

Agenda Item Wording:

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A Public Hearing and First Reading of Ordinance No. 2023-02, a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34. The project applies citywide to properties within the Urban Growth Boundary Tiers II and III established by the Visalia General Plan. A Notice of Exemption was prepared for the new ordinance in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183 (Public Resources Code §21083.3). Notice of Exemption No. 2023-23 disclosed that the Agricultural Land Preservation ordinance will have no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34, uniformly on development projects that convert prime farmland and farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

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Deadline for Action: 5/1/2023

Submitting Department: Community Development

Contact Name and Phone Number:

Paul Bernal, Community Development Director, paul.bernal@visalia.city, (559) 713-4025

Department Recommendation:

Staff recommends that the Visalia City Council hold a public hearing, receive a presentation and staff report, and introduce the first reading of Ordinance No. 2023-02, approving a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an Agricultural Preservation Ordinance to implement Visalia General Plan Land Use Policy LU-P-34.

Summary:

The City Council directed staff to prepare an agricultural preservation ordinance to implement General Plan Policy LU-P-34, which required the establishment of an Agricultural Mitigation Program. The adoption of the Agricultural Land Preservation Ordinance (APO) is a necessary step for projects in the Tier II and Tier III growth boundaries to move forward. Based on direction received from the City Council at their March 6, 2023 and December 5, 2022 Work Sessions staff, along with the City’s consultant, prepared a draft APO that was posted for a 32-day public review period and has finalized the APO for the City Council’s review and adoption.

Overview and Changes to Agricultural Land Preservation Ordinance:

On February 24, 2023, the draft APO was publicly advertised and posted for a 32-day public review. During the public review of the draft APO, the consultant and staff provided

the City Council with a detailed overview of the draft APO at the March 6, 2023 Work Session that highlighted key aspects of the APO including: processes for securement of easements; in-lieu fee assessments, process, and remittance; and, monitoring and compliance. During the 32-day public review period, staff received several correspondence e-mails and letters from individuals related to the draft APO. A copy of all correspondence items received is attached as Exhibit "B" to this staff report. Based on the comments provided by the City Council and the public, the final APO is included as Attachment "A" of Ordinance No. 2023-02 for the City Council's consideration and adoption.

The following are key highlights of the final APO, including a brief overview of revisions made to the draft APO based on comments received:

Articles 1 General Provisions: *Title, Purpose and Intent, Objectives, Interpretation of Provisions, Definitions*

Article 1 contains the purpose of the APO, which is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for development projects. The interpretation section establishes a procedure to address and record interpretations made by the Community Development Director in the implementation of the APO, and also establishes a procedure for code interpretations by the Community Development Director to be appealed to the City Council as defined in Section 18.04.040.D.

One key revision to this section is an update to the "public facility" definition to also include general hospitals and public cemeteries.

Article 2 Program Requirements: *Applicability, Preservation Requirement*

Article 2 outlines which projects are subject to the APO (i.e., development projects that would result in the conversion of prime farmland or farmland of statewide importance), but also identifies which projects would be exempt or excluded. Only one key change to note in this article is found under Section 18.04.060.C.2 "Exclusions, Project Type or Use". Based on comments received, the "affordable housing project" language was updated to include the following language "*comply with State Density Bonus Law*".

In addition, the final APO still retains the exemption provision for projects of five acres or less in gross area as being exempt from the APO provisions. Although comments received requested a revision to this section seeking to have the exemption increased to 20 acres to align with the threshold for easement acquisitions, staff retained the 5-acre provision based on staff's assessment that under the California Environmental Quality Act (CEQA) projects of five acres or less can be exempt from any further CEQA review based on the Class 32 In-fill exemption. Projects greater than 5 acres and up to a maximum of 20 acres would be afforded the option of using the in-lieu fee provision of the ordinance and/or demonstrate compliance with the APO through participation in a "agricultural land mitigation bank" which is addressed in the staff report under the Article 3 discussion below.

Furthermore, the APO retains the “roadways” exclusion as including major roadways as addressed in the Visalia General Plan. The General Plan identifies major roadways as Freeways, Arterials, and Collectors, which are designed to carry significant traffic volumes through the future growth areas of the entire Visalia planning area. Local streets, which were requested to be included as an “exclusion” to the APO requirements as noted in public comment letters received, are not included as these roads are built to serve the proposed development within each of the land use areas.

Article 3 Methods of Preservation: *Acquisition of Agricultural Conservation Easement, Payment of In-Lieu Fee*

Article 3 covers the two methods of preservation, acquisition of conservation easements, which is the preferred method, and the in-lieu fee method. One revision includes the addition of language based on comments received regarding the ability to demonstrate compliance with the APO through use of an “agricultural land mitigation bank”. Use of a land mitigation bank would allow a developer to secure easements within a land mitigation bank to offset their conversion of agricultural lands. Such lands within the mitigation bank are required to meet the same standards of land eligible for agricultural conservation easements, such as location and zoning of the land. However, this additional method of securing easements and/or paying into the land mitigation bank to secure the necessary acreage for the conversion of agricultural land will provide additional flexibility for project proponents to demonstrate compliance with the APO.

Furthermore, the APO language has also been revised to clarify that easements can be obtained within the southern San Joaquin Valley five-county region without first requiring that the project proponent they demonstrate that they have met with qualified entity and the entity is unable to assist with the acquisition of an easement within 10 miles of the City limits. The preference language for easements to be located within the 10-mile radius; however, the additional steps to demonstrate that there is no land available within the 10-mile radius has been removed.

Other provisions of this article include a requirement that conserved land shall be a minimum of 20 contiguous acres in size, shall be zoned and planned for agricultural uses and shall have at least one verified water source. This requirement does not preclude a land trust from requiring more than one source of water through their own due diligence process.

The APO also includes provisions in the event an easement cannot be obtained. Pursuant to Section 18.04.090 of the ordinance, a project proponent may pay an “in-lieu” fee as an alternative to purchasing a conservation easement when certain conditions are met. The in-lieu fee section was amended to be consistent with the easement language as noted in Section 18.04.080 by removing the requirement that limited the use of the in-lieu fee to only Tulare County. The revision, as noted in Section 18.04.090.D, allows the use of the in-lieu fee collected to be used for the acquisition, administration, monitoring, and enforcement of agricultural conservation easements and such easements shall be located within the Southern San Joaquin Valley (i.e., the defined five-county region).

The in-lieu fee will be determined on a case-by-case basis, as this provision has not changed and shall include:

- Purchase price = 35% of the average purchase price per acre of three comparable lands, confirmed through an appraisal report prepared by a licensed appraiser with experience in agricultural land appraisal. The appraisal shall be based on the highest and best use of the land without an agricultural conservation easement (this is consistent with other ordinances established that require an in-lieu fee calculation on a case-by-case basis).
- Transaction costs = closing costs, due diligence, administrative costs.
- Endowment cost = establishment of an endowment for ongoing monitoring, administration, enforcement.
- A reasonable amount to cover additional contingencies.

The in-lieu fee section also requires the City Council to approve the amount of the fee, and payment of the fee will be directly from the project proponent to the qualified entity. Approval shall occur prior to remittance of the in-lieu fee directly from the applicant to the qualified entity.

Article 4 Monitoring and Compliance: *Qualified Entity, Compliance Review, Severability*

Article 4 addresses qualified entities, and identifies qualifications for entities to be considered including: the entity must be a nonprofit public benefit corporation operating within the state of California; the entity is qualified to hold conservation easements under California Civil Code section 815.3.; and, the entity must be approved by the City Council for the purpose of holding and managing agricultural conservation easements in accordance with the APO. In addition, monitoring and reporting by approved qualified entities is required annually. Such reporting shall be submitted to the City by February 1st.

