



# **AGRICULTURAL PRESERVATION ORDINANCE**

**City Council Work Session**

**December 5, 2022**

# TOPICS

- 1 • **Purpose & Approach**
- 2 • **Program Options for Discussion**
- 3 • **City Council Discussion & Direction**



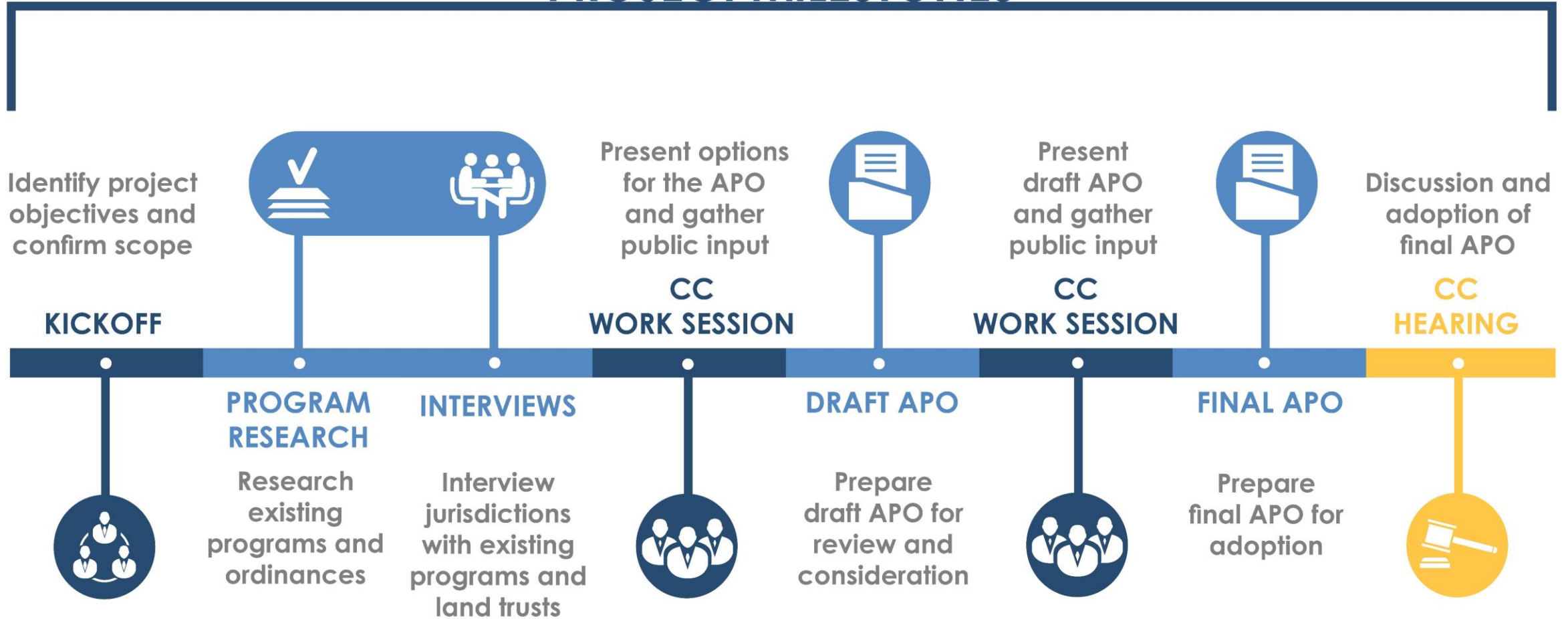
# PURPOSE

The City Council directed staff to implement an agricultural mitigation program as outlined by General Plan Policy LU-P-34.

The discussion this evening is intended to receive direction from City Council to direct the development of an agricultural preservation ordinance where there are options within the policy language.

# PROCESS

## PROJECT MILESTONES



# POLICY LU-P-34 COMPONENTS

General Plan Policy LU-P-34 calls for the City to create and adopt a mitigation program to address conversion of Prime Farmland and Farmland of Statewide Importance in Tiers II and III.

