

APPENDIX "B"
STANISLAUS COUNTY
FARMLAND MITIGATION PROGRAM GUIDELINES

Stanislaus County

Farmland Mitigation Program Guidelines

Purpose and Intent:

The purpose of the Farmland Mitigation Program (FMP) is to aid in mitigating the loss of farmland resulting from residential development in the unincorporated areas of Stanislaus County by requiring the permanent protection of farmland based on a 1:1 ratio to the amount of farmland converted. The FMP is designed to utilize agricultural conservation easements granted in perpetuity as a means of minimizing the loss of farmland.

The intent of these guidelines is to establish standards for the acquisition and long-term oversight of agricultural conservation easements purchased in accordance with the FMP.

Applicability:

These guidelines shall apply to any development project requiring a General Plan or Community Plan amendment from 'Agriculture' to a residential land use designation of the Stanislaus County General Plan. The acreage requiring mitigation shall be equal to the overall size of the legal parcel subject to the land use designation amendment and not the portion of parcel actually being developed.

Definitions:

Agricultural Mitigation Land:

Agricultural land encumbered by an agricultural conservation easement or other conservation mechanism acceptable to the County. "Agricultural land" is used synonymously with "farmland" in these guidelines.

Agriculture Conservation Easement:

An easement over agricultural land for the purpose of restricting its use to agriculture consistent with these guidelines. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements acquired in accordance with these guidelines shall be established in perpetuity (or shall be permanently protected from future development via enforceable deed restriction).

Building Envelope:

An area delineated by the agricultural conservation easement within which existing structures may remain or future structures may be permitted to be built.

Development Interest:

The property owner, developer, proponent, and/or sponsor of a discretionary development project subject to these guidelines.

Land Trust:

A nonprofit public benefit 501(c)(3) corporation or other appropriate legal entity operating in Stanislaus County for the purpose of conserving and protecting land in agriculture, and approved for this purpose by the Board of Supervisors. The County may be designated as a Land Trust.

Legal Parcel:

A portion of land separated from another parcel or portion of land in accordance with the Subdivision Map Act. A separate Assessors Parcel Number alone shall not constitute a legal parcel.

Methods of Mitigation: Farmland mitigation at a 1:1 ratio shall be satisfied by using one of the following techniques:

- 1) Where the total land area subject to a General Plan or Community Plan Amendment is less than 20-acres in size, farmland mitigation shall be satisfied by direct acquisition of an agricultural conservation easement or purchase of banked mitigation credits as set forth in these guidelines. Payment of an in-lieu mitigation fee may be authorized by the Board of Supervisors only when the development interest can show a diligent effort to obtain an agricultural conservation easement or banked mitigation credits have been made without success. Facts the Board may consider in making a decision regarding a request for payment of an in-lieu fee include, but are not limited to, a showing of multiple good faith offers to purchase an easement or banked mitigation credits having been declined by the seller(s).
- 2) Where the total land area subject to the General Plan or Community Plan Amendment is 20-acres or more in size, farmland mitigation shall be satisfied by direct acquisition of a farmland conservation easement as allowed by these guidelines and the Land Trust's program. It shall be the development interests sole responsibility to obtain the required easement.
- 3) Alternative Farmland Conservation Methods - Alternative methods may be authorized by the Board of Supervisors provided the land will remain in agricultural use consistent with these guidelines. Any request for consideration of an alternative Farmland Conservation Method shall be reviewed by the Planning Commission for consistency with these guidelines prior to a decision by the Board of Supervisors.

• **Direct Acquisition (In-Kind Acquisition):**

- 1) The Board of Supervisors shall approve the acquisition of any agricultural conservation easement intended to satisfy the requirements of these guidelines.
- 2) The location and characteristics of the agricultural mitigation land shall comply with the provisions of these guidelines.
- 3) The development interest shall pay an administrative fee equal to cover the costs of administering, monitoring and enforcing the farmland conservation easement. The fee amount shall be determined by the Land Trust and approved by the Board of Supervisors.
- 4) The Planning Commission shall review each agricultural conservation easement for consistency with these guidelines prior to approval by the Board of Supervisors. The Commission shall make a formal recommendation to the Board for consideration.

- **In - Lieu Fees:** The payment of an in-lieu fee shall be subject to the following provisions:
 - 1) The in-lieu fee shall be determined case-by-case in consultation with the Land Trust approved by the County Board of Supervisors. In no case shall the in-lieu fee be less than 35% of the average per acre price for five (5) comparable land sales in Stanislaus County.
 - 2) The in-lieu fee shall include the costs of managing the easement, including the cost of administering, monitoring and enforcing the farmland conservation easement, and a five percent (5%) endowment of the cost of the easement, and the payment of the estimated transaction costs associated with acquiring the easement. The costs shall be approved by the Board of Supervisors based on information relating to the costs provided by the Land Trust.
 - 3) The Planning Commission shall review the final in-lieu fee proposal for consistency with these guidelines prior to approval by the Board of Supervisors. The Commission shall make a formal recommendation to the Board for consideration.
 - 4) The Board of Supervisors shall approve the final amount and other terms of the in-lieu fee.

Use of In-lieu Fees - In-lieu fees shall be administered by the Land Trust in fulfillment of its programmatic responsibilities. These responsibilities cover, without exception, acquiring interests in land and administering, monitoring and enforcing the agricultural conservation easement or other instrument designed to conserve the agricultural value of the land for farmland mitigation purposes and managing the land trust. The location and characteristics of agricultural mitigation land shall comply with the provisions of these guidelines.