The overall language included in this section remains unchanged with the exception to Section 18.04.110.A.1.b, Compliance Review. This section states that the City of Visalia shall not issue any permit directly authorizing or resulting in disturbance to the converted land acreage until the preserved land obligation is satisfied. The preserved land obligation shall be satisfied when, a. The approved agricultural conservation easement has been recorded, or b. *When the applicant has remitted the approved in-lieu fee to the qualified entity.*

Public Comments Received:

During the 32-day public review comment period for the draft APO, staff received several items of correspondence regarding the draft APO. All comments, e-mails, and letters received are included as attachment Exhibit "B".

Next Steps:

Staff will place the second reading of Ordinance No. 2023-02 on the City Council's next available meeting if the City Council adopts the first reading of Ordinance No. 2023-02. The ordinance will go into effect 30 days from the second reading.

In the interim, if the ordinance is adopted, City staff will continue to process projects in the Urban Growth Boundary Tier II for those land uses eligible, and the Tier III boundary for industrial land, that were placed on hold as result of the City needing to adopt an agricultural preservation ordinance to address the conversion of prime farmland and farmland of statewide importance in Tier II and Tier III. Staff anticipates in the next few months to begin processing several new residential projects through the public hearing process that will incorporate the adopted APO into their conditions of approval, as applicable, to demonstrate compliance with Land Use Policy LU-P-34.

Fiscal Impact:

On September 19, 2022, the City Council authorized the City Manager to award a contract to Provost & Pritchard Consulting Group of Visalia, CA for the preparation of Agricultural Preservation Ordinance in amount of not to exceed \$150,000. Staff is also seeking if the allocated SB 2 Planning Grant monies can be used for the preparation of this ordinance.

Prior Council Action:

- On March 6, 2023, the City Council received a presentation and update on the release of the draft APO. During the Work Session presentation, the consultant and staff provided an overview of the ordinance and received input from the City Council and community on the content of the draft ordinance.
- On December 5, 2022, the City Council received a presentation and provided direction regarding a series of options for the City Council's consideration ahead of a future adoption of an APO to implement General Plan Land Use Policy LU-P-34.
- On August 18, 2022, the City Council adopted Resolution No. 2022-50 which rescinded the adoption of Resolution No. 2021-44, which approved General Plan Amendment No. 2021-01, a request by the City of Visalia to amend language to General Plan Land Use Policy LU-P-34 by removing the requirement to establish an Agricultural Mitigation Program (AMP) for properties converting prime farmland and farmland of statewide importance within Growth Tiers II and III. The adoption of the resolution to rescind the adoption of Resolution No. 2021-44 was based on the ruling of the Superior Court of the State of California, County of Tulare, which invalidated the City of Visalia's approval to General Plan Amendment (GPA) No. 2021-01 and the related certification of an addendum to a previously certified environmental impact report (EIR).

Other:

None.

Alternatives:

The City Council may, in lieu of the recommended motion specified above, consider any of the following alternatives:

1. Refer all or parts of the project back to staff for further review; or
2. Continue the matter to a future City Council hearing for additional information.

Recommended Motion (and Alternative Motions if expected):

..recommendation

I move to introduce the first reading of Ordinance No. 2023-02, approving a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 "Agricultural Land Preservation", Chapter 18.04 "Agricultural Land Preservation Program", to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34.

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Environmental Assessment Status:

A Notice of Exemption was prepared for the APO in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183(g)(7) (Public Resources Code §21083.3). Notice of Exemption No. 2023-23 disclosed that the APO requires no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34 and that the APO will be uniformly on development projects that convert prime farmland or farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

CEQA Review:

Notice of Exemption No. 2023-23 was prepared for Ordinance No. 2023-02 in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183(g)(7) (Public Resources Code §21083.3).

Attachments:

1. Ordinance No. 2023-02 - Agricultural Preservation Ordinance – Title 18 "Agricultural Land Preservation", Chapter 18.04 "Agricultural Land Preservation Program".
2. Exhibit "B" – Public correspondence received.
3. PowerPoint Presentation

ORDINANCE NO. 2023-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA ADOPTING ORDINANCE NO. 2023-02, A REQUEST BY THE CITY OF VISALIA TO ADOPT A NEW TITLE AND CHAPTER TO THE VISALIA MUNICIPAL CODE REFERRED TO AS TITLE 18 “AGRICULTURAL LAND PRESERVATION”, CHAPTER 18.04 “AGRICULTURAL LAND PRESERVATION PROGRAM”, TO CREATE AN AGRICULTURAL PRESERVATION ORDINANCE TO IMPLEMENT VISALIA GENERAL PLAN LAND USE POLICY LU-P-34. THE PROJECT APPLIES CITYWIDE TO PROPERTIES WITHIN THE URBAN GROWTH BOUNDARY TIERS II AND III ESTABLISHED BY THE VISALIA GENERAL PLAN.

WHEREAS, Ordinance No. 2023-02 is a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34. The project applies citywide to properties within the Urban Growth Boundary Tiers II and III established by the Visalia General Plan; and

WHEREAS, on September 19, 2022, the preparation of an Agricultural Preservation Ordinance was initiated in response to direction provided by the City Council to begin the preparation of an Agricultural Preservation Ordinance to fulfill General Plan Land Use Element Policy LU-P-34, created during the General Plan Update process in 2014 to assist with mitigating the impacts of the loss of farmland as a result of land use development under the General Plan; and

WHEREAS, the City Council of the City of Visalia on December 5, 2022, received a presentation and provided direction regarding a series of options for the City Council’s consideration ahead of a future adoption of an Agricultural Preservation Ordinance to implement the City’s Agricultural Mitigation Program as outlined in General Plan Land Use Policy LU-P-34; and

WHEREAS, on February 24, 2023, the Draft Agricultural Preservation Ordinance was publicly advertised for review on the City’s Agricultural Preservation Ordinance website for a 32-day public comment review period; and

WHEREAS, on March 23, 2023, the City Council received a presentation and update on the release of the Draft Agricultural Preservation Ordinance and received input from the community on the content of the draft ordinance; and

WHEREAS, the City Council of the City of Visalia, after duly published notice, held a public hearing before said Council on May 1, 2023; and

WHEREAS, the project is exempt under the California Environmental Quality Act (CEQA) Section 15183 (Public Resources Code §21083.3).

NOW, THEREFORE, BE IT RESOLVED the City Council concurs that the project is exempt from further environmental review under the California Environmental Quality Act (CEQA) Guidelines Section 15183 (Public Resources Code §21083.3) and Notice of Exemption No. 2023-23 disclosed that the Agricultural Land Preservation ordinance will have no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34, uniformly on development projects that convert prime farmland and farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Visalia approves Ordinance No. 2023-02, as shown on Attachment “A” of this Ordinance, based on the following specific findings and evidence presented:

1. That the ordinance is consistent with the Visalia General Plan as the provisions of Title 18 Agricultural Land Preservation, Chapter 18.04 Agricultural Land Preservation Program are established to implement the goals of the City of Visalia General Plan and address the conversion of prime farmland and farmland of statewide importance through the adoption of an agricultural land preservation program. The intent of the agricultural land preservation program is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects subject to the provisions of this chapter.
2. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption), as the proposed master plan boundary expansion, change in land use designation, and change in zoning classification will not in and of themselves have an effect on the environment.

ATTACHMENT "A"

AN ORDINANCE OF THE CITY COUNCIL ADOPTING A NEW TITLE AND CHAPTER TO THE VISALIA MUNICIPAL CODE REFERRED TO AS TITLE 18 "AGRICULTURAL LAND PRESERVATION", CHAPTER 18.04 "AGRICULTURAL LAND PRESERVATION PROGRAM" AS FOLLOWS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

Section 1: Enact Title 18 (Agricultural Land Preservation) of the Visalia Municipal Code:

Visalia Municipal Code

Title 18. Agricultural Land Preservation

Chapter 18.04. Agricultural Land Preservation Program

Article 1. General Provisions

Section 18.04.010 Title

This chapter may be cited as the “Agricultural Land Preservation Program” of the City of Visalia.