The policy directs creation of the program in three primary parts:

- 1 • **Applicability**
- 2 • **Agricultural Conservation Easements**
- 3 • **In-lieu Fee**

# APPROACH POLICY ANALYSIS

**Policy Parameters.** We identified where the policy provides narrow parameters for the program and where the policy directs more broad parameters for the program.

## Narrow Parameters

Provides enough direction within the policy language to direct next steps.

## Broad Parameters

Provides some direction within the policy language but needs further clarification.

# APPROACH RESEARCH & INTERVIEWS

## Local Governments

Reviewed 7 existing programs and interviewed 3 local agencies:

- City of Davis
- City of Tulare
- County of Stanislaus

## Land Trusts

Spoke with 9 land trusts and interviewed staff at 2 land trusts who work specifically with agricultural easements:

- Sequoia Riverlands Trust
- El Rio Reyes Conservation

# APPROACH FORM & ADOPTION

## Prepare an Agricultural Preservation Ordinance

The Ordinance would be:

- Integrated into the City of Visalia Municipal Code.
- Directive and provide standards for implementation.

*Note: If the City adopts an in-lieu fee, the in-lieu fee should be adopted by resolution.*





# OPTIONS FOR DISCUSSION

Applicability, Easements, and In-lieu Fee

# PROGRAM PARAMETERS & OPTIONS

## Policy Directives

## Topics for Discussion

### 1 Applicability

- Development of prime farmland and farmland of statewide importance
- Tier II and Tier III properties
- Exemptions apply to Tier I, agricultural processing, agricultural buffers, public facilities, roadways

- Designation of prime farmland and farmland of statewide importance
- Exemptions for project size
- Exemptions for affordable housing projects
- Exemptions for a portion of a project

### 2 Easements

- 1:1 conversion to preservation
- Equivalent land
- Located outside Visalia's Urban Development Boundary (UDB)
- Held by a qualifying entity
- Agricultural zoning

- Southern San Joaquin Valley
- Adequate water supply
- Level of City involvement

### 3 In-lieu Fee

- Allowed as an option
- Preference for easement over fee

- Case-by-case or set fee
- Level of City involvement

# TOPICS FOR DISCUSSION

## Organized by Policy Component: Applicability, Easements, In-Lieu Fee

**Policy Directives.** Summarizes the language in the policy for the policy component.

**Topics for Discussion.** Confirms the topics for which options will be presented during this discussion.

**Good-to-Know.** Shares context specific to the policy component prior to getting into to discussion of the options.

**Options.** Outlines the options for discussion and items City staff is requesting direction on for the preparation of the Agricultural Preservation Ordinance.



# 1. APPLICABILITY

## Farmland Designations and Exemptions

# 1 APPLICABILITY POLICY DIRECTIVES

## Conversion of Farmland

The program shall address:

- Conversion of Prime Farmland and Farmland of Statewide Importance.
- In Tiers II and III.

## Exemptions

The program shall specifically allow for exemptions:

- In Tier I,
- For agricultural processing uses,
- For agricultural buffers,
- For public facilities, or
- For roadways.

# 1 APPLICABILITY TOPICS FOR DISCUSSION

- How prime farmland and farmland of statewide importance designations are determined and confirmed.
- Other exemptions for consideration.
  - Based on project size,
  - Based on project type (specifically, affordable housing), and
  - Exempt uses as part of an overall project.

# ① APPLICABILITY GOOD-TO-KNOW

## Prime Farmland and Farmland of Statewide Importance

Prime farmland and farmland of statewide importance are designated and mapped by the California Department of Conservation's Farmland Mapping and Monitoring Program (FMMP).

- FMMP started in 1982 with the first map produced in 1984.
- Maps are updated every 2 years.
- Updated maps are released about 2-4 years after the data set.

# ① APPLICABILITY GOOD-TO-KNOW

## Prime Farmland and Farmland of Statewide Importance

Two primary qualities influence designation of prime farmland and farmland of statewide importance:

- **Land Use.** The land has been used for irrigated agricultural production in the last four years.
- **Soil.** The land has soil that meets specific and quantitative physical and chemical criteria.

