not adequately address agricultural mitigation. *(CEQA Guidelines Section 15096 [a] to [e]).*

Agricultural Mitigation Guidelines

1. Lands that are subject to agricultural mitigation requirements

Agricultural mitigation should be provided for lands being annexed that are designated as Prime Farmland, Farmland of Statewide or Local Importance, or Unique Farmland by the State of California Department of Conservation as of the date an annexation application is submitted to LAFCO.

Agricultural mitigation may also be warranted – on a case-by-case basis – if the annexation site previously had one or more of these designations but was later changed by the State to a lower, non-farmland designation (for example, because the lands are fallowed for a period of time). CEQA documents being prepared for annexation of formerly designated farmlands should evaluate development of those lands as a potential impact to agricultural resources that may warrant mitigation, depending on site-specific physical conditions and the circumstances that were involved in the changes of mapping designation. LAFCO staff is available to consult with cities to assist in developing a CEQA document's evaluation of potential farmlands impacts.

2. Timing of implementation

Proposals for annexation of farmlands to a city are required by law to identify and propose specific agricultural mitigation actions – for example, direct acquisition of permanent conservation easements and/or payment of in-lieu fees – prior to the public hearing on the proposed annexation.

For annexation proposals that include fewer than 100 acres of farmland subject to mitigation requirements as provided in these Guidelines, project proponents are expected to carry out all such agricultural mitigation actions prior to LAFCO's recordation of a certificate of completion for the annexation.

For proposals involving more than 100 acres of farmland subject to mitigation, applicants may propose a phased approach, wherein LAFCO records a certificate of completion effectuating an annexation for an initial part, phase, or portion consisting of at least 25% of the overall approved annexation area after appropriate agricultural mitigation actions corresponding to that acreage have been completed pursuant to these Guidelines, along with any other terms

and conditions. LAFCO would then record subsequent certificates of completion for the remaining parts, phases, or portions of the overall acreage, in up to three subsequent phases with each phase including at least 25% of the original acreage approved for annexation, after corresponding agricultural mitigation actions for each phase have been carried out in accordance with these Guidelines to the satisfaction of the LAFCO Executive Officer, along with any other terms and conditions identified in the Commission's original approval resolution.² Recordation of the initial and subsequent (phased) certificates of completion for an annexation is subject to time limitations as determined by the Commission pursuant to Government Code Section 57001.

3. **Methods of Implementation**

- A. Mitigation ratio and criteria:** Agricultural mitigation should be provided at a 1-to-1 ratio – meaning one acre of mitigation provided for each acre of applicable farmland being annexed – and should occur on lands with equivalent or higher farmland mapping designations – i.e., “like-for-like or better” with regard to mapping designations.
- B. Conservation easements (preferred mitigation type):** Dedication of permanent conservation easements on specific sites is generally preferable to payment of in-lieu fees to fund the future purchase of conservation easements at a later date on sites not yet identified.

To the extent practicable, conservation easement receiver sites should be located in close proximity to the community where the proposed annexation and the resulting loss/conversion of farmland are occurring. However, if an applicant has made a good-faith effort – as described below – to identify suitable conservation easement sites in the nearby vicinity and no such sites are available, then the applicant may identify and propose conservation easement sites on equivalent lands elsewhere in Monterey County, and/or proceed to payment of mitigation in-lieu fees to fund the purchase of conservation easements in Monterey County.

“Good-faith effort” means an applicant has: 1) Consulted with a qualified conservation entity to have that entity hold conservation easements to satisfy the applicant's mitigation requirements under these Guidelines; 2) Has made reasonable efforts to identify suitable potential conservation easement receiver sites; and 3) Has made one or more bona fide offer for suitable conservation easements at fair market value on suitable available sites, but no property owner has accepted the applicant's offer.

- C. In-lieu fee payment:** If in-lieu fee payment is being proposed, LAFCO will require applicants to document having made a good-faith effort to secure conservation easements, as outlined above. The payment of an in-lieu fee shall be subject to the following provisions:
1. The amount of the in-lieu fee shall be determined by using the appraised fair market value of acquiring a conservation easement for agricultural purposes on the land

² For an annexation phase being recorded as a subsequent Certificate of Completion pursuant to this paragraph, a determination by the Executive Officer that proposed agricultural mitigation actions are inadequate may be appealed to the Commission.

being converted. The value of the conservation easement shall be determined by an independent real property appraiser with experience valuing conservation easements for the California Department of Conservation Sustainable Agricultural Lands Conservation Program (SALC) or a similar program.

2. The appraisal determining an appropriate in-lieu fee amount shall be completed no more than 90 days prior to recordation of a Certificate of Completion for an annexation. The in-lieu fees shall be paid to a qualified conservation entity prior to recordation.

If the Commission's approval of an annexation proposal involves phased recordation of more than one Certificate of Completion in accordance with Section 2, above, then any proposed in-lieu fees shall be determined based on a new appraisal that is prepared no more than 90 days prior to recording a Certificate of Completion for each individual phase. Fees shall be paid prior to each incremental recordation.

3. In addition to the in-lieu fee, applicants may be required to pay to the conservation entity a reasonable amount sufficient to cover the costs of managing and administering a conservation easement, and estimated transaction costs associated with acquiring the easement.
4. In-lieu fees may be used to satisfy either a portion of or the entire mitigation requirement for an applicant.

D. Qualified conservation entity: Dedication of conservation easements, or payment of in-lieu fees, should be to a qualified conservation entity (land trust) that is a nonprofit 501(c)(3) corporation eligible to hold a conservation easement, hold a deed restriction, or collect in-lieu fees under California law, and with conserving and protecting agriculture land as one of its primary purposes. The conservation entity shall provide reasonable assurances that in-lieu fees collected in connection with LAFCO's approval process will fund acquisition and administration of conservation easements exclusively in Monterey County.

4. Alternative agricultural mitigation proposals:

Agricultural mitigation should generally occur for all Prime Farmland or Farmland of Statewide/Local Importance, or Unique Farmland, within the area being annexed. However, the Commission retains the independent discretion to accept, on a case-by-case basis, an annexation – or portions thereof – that has a lesser or different agricultural mitigation for annexation purposes, to the extent that such exceptions would be consistent with a project's required mitigation measures under the California Environmental Quality Act.

Examples of projects that may qualify for alternative agricultural mitigation include, but are not limited to, those proposals, or areas of a proposal, that provide certainty with respect to the proposed future uses of public benefit, such as deed-restricted affordable, inclusionary, and/or agricultural housing.

While alternative mitigation may be accepted by the Commission, the Commission's intent remains for agricultural mitigation to be provided in a ratio as close as possible to the 1:1 overall goal as identified in these Guidelines.