Section 18.04.020 Purpose and Intent

- A. The provisions of this chapter are established to implement the goals of the City of Visalia General Plan and address the conversion of prime farmland and farmland of statewide importance through the adoption of an agricultural land preservation program. The intent of the agricultural land preservation program is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects subject to the provisions of this chapter.
- B. The provisions of this chapter shall only apply to the extent that their application would not violate the constitution or laws of the United States, or of the State of California. The City of Visalia shall apply the chapter to avoid such unconstitutionality or illegality.
- C. Nothing in this chapter shall be construed to abridge or narrow the City of Visalia's police powers. The City Council retains its full power and discretion in its ability 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, which the City is tasked with safeguarding.

Section 18.04.030 Objectives

The objectives of this chapter are to:

- A. Protect agricultural land as a component of the regional economy in the southern San Joaquin Valley, including the City of Visalia.
- B. Preserve agricultural lands from the effects of urban encroachment.
- C. Balance the need for agricultural land conservation with other public goals for the City of Visalia, including the need for housing, commercial, industrial, and infrastructure development.

Section 18.04.040 Interpretation of Provisions

- A. **Authority to Interpret.** Where uncertainty exists regarding the interpretation of any provision of this chapter or its application to a specific site, the Community Development Director (“Director”) shall have the authority and responsibility to interpret such terms, provisions, and requirements.
- B. **Record of Interpretation.** Code interpretations shall be made in writing and shall state the facts upon which the Director relied to make the determination. The Community Development Department shall keep a record of interpretations made pursuant to this chapter on file for future reference.
- C. **Applicability of Interpretation.** Code interpretations shall be applied in all future cases, provided that any interpretation may be superseded by a later interpretation when the Director determines that the earlier interpretation was in error or no longer applicable under the current circumstances.
- D. **Right to Appeal.** A code interpretation by the Community Development Director may be appealed to the City Council. The following procedure shall apply.
 - 1. The applicant or any interested person adversely affected may, upon payment of an appeal fee as may be established by resolution of the Council, appeal any interpretation of the Community Development Director by filing a notice thereof in writing with the city clerk, setting forth in detail the interpretation and the grounds upon which the appeal is based within ten (10) days after the interpretation that is the subject of the appeal. Such notice shall state specifically where it is claimed there was an error or abuse of discretion by the Director.
 - 2. Upon the filing of an appeal, the City Council shall set the matter for hearing. Such hearings shall be held within thirty (30) days after the date of filing the appeal.
 - 3. In holding the hearing on the matter, the Council may receive any and all information pertinent to the matter. Upon the close of the hearing, the Council shall vote to either confirm the decision of the Community Development Director, overturn the interpretation, or confirm the interpretation with modifications, and the Council may continue the item to the next meeting if necessary to direct staff to prepare a conforming resolution with findings, which shall be considered by the Council at the next scheduled Council meeting. In the case of a tie vote, the Community Development Director interpretation shall stand, and shall be considered final as of the date of the Council vote.

Section 18.04.050 Definitions

For the purpose of this chapter, the following definitions shall apply, except where the context of this chapter otherwise expressly requires. The definition of a word or phrase shall apply to any variants of the word or phrase.

“Affordable housing” means housing with an affordable housing cost, as defined in Health and Safety Code Section 50052.5, or affordable rent, as defined in Health and Safety Code Section 50053, for households whose gross income does not exceed 120 percent of the area median income.

“Agricultural buffers” mean areas of permanent vegetation between agricultural land and urban development.

“Agricultural conservation easement” means a conservation easement executed pursuant to Civil Code section 815, et seq. for purposes of agriculture.

“Agricultural processing uses” means operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption, including goods for nonfood use.

“Conversion” means to develop land through construction or improvement of land associated with approval of a project such that the land may not be converted back to agricultural use.

“Converted land” means the area of land that would be converted as a result of project approval, as calculated in section 18.04.070(A).

“Farmland of statewide importance” is a category of farmland defined by the California Department of Conservation for purposes of the Farmland Mapping and Monitoring Program (FMMP).

“In-lieu fee” means payment in-lieu of direct acquisition of an agricultural conservation easement.

“Preserved land” means that land to be encumbered by an agricultural conservation easement, as determined in section 18.04.070(A).

“Prime farmland” is a category of farmland defined by the California Department of Conservation for purposes of the Farmland Mapping and Monitoring Program (FMMP).

“Project” means a development project requiring an approval action from the City of Visalia that would authorize the construction or operation of buildings or uses. For purposes of this chapter, project does not include annexation of land, redesignation of a planned land use, or rezone action as these actions alone do not authorize development.

“Public facility” means a facility owned or operated by a public, quasi-public, or private entity used for the production, storage, transmission, collection, or treatment of electricity, wastewater, stormwater, water, and refuse, or for the provision of general hospitals, public cemeteries, public schools or open space, including both public and private parks and trails.

“Qualified entity” means an entity qualified and approved to hold agricultural conservation easements in compliance with section 18.04.100.

“Roadways” mean those roadways defined in the Transportation Element of the Visalia General Plan.

“Southern San Joaquin Valley” means the portions of Madera, Fresno, Kings, Tulare, and Kern counties located within the San Joaquin Valley Air Pollution Control District boundaries.

“Sphere of influence” means the ultimate service area of an incorporated city, as established by the applicable Local Agency Formation Commission.

“Tier II” means the Tier II Urban Development Boundary as defined in the Visalia General Plan.

“Tier III” means the Tier III Urban Growth Boundary as defined in the Visalia General Plan.

Article 2. Program Requirements

Section 18.04.060 Applicability

- A. **Projects Subject to Program.** Projects authorized by the City that would result in the conversion of prime farmland or farmland of statewide importance are subject to the provisions of this chapter, unless exempt in accordance with subsection 18.04.060(B) or excluded in accordance with subsection 18.04.060(C).
- B. **Exemptions.** Projects subject to any of the following criteria are not subject to the provisions of this chapter.
1. **Location.** Projects, or portions thereof, located on lands that are not within the Tier II Urban Development Boundary or the Tier III Urban Growth Boundary.
 2. **Size.** Projects of five acres or less in gross area. The City may disallow the use of this exemption if it finds that the subject property has been subdivided into five-acre or smaller parcels in whole or in part to avoid the preserved land obligation in accordance with this chapter.
 3. **Prior Compliance.** Projects on sites that have demonstrated compliance with the provisions of this chapter for affected acreage.
- C. **Exclusions.** Projects consistent with any of the following criteria are not subject to the provisions of this chapter and shall be excluded from the preserved land obligation as outlined in section 18.04.070(A). Such exclusions may comprise the entire project area or may be a portion of the project area acreage. Only such portion of the project area that falls within any of the following categories shall be excluded.
1. **Farmland Designation.**
 - a. Acreage not designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP) map published by the California Department of Conservation.

- b. Acreage that may be designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP) map published by the California Department of Conservation but meets at least one of the following standards. Documents demonstrating compliance with one or both standards shall be submitted to the Director for evaluation and determination, which may include concurrence from the Department of Conservation.
 - 1. Land Use. The land is not currently and has not been used for irrigated agricultural production for a minimum of four consecutive calendar years.
 - 2. Soils. The soil type is not listed on the Soil Candidate Listing for Prime Farmland and Farmland of Statewide Importance for Tulare County, as maintained by the Department of Conservation for purposes of the FMMP.
- 2. Project Type or Use.
 - a. Affordable housing projects that comply with State Density Bonus Law.
 - b. Agricultural processing uses.
 - c. Agricultural buffers.
 - d. Public facilities.
 - e. Roadways.

Section 18.04.070 Preservation Requirement

- A. **Determination of Preserved Land Obligation.** The preserved land obligation shall be calculated at a ratio of one acre of preserved land for each acre of converted land. Converted land acreage shall be calculated by determining the applicable project acreage less the acreage of exclusions.
- B. **Method of Preservation.** The preserved land obligation, as established in section 18.04.070(A), shall be preserved through acquisition of an agricultural easement in accordance with section 18.04.080, unless eligible for payment of an in-lieu fee in accordance with section 18.04.090.