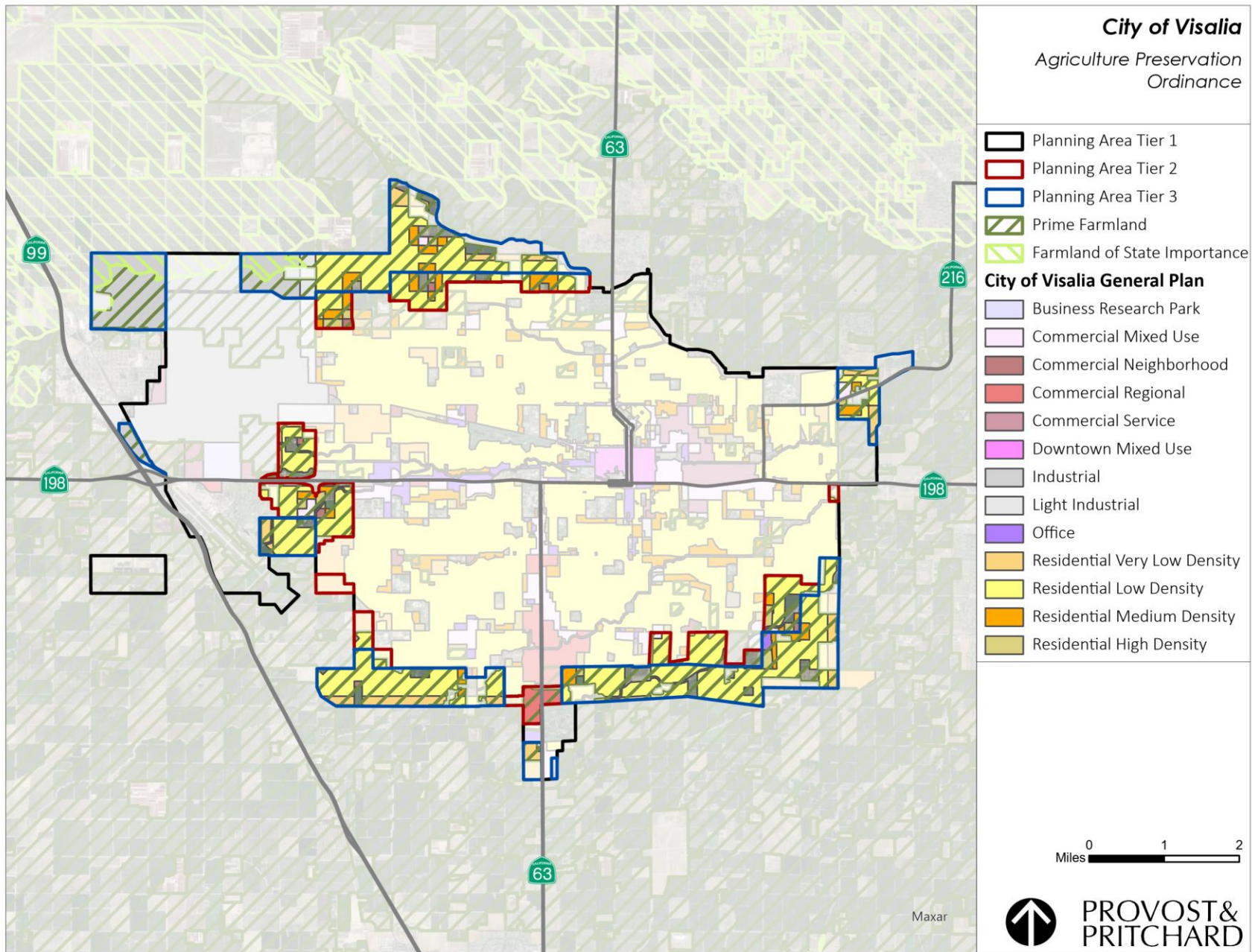


# 1 APPLICABILITY GOOD-TO-KNOW

## Prime Farmland and Farmland of Statewide Importance

Farmland designations are documented through the FMMP. Data is primarily derived from the following sources:

- **Land Use.** Desktop review, supplemented with field verification. *Data is updated every 2 to 4 years.*
- **Soil.** National Resource Conservation Service (NRCS) data. *Data was last updated in 1999 for Tulare County and is generally not site-specific.*



## In Tiers II and III:

**6,309 acres** of prime farmland or farmland of statewide importance.

**5,586 acres** of prime farmland or farmland of statewide importance designated for residential, commercial, or industrial uses.

# ① APPLICABILITY OPTIONS

## Confirm Farmland Designation of Property

FMMP mapping is based on older data. Given the lag in available data, it may be appropriate to allow applicants an opportunity to verify the farmland designation status of the land to be developed.

**Option 1.** Rely only on the most recent version of FMMP maps.

**Option 2.** Use the most recent version of the FMMP maps but allow for an individual site assessment process to confirm FMMP designation.

# ① APPLICABILITY OPTIONS

## Exemption for Project Size

The policy does not expressly call for an exemption based on the size of the project. However, such an exemption for small properties could be considered.

**Option 1.** No exemption based on the size of the project.

**Option 2.** Projects of one acre or less are exempt.

**Option 3.** Projects of five acres or less are exempt.

# 1 APPLICABILITY OPTIONS

## Exemption for Affordable Housing Projects

The policy specifically exempts certain uses (agricultural processing, agricultural buffers, and public facilities). The city may consider a specific exemption for affordable housing to align with other planning priorities and requirements.

**Option 1.** No exemption for affordable housing projects.

**Option 2.** Exemption for affordable housing projects under the density bonus ordinance.

**Option 3.** Exemption for 100 percent affordable housing projects.

# 1 APPLICABILITY OPTIONS

## Exemption for Portion of Project

The policy includes exemptions for certain uses (e.g., agricultural processing, public facilities) but does not address the scope of the exemptions for such uses when a part of a larger project.

**Option 1.** For the exemption to apply, the exempted use must be the whole of the project. *E.g., The project is development of a community park.*

**Option 2.** The exemption applies to the area of the exempted use. *E.g., If a 10-acre project includes one acre of an exempted use (e.g., pocket park), the developer must preserve farmland for only nine acres.*

A close-up photograph of a tree branch heavily laden with bright orange fruit, likely oranges or tangerines. The leaves are green and glossy, and the background is a soft-focus landscape of more trees and foliage under bright, natural light.

# **2. EASEMENTS**

**Location, Qualifying Criteria, and City Involvement**

## 2 EASEMENTS POLICY DIRECTIVES

### Agricultural Land Preserved

The program shall require that agricultural land preserved:

- Be located outside the City UDB, and within the southern San Joaquin Valley,
- Be a 1:1 ratio to agricultural land converted,
- Be equivalent to agricultural land converted,
- Demonstrate adequate water supply, and
- Demonstrate agricultural zoning.

### Qualifying Entity

The program shall require:

- Easements to be held by a qualifying entity, such as a local land trust, and
- Submission of annual monitoring reports to the City



# 1 EASEMENTS TOPICS FOR DISCUSSION

- How undefined terms may be implemented in the program:
  - Southern San Joaquin Valley, and
  - Adequate water supply.
- How integrated the City should be in the easement.

# 2 EASEMENTS GOOD-TO-KNOW

## Agricultural Conservation Easements

- A voluntary, legally binding agreement
- Limits certain types of uses or prevents development from taking place on a piece of property now and in the future
- Recorded in the chain of title of the property and it ‘runs with the land’ so that the restrictions also apply to future owners of that land

### PROCURING AN EASEMENT

**SUITABLE LAND**

- Acceptable location and zoning
- Equivalent agricultural quality
- Water availability

**WILLING LANDOWNER**

- Willingness to sell a permanent easement on land
- Agreed compensation

### REMOVING AN EASEMENT

- Prove land is no longer effective for farming
- Approved for termination in court
- May require replacement mitigation

## ② EASEMENTS GOOD-TO-KNOW

### Agricultural Conservation Easements

**Landowner.** The landowner agrees to use the property only for certain agricultural purposes in perpetuity.

**Qualified Entity.** The qualified entity is the holder of the easement. It monitors use of the property, may, in some cases, approve certain activities, and may enforce the easement.