- **Mitigation Credit Banking:** Mitigation credits may be banked and utilized in accordance with the following provisions:
 - 1) **Purpose** - The purpose of establishing a method of banking mitigation credits is to equalize the imbalance between the acreage size of farmland suitable, and available, for purchase of farmland conservation easements and the amount of acreage required to meet a 1:1 ratio.
 - 2) **Process** - Any project requiring the acquisition of an agricultural conservation easement in accordance with these guidelines may be approved by the Board of Supervisors to bank mitigation credits on the acreage in excess of the 1:1 ratio required for mitigation of the original project. The mitigation credits shall be held by the individual/entity purchasing the agricultural conservation easement.
 - 3) **Credit Value** - Each acre in excess of the required 1:1 ratio for mitigation may be utilized at a 1:1 ratio to satisfy the mitigation requirements of another development.
 - 4) **Negotiations** - Negotiations to purchase mitigation credits shall not involve the County and shall be subject to free market values. The County shall make available a contact list of individuals/entities with banked credits on record. The sale of banked credits shall not alter the terms of the original farmland conservation easement which generated the credits.

- 5) **Authorization** - The Board of Supervisors shall accept purchased credits upon receipt of a sales agreement.
- 6) **Records** - The County shall maintain a record of banked credits and purchased credits to insure the Farmland Mitigation Program is maintained whole.

Agricultural Mitigation Lands - Locations and characteristics:

- 1) **Location** - Agricultural mitigation land shall be: A) located in Stanislaus County; B) designated Agriculture by the Land Use Element of the Stanislaus County General Plan; C) zoned A-2 (General Agriculture); and D) located outside a Local Agency Formation Commission (LAFCO) adopted Sphere of Influence of a city.
- 2) **Allowable Uses** - Agricultural Mitigation land shall be in conformance with the A-2 zoning district. Any legal nonconforming use of the property shall be abandoned prior to execution of the agricultural conservation easement and shall not be allowed to reestablish except as authorized within a building envelope. The type of agricultural related activity allowed on mitigation land shall be specified as part of the agricultural conservation easement and shall not be less restrictive than the A-2 zoning district.
- 3) **Parcel Size** - Agricultural mitigation land shall consist of legal parcel(s) of twenty (20) net acres or more in size. Parcels less than twenty (20) net acres in size shall only be considered if merged to meet the minimum size requirement prior to execution of the farmland conservation easement. Any building envelope allowed by the Land Trust shall not be counted towards the required parcel size.
- 4) **Soil Quality** - The agricultural mitigation land shall be of equal or better soil quality than the agricultural land whose use is being changed to nonagricultural uses. Priority shall be given to lands designated as 'prime farmland', 'farmland of statewide importance' and 'unique farmland' by the California Department of Conservation's Farmland Mapping and Monitoring Program.
- 5) **Water Supply** - The agricultural mitigation land shall have an adequate water supply to support the agricultural use of the land. The water rights on the agricultural mitigation land shall be protected in the farmland conservation easement.
- 6) **Previous Encumbrances** - Land already effectively encumbered by a conservation easement of any nature is not eligible to qualify as agricultural mitigation land.

Final Approval:

Final approval of any project subject to these guidelines shall be contingent upon the execution of any necessary legal instrument and/or payment of fees as specified by these guidelines. Final approval shall be obtained prior to any of the following: 1) the issuance of any building, grading or encroachment permit(s) required for development, 2) recording of any parcel or final subdivision map, or 3) operation of the approved use.

Legal Instruments for Encumbering Agricultural Mitigation Land:

Requirement - To qualify as an instrument encumbering the land for agricultural mitigation:

- 1) all owners of the agricultural mitigation land shall execute the instrument;
- 2) the instrument shall be in recordable form and contain an accurate legal description of the agricultural mitigation land;
- 3) the instrument shall prohibit any activity which impairs or diminishes the agricultural productivity of the agricultural mitigation land;
- 4) the instrument shall protect the existing water rights and retain them with the agricultural mitigation land;
- 5) the interest in the agricultural mitigation land shall be held in trust by the Land Trust and/or the County in perpetuity;
- 6) the Land Trust or County shall not sell, lease, or convey any interest in the agricultural mitigation land except for fully compatible agricultural uses;
- and 7) if the Land Trust ceases to exist, the duty to hold, administer, monitor, and enforce the interest shall pass to the County to be retained until a qualified entity to serve as the Land Trust is located.

Monitoring, Enforcing, and Reporting:

- 1) **Monitoring and Enforcing** - The Land Trust shall monitor all lands and easements acquired in accordance with these guidelines and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. It shall also enforce compliance with the terms of the conservation easement or agricultural mitigation instruments.
- 2) **Reporting by the Land Trust** - Annually, beginning one year after the adoption of this chapter, the Land Trust shall provide to the County Planning Director an annual report delineating the activities undertaken pursuant to the requirements of these guidelines and assessment of these activities. The report(s) shall describe the status of all lands and easements acquired in accordance with these guidelines, including a summary of all enforcement actions.

Stacking of Conservation Easements:

Stacking of easements for both habitat conservation easements on top of an existing agricultural easement granted in accordance with these guidelines may be allowed if approved by the Board of Supervisors provided the habitat needs of the species addressed by the conservation easement shall not restrict the active agricultural use of the land.

- The Commission, with input from the County Agricultural Advisory Board, shall review all stacking proposals to insure the stacking will not be incompatible with the maintenance and preservation of economically sound and viable agricultural activities and operations. The recommendation of the Commission shall be considered by the Board of Supervisors.