Article 3. Methods of Preservation

Section 18.04.080 Acquisition of Agricultural Conservation Easement

- A. **Easement Acquisition.** The applicant shall convey, or arrange for the conveyance of, an area of land meeting its preserved land obligation to a qualified entity for execution of an agricultural conservation easement thereon. This shall include the conveyance of land within an agricultural land mitigation bank. Such land shall meet all requirements for an agricultural conservation easement in accordance with this chapter.
- B. **Eligibility of Land for Easement.** The preserved land shall meet all of the following requirements to be eligible for placement in an agricultural conservation easement.
1. The preserved land shall be located in the southern San Joaquin Valley, with preference afforded to preserved land located within 10 miles of the City limits. The preserved land must be located outside any city's limits and sphere of influence.
 2. The preserved land shall be designated as prime farmland or farmland of statewide importance on the most recent published FMMP map.
 3. The preserved land shall be a minimum of 20 contiguous acres in size.
 4. The preserved land shall be zoned and planned for agricultural uses consistent with the purposes of an agricultural conservation easement.
 5. The preserved land shall have at least one verified source of water.
 6. The preserved land shall not be encumbered by any use or structure that would be incompatible with the purpose of the agricultural conservation easement. Such uses shall be deducted from the total acreage being preserved.
- C. **Terms of Easement.** The agricultural conservation easement shall be consistent with the purpose and intent of this chapter and shall include, at a minimum, the following terms.
1. The agricultural conservation easement prohibits all residential, commercial, or industrial development and any other land uses or activities that substantially impair or diminish the agricultural productive capacity of the preserved land or that are otherwise inconsistent with the conservation purposes of this chapter.
 2. 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 preserved land.

3. The agricultural conservation easement limits the construction of structures to those designed to facilitate agricultural use of the property, except that this division shall not prohibit replacement of an existing home that was present at the time the easement was established so long as the replacement of the home does not prevent the agricultural use of the property. Secondary dwelling units or farmworker housing may also be permitted, so long as the primary use of the property is agricultural.
4. The preserved land to be subject to the agricultural conservation easement will be either obtained from a willing seller or voluntarily conveyed by the applicant.
5. Any existing financial liens or financial encumbrances on the preserved land shall be subordinated to the agricultural conservation easement.
6. 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 preserved land.
7. The agricultural conservation easement is in recordable form and contains an accurate legal description of the preserved land.
8. The agricultural conservation easement names the qualified entity as an intended beneficiary and authorizes it to enforce all terms of the easement.
9. The agricultural conservation easement recites that it is intended to satisfy the preserved land obligation imposed by this chapter and that it is subject to the requirements set forth in this chapter.
10. 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.
11. The agricultural conservation easement has been approved as to form by the City of Visalia, in accordance with the section 18.04.080(D).

D. **Approval of Easement.** The City Council shall approve the form and content of all agricultural conservation easements to ensure consistency with this chapter.

1. Should the easement be consistent with a form previously approved by the City Council, the City Council may designate an authorized party to review and confirm consistency of subsequent easements prior to execution by third parties without further approval by the City Council.
2. Should the easement deviate from a form approved by the City Council, the City Council shall review and approve proposed amendments prior to execution by third parties.

- E. **Holder of Easement.** All agricultural conservation easements acquired for purposes of this chapter shall be held by a qualified entity, as determined in section 18.04.100.

Section 18.04.090 Payment of In-Lieu Fee

- A. **Eligibility of In-Lieu Fee Payment.** To be eligible for payment of an in-lieu fee to satisfy the preserved land obligation, either of the following standards must be met.

1. The total preserved land obligation is less than 20 acres.
2. If the total preserved land obligation is 20 acres or more, the applicant must demonstrate at least one of the following to the satisfaction of the City:
 - a. No qualified entity exists;
 - b. The applicant has met with all qualified entities and all such entities are unable or unwilling to assist with the acquisition of an agricultural conservation easement, as certified in writing to the City; or
 - c. Working with a qualified entity, the applicant has made at least one good faith offer to purchase an agricultural conservation easement, but any and all such offers have been declined by the potential seller, as certified in writing to the City.

- B. **Determination of Fee.** The in-lieu fee shall be determined on a case-by-case basis and include the following components. The applicant shall determine the amount of the in-lieu fee with supporting documentation from at least one qualified entity.

1. The purchase price of an agricultural conservation easement, which shall equal 35 percent of the average price per acre of three comparable lands, as confirmed through submittal of an appraisal report prepared by a licensed appraiser with experience in agricultural land appraisal. The appraisal shall be based on the highest and best use of the land without an agricultural conservation easement. The price per acre shall be adjusted for inflation based on an estimate of the time required to acquire the agricultural conservation easement following payment of the in-lieu fee. The price per acre shall be multiplied by the preserved land obligation to determine this component of the in-lieu fee.
2. All transaction costs associated with the acquisition of the agricultural conservation easement, which may include anticipated due diligence and administrative costs.
3. An amount sufficient to establish an endowment for the cost of monitoring, administering, and enforcing the agricultural easement in perpetuity.
4. A reasonable amount to cover additional contingencies.

5. In no event shall the in-lieu fee established pursuant to this section exceed a reasonable estimate of the total of:
 - a. The cost of acquiring and managing the agricultural conservation easement that the applicant would otherwise be required to create to satisfy its preserved land obligation under this chapter; and
 - b. The cost of administering the in-lieu fee.
- C. **Fee Approval and Remittance.** City Council shall approve the amount of the in-lieu fee established under section 18.04.090(B). Approval shall occur prior to remittance of the in-lieu fee directly from the applicant to the qualified entity.
- D. **Use of Fee.** In-lieu fees collected shall be used solely for the acquisition, administration, monitoring, and enforcement of agricultural conservation easements in accordance with this chapter and such easements shall be located within the Southern San Joaquin Valley.
- E. **Reporting Requirements.** The annual report required in section 18.04.100(D) shall include an accounting of the use and status of all in-lieu fees collected in accordance with this program.

Article 4. Monitoring and Compliance

Section 18.04.100 Qualified Entity

- A. **Requirements.** To be considered a qualified entity for purposes of holding agricultural conservation easements in accordance with this chapter, an entity must be a nonprofit public benefit corporation, operating within the state of California, that is qualified to hold conservation easements under California Civil Code section 815.3 and be approved by the City Council for the purpose of holding and managing agricultural conservation easements in accordance with section 18.04.100(B).
- B. **Approval Process.** In considering whether to approve an entity as a qualified entity for purposes of this chapter, the City Council shall consider the following criteria:
 1. Whether the entity's principal purpose includes holding and administering easements for conserving and maintaining lands in agricultural production;
 2. The extent and duration of the entity's involvement in agricultural land conservation within the southern San Joaquin Valley;
 3. Whether the entity has been accredited by the Land Trust Accreditation Commission;
 4. Whether the entity is a member in good standing of an established and widely recognized national or statewide association of land trusts; and

5. Whether the entity's easement template is consistent with the terms of this chapter.
6. Any other information or requirements the City finds relevant under given circumstances.

C. Duties.

1. The qualified entity shall monitor the use of all preserved land subject to agricultural conservation easements held by the entity and enforce compliance with the terms of those agricultural conservation easements.
2. If a qualified entity intends or reasonably expects to cease operations, it shall assign any agricultural conservation easements it holds to another qualified entity.

D. Monitoring and Reporting. The qualified entity shall submit a report to the City on or before February 1 of each year, describing the activities undertaken by the entity under this chapter for the previous calendar year. The report shall describe the status of the agricultural conservation easements for purposes of satisfying the preserved land obligations under this chapter held by the entity, including all costs associated with acquisition of agricultural conservation easements acquired in accordance with this chapter, a summary of all actions taken to enforce its agricultural conservation easements acquired in accordance with this chapter, and an accounting of the amount and use of administrative and in-lieu fees remitted to it by applicants. Confirmation of the accreditation status of the qualified entity shall also be reported. The report shall also include any other applicable reporting requirements as specified by this chapter.