**Third Party.** The easement is typically paid for by a third party (e.g., a developer, government agency, grant funding). The third party is paying the landowner to forfeit their right to use the property for non-agricultural purposes (i.e., residential, commercial, or industrial).

# 2 EASEMENTS OPTIONS

## Location of Easements

The policy calls for agricultural conservation easements to be located within the southern San Joaquin Valley. There are three options for defining the region.



**Option 1.** Tulare and Kern



**Option 2.** Tulare, Kern, and Kings



**Option 3.** Tulare, Kern, Kings, Fresno, and Madera

## 2 EASEMENTS OPTIONS

### Qualifying Criteria: Adequate Water Supply

The policy requires that the farmland preserved, i.e., the property subject to the conservation easements, “demonstrate adequate water supply”. There are different methods of demonstrating adequate water supply.

**Option 1.** Use the FMMP mapping designation as a proxy for demonstrating adequate water supply.

**Option 2.** In addition to referencing the FMMP mapping designation, verify that the property has at least one source of water (e.g., pre-1914, surface water, groundwater rights).

## ② EASEMENTS OPTIONS

### City Involvement: Easement Acquisition and Maintenance

The City may become a party to the easement. Whether or not the City is a party to the easement, the City still has an interest that the easement itself accomplishes the intended purposes.

**Option 1.** The City is not a party to the easement, but the City must approve the form of the easement.

**Option 2.** The City is a third-party beneficiary to the easement, so that the City may enforce the easement's terms, and City must approve the form of the easement.

**Option 3.** The City is a co-holder of the easement along with the qualified entity.

A close-up photograph of several bright orange fruits hanging from a tree with green leaves. The background is softly blurred, showing more of the orchard and trees under bright, natural light.

# **3. IN-LIEU FEE**

**Establishment of a Fee and City Involvement**

### 3 IN-LIEU FEE POLICY DIRECTIVES

The program shall:

- Allow mitigation to be provided by payment of a fee in-lieu of direct acquisition of an easement, and
- Shall indicate a preference of purchase of easements over payments of a fee.



### 3 IN-LIEU FEE TOPICS FOR DISCUSSION

- Calculation of the in-lieu for a legislative fee or an ad hoc fee
- City role in the collection and expenditure of fees

# 3 IN-LIEU FEE GOOD-TO-KNOW

## Type of Fee

**In-Lieu Fees.** In this case, the in-lieu fee is payment of a fee in lieu of acquiring an agricultural conservation easement.

### **Legislative Fees vs. Ad Hoc Fees.**

- Legislative fees are adopted by City Council and applied formulaically to all projects.
- Ad hoc fees are applied on a case-by-case bases to individual projects.

# 3 IN-LIEU FEE GOOD-TO-KNOW

## Mitigation Fee Act

The Mitigation Fee Act requires fees to defray the public facilities needs of development projects meet certain standards.

The Act does not apply to an in-lieu fee for an agricultural conservation easement.

# 3 IN-LIEU FEE GOOD-TO-KNOW

## Fee Components

**Purchase Price.** The purchase price is the price of the easement. It is paid by the developer to the land trust, who then purchases the easement from the landowner.

**Transaction Costs.** These costs are paid by the developer to the land trust, who in turn performs the necessary due diligence for the prospective property.

**Endowment.** The endowment funds ongoing maintenance of the easement. It is a one-time payment from the developer to the land trust.

# 3 IN-LIEU FEE GOOD-TO-KNOW

## Thresholds for In-lieu Fee

The policy requires a preference of purchase of easements over payment of an in-lieu fee. Typical thresholds used in other jurisdictions that will be considered for the agricultural preservation ordinance include:

- Size of the parcel (e.g., smaller than 20 acres).
- No qualified entity exists or is willing to hold the easement.
- No landowner is willing to sell an easement.