Section 18.04.110 Compliance Review

- A. All preservation methods proposed by an applicant to comply with this chapter shall be reviewed by the Community Development Director for consistency with the terms and purposes of this chapter, except as expressly stated otherwise.
1. The City of Visalia shall not issue any permit directly authorizing or resulting in disturbance to the converted land acreage until the preserved land obligation is satisfied in accordance with this chapter. The preserved land obligation shall be satisfied when:
 - a. The approved agricultural conservation easement has been recorded; or
 - b. When the applicant has remitted the approved in-lieu fee to the qualified entity.
- B. If a court issues a judgement declaring that the purposes of this 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 preserved land, if the following requirements are met:

1. Either the action was not contested and the judgement was entered pursuant to stipulation, or the City of Visalia was a party to the action and stipulated to the judgement; and
2. The qualified entity shall use the proceeds of sale to acquire an agricultural conservation easement in other preserved land in compliance with this chapter.

Section 18.04.120 Severability

If any portion of this chapter is held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have enacted this chapter and each section, division, paragraph, sentence, clause, or phrase thereof even if a portion of the chapter were declared unconstitutional.

Section 2: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is or any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not effect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of these Ordinances, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3: Construction. The City Council intends these Ordinances to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section 4: Effective Date. These Ordinances shall take effect thirty days after its adoption.

Section 5: Certification. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Exhibit “B”

Public Correspondence Received

Paul Bernal

From: michelle m-archdesign.com <michelle@m-archdesign.com>
Sent: Tuesday, March 21, 2023 11:10 AM
To: Paul Bernal
Cc: 1077dave@crinklax.com; Sandra Staats
Subject: Agriculture Ordinance Comments

Good morning Paul,

We understand the intention of the ordinance, but it shouldn't deter development and add to the costly process or timeframe. The current market is impacting home buyers' ability to purchase a home. The added burden of acquiring an easement (cost & lengthy time process) ---will be passed down to consumers, further diminishing the affordability of homes.

Agriculture Ordinance Comments:

Article 2 Program Requirements
C. Exclusions
2. Project Type or Use. Page 5

2. Project Type or Use.

- a. Affordable housing projects, provided that one hundred percent of the project's housing units are affordable through a deed restriction.

Comment: Modify percentage of project requirements from 100% to 50%.

- e. Roadways.

Comment: Request areas of R.O.W. (Right of Way-dedications), local streets, planters, sidewalks, walking paths be added.

Article 3 Methods of Preservation
B. Eligibility of Land for Easement. Page 6

B. Eligibility of Land for Easement. The preserved land shall meet all of the following requirements to be eligible for placement in an agricultural conservation easement.

1. The preserved land shall be located in the southern San Joaquin Valley, with preference afforded to preserved land located within 10 miles of the City limits. The preserved land must be located outside any city's limits and sphere of influence. Prior to consideration of preserved land located beyond 10 miles of the City limits, the applicant must demonstrate at least one of the following to the satisfaction of the City:

Comment: Propose to eliminate 10-mile radius preference, return to original commission workshop recommendation of 5 County allowance. Keep the ordinance simple and timely.

3. The preserved land shall be a minimum of 20 contiguous acres in size.

Comment: Propose that preserved land shall be a minimum of 5 contiguous acres in size, consistent to exception size as noted in Article 2. Section 18.04.060 B.2

5. The preserved land shall have at least one verified source of water.

Comment: Propose to keep verbiage as written in ordinance "at least one verified source of water".

Payment of In-Lieu Fee – Page 8 & 9

A. Eligibility of In-Lieu Fee Payment. To be eligible for payment of an in-lieu fee to satisfy the preserved land obligation, either of the following standards must be met.

1. The total preserved land obligation is less than 20 acres.
2. If the total preserved land obligation is 20 acres or more, the applicant must demonstrate at least one of the following to the satisfaction of the City:
 - a. No qualified entity exists;
 - b. The applicant has met with all qualified entities and all such entities have certified in writing to the City that they are unable or unwilling to assist with the acquisition of an agricultural conservation easement; or
 - c. Working with a qualified entity, the applicant has made at least one good faith offer to purchase an agricultural conservation easement, but any and all such offers have been declined by the potential seller, as certified in writing by the qualified entity.

Comment: Propose to remove item 1 & 2. In their entirety. Making ordinance simple and timely.

B. Determination of Fee. The in-lieu fee shall be determined on a case-by-case basis and include the following components. The applicant shall determine the amount of the in-lieu fee with supporting documentation from at least one qualified entity.

1. The purchase price of an agricultural conservation easement, which shall equal 35 percent of the average price per acre of three comparable lands, as confirmed through submittal of an appraisal report prepared by a licensed appraiser with experience in agricultural land appraisal. The price per acre shall be adjusted for inflation based on an estimate of the time required to acquire the agricultural conservation easement following payment of the in-lieu fee. The price per acre shall be multiplied by the preserved land obligation to determine this component of the in-lieu fee.

Comment: Recommend verbiage be added to "three comparable lands for agricultural use" not Development

C. **Fee Approval and Remittance.** City Council shall approve the amount of the in-lieu fee established under section 18.04.090(B). Approval shall occur prior to transaction. Upon approval, the in-lieu amount shall be remitted directly from the applicant to the qualified entity.

Comment: Recommend the approval of a flat fee established, based on land value sources (ASFMRA- American Society of Farm Managers and Rural Appraisers, CDFA-USDA's NASS (National Agricultural Statistic Services) that can be monitored and reviewed annually for market fluctuations. Providing the City with an opportunity to keep pace with changing environment, as currently applied to City's master fees.

Comment: Provide verbiage allowing land banking.

Thank you for all of your efforts in making the ordinance a priority for the City.

Michelle Huerta
M Architecture & Design
10100 Kings River Road
Reedley, CA 93654
(559) 408-4200
michelle@m-archdesign.com



From: darlene@drmataconsulting.com
To: [Paul Bernal](#)
Subject: Ag Preservation Ordinance
Date: Tuesday, March 21, 2023 1:38:59 PM

Good Afternoon Paul,

I attended the March 5, 2023 presentation on the Ag Preservation Ordinance and reviewed the ordinance and would like to offer the following comments:

First, Section 18.04.060 (C)(1)(b) states that the property can be excluded if it either hasn't been farmed for four consecutive years or is not on the soil list. My first reading was that use of the word "either" is confusing. Perhaps it should say "one of both of the following." I would also like to know whether the Director can make this decision based on information submitted, or if it must go to the Department of Conservation. It would be clearer if there was a description of when the Department of Conservation would be required to concur.

b. Acreage that may be designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP) map published by the California Department of Conservation but does not meet either of the following standards. Documents demonstrating compliance with either or both standards, shall be submitted to the Director for evaluation and determination, which may include concurrence from the Department of Conservation.

1. Land Use. The land is not currently and has not been used for irrigated agricultural production for a minimum of four consecutive calendar years.

2. Soils. The soil type is not listed on the Soil Candidate Listing for Prime Farmland and Farmland of Statewide Importance for Tulare County, as maintained by the Department of Conservation for purposes of the FMMP.

Second, the current Department of Conservation Farmland Finder maps have not been updated since 2018. They are supposed to be updated every two years, so in using these maps, without additional consideration for exclusions, is relying on outdated information. Perhaps there should be another mechanism if those maps are outdated.

Thank you for the opportunity to comment on the proposed ordinance.

Darlene Mata

11878 Avenue 328
Visalia, CA 93291
Ph. 559-334-6888
Fax 559-734-3074

CRS Farming LLC

Hayes Ranch Partners

March 24, 2023

City of Visalia Council Members
315 E. Acequia Avenue
Visalia, CA 93291

Dear Council Members,

As farmers, we are strong proponents of property rights. We believe a person should have the right to pursue the best and highest use of their own property. Most businesses go through business cycles and currently the agriculture community is facing several challenges. Notwithstanding this current years' events, farmers are facing major uncertainty regarding water pumping restrictions and availability, along with historically low commodity prices, coupled with record high growing costs. Many farmers will be faced with difficult choices of the best utilization of the land and financial resources.

The Ag community has been good stewards of the land and has historically made great strides to preserve prime farm ground and increase production on what land they have available. Water availability and cost, along with commodity prices, have determined what is viable farm ground. While we truly appreciate all the hard work that the Council and City staff members have put into developing an Ag Mitigation program, we don't think having a Mitigation plan that places easements for perpetuity is a good solution. However, if a plan has to be adopted we agree with the components of the plan that we would like to see as the Tulare County Farm Bureau has stated in their letter to the Council. We have included those points below.

The following summary statements provide our suggested changes to the draft APO:

- The acreage threshold for mitigation should be set at 20 acres or more, a 5-acre project should not trigger the mitigation requirement. If preserved land should be a minimum of 20 contiguous acres in size, then 20-acre minimum should be standardized across the draft.
- The 10-mile radius from town is not reasonable, it will unlikely be possible to locate land of suitable type to be sufficient to comply with the ag mitigation requirements. We recommend removing the 10-mile language.
- Considering the significant changes that SGMA is implementing now, requiring multiple sources of water for agriculture production will be a speculative and untenable situation that may result in the land not being farmable.

- If a water year is substantially limited and the land has no potential to be dryland farmed, will there be consequences for breach of easement covenants?
- The stipulations for using the in-lieu fee should be the same as the mitigation requirement, that it can be applied to land within the 5-county region identified. A landowner should be able to opt in to the in-lieu fee choice without having to incur additional costs to prove that an attempt has been made.
- After consultation with local appraisers, the 35% of average price of three comparable parcels referenced under *Determination of Fee* seems arbitrary and unsupported. Easements are valued based on what rights the property owner is forfeiting. Depending on the location of the easement and the likelihood of development, an easement could cost anywhere from 5% to 50%, with most transactions closer to the lower end. The 35% seems to be an artificial number that could increase costs unnecessarily and hinder economic development for the City of Visalia.
- In-lieu fees should be used to help existing farmers within the City's Sphere of Influence, to provide abatement and clean up services for trash dumping, rural crime, nuisance, trespass, and other challenges that exist for farmers at the edge of urban development.

Again, we appreciate your hard work and diligence in trying to resolve the matter and I am glad to add additional comments at any time if desired.

Sincerely Yours,



Eric Shannon



March 27, 2023

Paul Bernal
Community Development Director
City of Visalia
315 East Acequia Avenue
Visalia CA 93291

Re: Comment letter on Draft Agricultural Preservation Ordinance_02_24_2023, presented to Visalia City Council on March 6, 2023

Dear Mr. Bernal,

The Central Valley Partnership is dedicated to achieving social, racial, environmental and economic justice in the San Joaquin Valley. We recognize land use policies as an important aspect of our mission, especially related to farmland preservation, infill development and the promotion of smart growth principles.

On March 6, 2023, the Visalia City Council received a staff presentation and provided direction on a draft Agricultural Preservation Ordinance (APO) to implement an Agricultural Mitigation Program as outline in its General Plan Policy LU-P-34. While the overall draft APO is sound, there are a few provisions that are cause for concern as they present potential loopholes or are vague enough to threaten effective implementation.

Here are a few of the most noteworthy concerns that we identified:

Article 1. Program Requirements

Section 18.04.060 Applicability

C. Exclusions

1. Farmland Designation

Subsection b1. Land Use – The policy related to “exclusions” from a Prime Farmland or Farmland of Statewide Importance under this section appears to allow deference to Visalia’s Community Development Director for “evaluation and determination” related to whether the farmland may be in compliance with the California Department of Conservation’s assessment of prime farmland. Of particular concern is subsection #1b1, which appears to allow for exclusion if, “The land is not currently and has not been used for irrigated agricultural production for a minimum of four consecutive calendar years.”

By appearing to allow exclusion for lands that have been fallowed is not sufficient to negate the need for them to be included for mitigation for their loss. Even more problematic, such an exemption opens a loophole for landowners to stop irrigating a few years prior to plans to develop land as an attempt to avoid mitigating for the loss of these farmlands. Even without irrigation, the productive capacity of the soils is still present, and some fallowing practices can even improve the productive capacity of farmland. In any case, such an exclusion of these non-irrigated lands for a mere four years is not warranted and threatens the integrity of the overall policy.

Article 3. Methods of Preservation

Section 18.04.080 Acquisition of Agricultural Conservation Easement

B. Eligibility of Land for Easement

1. “The preserved land shall be located in the southern San Joaquin Valley, with preference afforded to preserved land located within 10 miles of the City limits.”

During the presentation of the draft APO, some city council members questioned whether the 10 mile preference for preserving land be given, some seemed to prefer land that was outside of Tulare County. Ideally, such a preference will be retained and emphasize farmland preservation of properties that are proximate to the threatened farmlands located near urbanized centers just outside their spheres of influence. This distinction – of mitigating for the development value of land as well as for its soil characteristics – is also vitally important to establishing the conservation easement value of the farmland being mitigated for under the future APO. At the least, it makes sense that Visalia should seek to make investments in farmland preservation available to Tulare County farmers first and as a priority.

Section 18.04.090 Payment of In-Lieu Fee

B. Determination of Fee

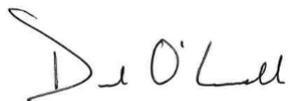
This section of the draft APO is unclear. Already with the in-lieu fee being determined on a case-by-case basis there is a heightened need for specificity and policy direction, which is attempted in subsection #1: “The purchase price of an agricultural conservation easement, which shall equal 35 percent of the average price per acre of three comparable lands as confirmed through submittal of an appraisal report prepared by a licensed appraiser...”

This definition of comparable lands needs clearer definition, particularly associating it with similar soil quality of the farmland being lost to developed, and with the establishment of a mitigation value that accounts for the proximity of farmland in relationship to proximity to the city. In order to purchase agricultural conservation easements of similar characteristics to farmland that is being lost to development, the value of these farmlands needs to account for their higher valuation due to urbanized pressure. In turn, it will be possible to mitigate for like properties to the farmland being consumed.

The Visalia Agricultural Preservation Ordinance of 2023 is a starting point from which future, more robust policies can be enacted in coming years. Given that the establishment of an Agricultural Mitigation Program on a 1:1 ratio of one acre of preserved land for each acre of converted land as a benchmark, it roughly equates to the loss of fifty percent of all farmland in the region. Such losses of farmland threaten the economic and ecological integrity of the region.

With Southern California as a cautionary example, we hope that the city’s APO policy can be strengthened in future years. It is also important that this current policy be established with strong foundations so that it may be emulated by other cities in Tulare County, a task that will also be addressed in subsequent general plan advocacy at those municipalities.

Sincerely,



**Daniel O’Connell
Executive Director
Central Valley Partnership**

From: [Skip Moss](#)
To: [Paul Bernal](#)
Subject: Draft Agricultural Preservation Ordinance Comments
Date: Monday, March 27, 2023 10:11:06 PM
Attachments: [image001.png](#)

You don't often get email from smoss@natural-resources-group.com. [Learn why this is important](#)

Mr. Bernal,

We would like to provide comments on the City of Visalia's Draft Agricultural Preservation Ordinance ("Ordinance"). Natural Resources Group, Inc. is a local company, headquartered in Clovis, CA, that provides mitigation to help offset impacts to many different resources, including losses of farmland. First, we would like to commend the City on taking an important step in helping to preserve the San Joaquin Valley's rich agricultural heritage.

In reviewing the City's proposed ordinance, we wanted to share a couple of thoughts as a mitigation "practitioner", with decades of experience helping project proponents fulfill their mitigation requirements.