# 3 IN-LIEU FEE OPTIONS FOR DISCUSSION

## Legislative Fee or Ad Hoc Fee

The purpose of the in-lieu fee is that a developer, in-lieu of acquiring an agricultural conservation easement, pays the City a fee to be used towards acquiring agricultural conservation easements.

**Option 1.** Formulate and adopt a legislative fee for all projects.

**Option 2.** Determine an ad hoc fee on a case-by-case basis.

### 3 IN-LIEU FEE OPTIONS

#### City Involvement: In-lieu Fee Collection and Expenditure

As in-lieu fees, the fees collected should be spent towards acquisition of agricultural conservation easements. Those agricultural easements could be purchased by a qualified entity or directly by the City.

**Option 1.** The City remits the fees to a qualified entity to acquire an easement.

**Option 2.** The City either remits the fees to a qualified entity to acquire an easement or directly acquires the easement.



# CITY COUNCIL DISCUSSION & DIRECTION

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# CONFIRMATION OF APPROACH

## PROJECT MILESTONES



# APPLICABILITY SUMMARY OF OPTIONS

<b>Confirm Farmland Designation of Property</b>	<p><b>Option 1.</b> Rely only on the most recent version of FMMP maps.</p> <p><b>Option 2.</b> Use the most recent version of the FMMP maps but allow for an individual site assessment process (by the applicant) to confirm FMMP designation.</p>
<b>Exemption for Size of Project</b>	<p><b>Option 1.</b> No exemption based on the size of the project.</p> <p><b>Option 2.</b> Projects of one acre or less are exempt.</p> <p><b>Option 3.</b> Projects of five acres or less are exempt.</p>
<b>Exemption for Affordable Housing Projects</b>	<p><b>Option 1.</b> No exemption for affordable housing projects.</p> <p><b>Option 2.</b> Exemption for certain affordable housing projects.</p> <p><b>Option 3.</b> Exemption for all affordable housing projects.</p>
<b>Exemption for Portion of the Project</b>	<p><b>Option 1.</b> For the exemption to apply, the exempted use must be the whole of the project.</p> <p><b>Option 2.</b> The exemption applies to the area of the exempted use.</p>

# EASEMENTS SUMMARY OF OPTIONS

## Location of Easements

**Option 1.** Counties of Tulare and Kern.

**Option 2.** Counties of Tulare, Kern, and Kings.

**Option 3.** Counties of Tulare, Kern, Kings, Fresno, and Madera.

## Qualifying Criteria: Adequate Water Supply

**Option 1.** Use the FMMP mapping designation as a proxy for demonstrating adequate water supply.

**Option 2.** In addition to referencing the FMMP mapping designation, verify that the property has at least one source of water.

## City Involvement: Easement Acquisition and Maintenance

**Option 1.** The City is not a party to the easement, but the City must approve the form of the easement.

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**Option 3.** The City is a co-holder of the easement along with the qualified entity.

# IN-LIEU FEE SUMMARY OF OPTIONS

## Legislative Fee or Ad Hoc Fee

**Option 1.** Formulate and adopt a legislative fee for all projects.

**Option 2.** Determine an ad hoc fee on a case-by-case basis.

## City Involvement: In-lieu Fee Collection and Expenditure

**Option 1.** The City remits the fees to a qualified entity to acquire an easement.

**Option 2.** The City either remits the fees to a qualified entity to acquire an easement or directly acquires the easement.

# STAY INFORMED

## Contact:

Paul Bernal, Community Development Director

[paul.bernal@visalia.city](mailto:paul.bernal@visalia.city)

(559) 713-4025

## Visit the Website:



[https://www.visalia.city/depts/community\\_development/planning/agricultural\\_preservation\\_ordinance.asp](https://www.visalia.city/depts/community_development/planning/agricultural_preservation_ordinance.asp)