- **Location of Mitigation:** The Ordinance in Article 3, Sect. 18.04.080, B.1, states that a preference be afforded to preserved land located within 10 miles of the City limits. Locating the preservation proximally to the lost resource may help the City achieve open space buffers between neighboring communities, but the implementation of geographic restrictions (even preferences) should be implemented with caution. Geographic restrictions often cause the price of preservation within those area to increase. This is because lands within this boundary will immediately be perceived as having additional value or a lack of supply (or perceived lack of supply) will drive price increases that are not in keeping with regional pricing trends. If the price to implement the Ordinance begins to inhibit the ability for the City to achieve other public goals, then it may be difficult for the City to achieve its objective of finding "balance". The preserved farmland should ideally be located in areas that fulfill the Ordinance's other objectives; protecting the regional economy and protecting agricultural lands from urban encroachment.
- **In-Lieu Fee Program:** In-Lieu Fee Programs ("ILF") are a common tool used to offset impacts when more common approaches (like easement acquisition) are difficult or infeasible. The less than 20-acre threshold for participation in the ILF (Article 3, Sect. 18.04.090, A.1) would allow smaller projects to mitigate, where they might have difficulty finding a willing seller of such a small acreage easement. The criteria described in Article 3, Sect. 18.04.090, A.2, provide a relief mechanism when a project proponent is having difficulty sourcing preservation opportunities. Both conditions for using the ILF highlight why ILF programs can be very difficult to successfully implement. ILF's effectively transfer the liability for finding suitable ag preservation from the project proponent, to the City – but the circumstances that created the need for the ILF, may then be encountered by the City as it looks to protect land with the collected fees. ILF programs, especially those implemented by cities and counties, often struggle to acquire sufficient lands to fulfill their commitments. If regional land values are appreciating, the fees collected are almost immediately insufficient to meet those

commitments – especially if acquisition lags fee-collection for any significant amount of time. ILF's are a valuable conservation tool, but programs like "farmland mitigation banks" may fulfill a similar role and not expose the City to the liability of having to implement the preservation.

Thank you for the opportunity to provide input on the City of Visalia's Draft Agricultural Preservation Ordinance. We would be happy to answer any questions the City might have, or provide specific examples related to the comments above. We look forward to working with the City in its ongoing effort to protect the San Joaquin Valley's agricultural heritage.

Thank you,

~Skip Moss
President | Natural Resources Group, Inc.

Richard "Skip" Moss
Natural Resources Group, Inc.
559.804.9833
smoss@natural-resources-group.com
www.natural-resources-group.com



February 2023
Visalia Municipal Code
Title 18. Agricultural Land Preservation

QUESTIONS & COMMENTS

18.04.090 (B)3. Payment of In-Lieu Fee, Determination of Fee:

The term “perpetuity” with respect to this provision is tied to the lifetime of the easement. If the term “perpetuity,” on the other hand, applied to the life of the easement--“a restriction making an estate inalienable perpetually or for a period beyond certain limits fixed by law,” i.e., for as long as the easement exists, then, the provisions for monitoring, administering and enforcing the easement would terminate upon expiration of the easement. For the purpose of clarification, therefore, the Ordinance needs to specify whether qualified easements must be permanent or if they may be merely long term.

18.04.060 (B)3. Applicability, Exemptions, Prior Compliance:

Are such projects exempt because a previous project on the site either had obtained an agricultural easement still in effect or paid an in-lieu fee? Please explain and provide examples of projects on sites that have demonstrated compliance

18.04.060 (C)1.b.1&2 Applicability, Exclusions, Farmland Designation, Land Use and/or Soils:

Why should the ordinance exempt projects proposed on prime farmland that have for any reason been out of production for four years or longer? Isn't fallowed land generally more productive than land planted every year? Why exclude any land suitable for agriculture regardless of its history? Has the City identified such land within its Urban Development Boundaries? Why not require the Director to request validation of a claim of exemption on the basis of soil type?

18.04.060 (C)2 Applicability, Exclusions, Project Type or Use:

What are the justifications for prioritizing each of the specified project types over the value of farmland preservation?

*Affordable Housing

*Agricultural processing Isn't off-site food/fiber processing considered an industrial use?

*Agricultural buffers Please explain this kind of project, the likely proponents, locations & legal instrument used to converted farmland into “permanent” vegetation.

*Public facilities

*Roadways Please give examples of roadway projects and potential applicants. Do these include streets internal to subdivisions?

18.04.080(B)1. Acquisition of Agricultural Conservation Easement, Eligibility of Land for Easement:

Why shouldn't easements be located within a city's sphere of influence, since the City's objective is to preserve farmlands from the effects of urban encroachment? Isn't this provision assuring the encroachment of urban development far beyond the City's urban development boundaries? Certain members of the Council expressed an interest at the second public workshop in assuring unincumbered urban encoachment by exporting its preservation responsibilities far beyond any conceivable future development planning area.

18.04.080(D)1. Acquisition of Agricultural Conservation Easement, Approval of Easement:

Isn't there potential for abuse if the responsibility for reviewing the form of easements for consistency is delegated to a private party?

18.04.110 (A)1.b. Compliance Review:

I don't understand this provision: Is the project applicant who is eligible to pay an in-lieu fee able to break ground within three years of making an in-lieu fee payment or not until three years or less have passed after making such payment? When is the obligation satisfied "if the in-lieu fee is [not] used to acquire an agricultural conservation easement?"

There needs to be provisions in the ordinance to retroactively subject projects to its requirements which are located in Tier II and which were unlawfully approved in violation of the Agricultural Preservation Mitigation Measures in the City's General Plan. The ordinance should also include an appendix containing the list of those projects which is made available for public review prior to adoption by the City Council.

Respectfully submitted,
Don Manro
523 North O Street
Tulare CA 93274



March 24, 2023

Paul Bernal, City Planner
The City of Visalia
315 E. Acequia
Visalia, CA 93291

Re. Visalia Municipal Code Title, 18 Agricultural Land Preservation, Chapter 18.04
Agricultural Land Preservation Program

Dear Mr. Bernal,

Sequoia Riverlands Trust (SRT) is a California Nonprofit Corporation public benefit corporation that has protected more than 43,300 acres of natural lands across the southern San Joaquin Valley through the establishment of nature preserves and of conservation easements on agricultural and other working lands. As an accredited land trust, SRT holds 75 conservation easements on approximately 26,000 acres of land—mainly working farms and ranches—as well as ten deed restrictions on 4,100 acres in and around the Carrizo Plain. SRT respectfully submits the following comments to the proposed Draft Agricultural Preservation Ordinance as submitted to the City Visalia Council on March 6, 2023, for your consideration;

Article 1. General Provisions

Section 18.04.020 Purpose and Intent

- SRT suggests the City of Visalia (City) consider including the option for the purchase of credits in an Agricultural Land Mitigation Bank as an acceptable form of mitigation.

Section 18.04.050 Definitions

- SRT suggests including a definition for Agricultural Land Mitigation Bank.

Article 2. Program Requirements

Section 18.04.070 Preservation Requirements

- B. Methods of Preservation
 - SRT suggests including purchasing credit in an Agricultural Land Mitigation Bank as an acceptable requirement.

Article 3. Methods of Preservation

Section 18.04.080 Acquisition of Agricultural Conservation Easement

- B. Eligibility of Land for Easement
 - SRT suggests that the applicant be the entity to certify in writing. The qualified entity does not have a contractual obligation or any protection.

- C. Terms of Easement
 - 5. SRT suggests narrowing this requirement to any and all financial liens or financial encumbrances shall be subordinated to the conservation easement. It would put an undue burden on the Landowner to obtain subordination for easement holders.

 - 11. SRT suggests the City sign the Conservation Easement stating that it has satisfied the Agricultural Preservation Ordinance and is accepted to form.

- Additional term:
 - SRT suggests the City consider allowing for Secondary Dwellings or Farm worker housing. Various Grant programs funded through, The California Department of Conservation for the protection of Agricultural lands require the conservation easement allow provide for this. For reference and consideration we have included the following as contained in the Round 9 Sustainable Agricultural Lands Conservation Protection Program Draft Guidelines:

Additional Requirements and Considerations

Single Family Residences, Secondary Dwelling Units, and Farm Worker Housing

Each single-family residence reserved in the deed is limited to a maximum living area that is consistent with grantee's policies, local building codes, and the surrounding neighborhood. The residence must not significantly impair the conservation purpose of the deed.

The California Legislature has enacted numerous policies to address the state's shortage of housing, particularly affordable housing. Easements funded through this program shall not prohibit either secondary dwelling units or farmworker housing. Any easement restrictions on these dwellings cannot be more restrictive than California Government Code section 65852.2 or California Health and Safety Code section 17021.6, respectively.

Section 18.04.090 Payment of In-Lieu Fee

- A. Eligibility of In-Lieu Fee
 - 2. b. & c. The applicant should be the entity required to certify in writing. The qualified entity does not have a contractual obligation or any protection.

- B. Determination of Fee
 - 1. SRT suggests clarification as to what land is being appraised. Is the land subject to development the land required to be appraised as conserved with an agricultural conservation easement?
- C. Fee Approval and Remittance
 - SRT suggests clarifying the transaction referred to in the sentence "Approval shall occur prior to transaction".
- D. Use of Fee
 - SRT suggests the reference to agricultural easement be revised to refer to conservation easements in plural.

Article IV Monitoring and Compliance

Section 18.04.100 Qualified Entity

- D. Monitoring and Reporting
 - SRT suggests that this more generally require the qualified entity to conduct annual monitoring for compliance with easement conditions. The qualified entity shall submit their annual monitoring report on their usual form to the City before February 1 of the year. The report will also include a reporting of the stewardship endowment monies held, and any In-Lieu Fees for the purpose of meeting the requirement of this Ordinance.

Section 18.04.110 Compliance Review

- A. 1 b.
 - Please clarify this paragraph.

Sequoia Riverlands Trust thanks you for your time and consideration. We look forward to working with the City of Visalia to protect and preserve our valuable agricultural lands, and please feel free to reach out to us for further consultation on this ordinance or on agricultural conservation easements in general.

Sincerely,



Logan Robertson-Huecker, PhD
Executive Director



TULARE COUNTY FARM BUREAU

Mission: to promote and enhance the viability of Tulare County agriculture.

March 24, 2023

City of Visalia Council Members
Attn: Paul Bernal
315 E. Acequia Avenue
Visalia, CA 93291

Dear Council Members, and Mr. Bernal:

Tulare County Farm Bureau is a tax exempt, non-governmental membership association representing more than 1,100 farmers and ranchers in Tulare County. We have long held the belief that agriculture mitigation is not a real solution for the protection of farmland. Easements held in perpetuity with the changing landscape of our industry, and particularly the uncertainty of the Sustainable Groundwater Management Act (SGMA) laws creates significant concerns about how to implement an Ag Preservation Ordinance.

The face of California agriculture is changing rapidly. The industry is under constant threat, with onerous laws and regulations adding complexity and uncertainty to a landowner in determining their best practices for farming and remaining a viable business. Low commodity prices coupled with increasing labor costs, water costs, governmental regulations, and supply costs are contributing factors that makes farming risky and unpredictable. Whether the City re-initiates an agriculture preservation ordinance or not, these are facts, and the industry is having to make difficult choices about land use, in light of those issues. This clouds the discussion around whether agriculture mitigation in fact helps or hinders the long term preservation of farmland. The City of Visalia knows this well, and firsthand, with their own involvement in farming and land holdings of walnuts and pecans.

As much as weather is a variable, farming itself and commodities prices are cyclical too and dependent on a variety of factors. It should be acknowledged by the City and staff, that many of these changes are out of the hands of the landowners and farmers to control. One year they may be able to farm and the next they cannot. The City Council and it's staff need to incorporate flexibility be able to make changes to the ordinance as the realities of farming changes year to year. Tulare County Farm Bureau is committed to helping ensure viability for farmers and ranchers, but protecting their ability to farm is under constant threat. It seems like an overburdensome request to preserve every acre of farmland within Tier II and III, when farmers are currently trying to simply preserve their livelihoods. Contemplating the need to permanently set aside land for preservation of farming, when other farmland may be idled or their ability to farm extinguished is challenging. President Dwight D. Eisenhower once said, "*Farming looks mighty easy when your plow is a pencil and you're a thousand miles from the corn field.*" Often times we see outside interests seeking to influence the ag preservation policy who have little to no knowledge of what it takes to make a farm and the land profitable.

In speaking with a local land appraiser, they offered, that the size of a property plays a key role in its ability to produce enough agricultural goods and services to constitute the economic feasibility of that property. In the local Tulare County market, parcels less than 20 acres in size have a different highest and best use than that of a 100-acre property. Properties under 20 acres are desirable in the market for rural residential development. Rural residential properties tend to sell for higher prices than larger properties because the buyers are not purchasing these properties based on their agricultural income producing ability, but for their residential desires. When it comes to farming, efficiencies are gained when the cost can be divided over a larger acreage. Small properties do not have this luxury and are not truly capable of producing enough income on a stand-alone basis to cover the basic input costs associated with farming. Therefore, small farms are not usually considered economically viable farming units. If a property that small is not considered economically viable, then why

should it be required to be preserved in perpetuity for agriculture? In order to preserve agriculture, it should first be determined that it is considered viable for agriculture. Consideration should be given to only preserving true agricultural properties, and not rural residential properties. Although there is not an industry standard on size, feasibility for production is usually much larger than 20 acres.

The following summary statements provide our suggested changes to the draft APO:

- The acreage threshold for mitigation should be set at 20 acres or more, a 5-acre project should not trigger the mitigation requirement. If preserved land should be a minimum of 20 contiguous acres in size, then 20-acre minimum should be standardized across the draft.
- The 10-mile radius from town is not reasonable, it will unlikely be possible to locate land of suitable type to be sufficient to comply with the ag mitigation requirements. We recommend removing the 10-mile language.
- Considering the significant changes that SGMA is implementing now, requiring multiple sources of water for agriculture production will be a speculative and untenable situation that may result in the land not being farmable. It should be noted, that SGMA is changing agricultural land uses quicker than the State Dept. of Conservation's FMMP can even track, and farmers are already having to fallow lands that lack sufficient water.
- The stipulations for using the in-lieu fee should be the same as the mitigation requirement, that it can be applied to land within the 5-county region identified. A landowner should be able to opt in to the in-lieu fee choice without having to incur additional costs to prove that an attempt has been made.
- After consultation with local appraisers, the 35% of average price of three comparable parcels referenced under *Determination of Fee* seems arbitrary and unsupported. Easements are valued based on what rights the property owner is forfeiting. Depending on the location of the easement and the likelihood of development, an easement could cost anywhere from 5% to 50%, with most transactions closer to the lower end. The 35% seems to be an artificial number that could increase costs unnecessarily and hinder economic development for the City of Visalia.
- Utilizing the in-lieu fees solely for acquiring agricultural conservation easements burdens all Tulare County farmers. Instead, draft language should be modified or in-lieu fees earmarked to help the existing farmers to continue farming within the City's urban development boundaries or sphere of influence. The entire purpose and intent of the Agricultural Land Preservation Program is to preserve prime agricultural land and what better way to do that than by assisting those who are farming. In-lieu fees should be used to help existing farmers within the City's Sphere of Influence, to provide abatement and clean up services for trash dumping, rural crime, nuisance, trespass, and other challenges that exist for farmers at the edge of urban development.

Tulare County Farm Bureau was founded in 1917, right here in Visalia. We are a non-profit organization made up of agricultural producers in Tulare County who understand farming and ultimately rely on its success. Our organization wants nothing more than to preserve prime farmland and continue to produce high-quality crops that provide food and fiber to more than 90 countries throughout the world, however, we feel strongly that this new ordinance is not helping to accomplish that goal. If you want to better understand the challenges facing farmers, specifically Visalia area farmers, please don't hesitate to contact our office.

Sincerely,



Tricia Stever Blattler
Executive Director