

City of Morgan Hill

Agricultural Lands Preservation Program

Adopted: November 5, 2014

Purpose

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. To be effective for Morgan Hill, the agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City's Southeast Quadrant (SEQ) area, but also encourage preservation efforts throughout the City's SOI.

Definitions

Agricultural Land

For “Agricultural Land” that requires off-setting preservation/mitigation under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that has not been subsequently developed for non-Agricultural Use prior to the adoption of this Program or subsequently developed per the provisions of this Program. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy. The FMMP classifications reflect a finding by the California Department of Conservation of agricultural quality, which is based on a combination of soil quality as measured by the soil surveys of the United States Department of Agriculture (USDA) Natural Resource Conservation Service, together with recent agricultural-usage history.

Agricultural and grazing land definitions, as defined by the Department of Conservation mapping classifications include:

- 1. Prime Farmland.** Prime farmland is land with “the best combination of physical and chemical features able to sustain long term agricultural production. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
- 2. Unique Farmland.** Unique farmland is “farmland similar to prime farmland but with minor shortcomings, such as greater slopes or less ability to store soil moisture. Land must have been used for irrigated agricultural production at some time during the four years prior to the mapping date.”
- 3. Farmland of Statewide Importance.** Farmland of statewide importance is “farmland of lesser quality soils used for the production of the state’s leading agricultural crops. This land is usually irrigated, but may include non-irrigated orchards or vineyards as found in some climatic zones in California. Land must have been cropped at some time during the four years prior to the mapping date.”
- 4. Farmland of Local Importance.** Farmland of local importance is farmland identified as “land of importance to the local agricultural economy as determined by each county’s board of supervisors and a local advisory committee.”
- 5. Grazing Land.** Grazing land, defined as “land on which the existing vegetation is suited to the grazing of livestock” is not included in this study’s use of the term Agricultural Land and is not considered as core to the proposed preservation program.

Agricultural Conservation Easement

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting

development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

Agricultural Mitigation Land

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

Agricultural Priority Area

The Agricultural Priority Area is an area within the City's Southeast Quadrant (SEQ) that has been identified as the City's first priority for the acquisition of agricultural land conservation easements. This area was selected because it is the area within the Morgan Hill SOI where agriculture is considered to be the most viable over the long term. Conservation within this area will also contribute toward the City's goals of creating an open space buffer along its southern edge. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

Agricultural Use

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.

4. Dairy: Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. Feed Lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field Research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom Farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:
 - a) Direct sales of locally produced agricultural products.
 - b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

Agricultural Preservation In-lieu Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying

Entity and used by either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

Agricultural Lands Preservation Program Surcharge Fee

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

Open Agricultural Land

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land. Because an Open Agricultural Land Conservation Easement would potentially reduce the economic potential for future agricultural uses, it would normally be more expensive to acquire than a standard Agricultural Conservation Easement. The City may however determine that at some locations an Open Agricultural Land Conservation Easement would better implement the City's land use objectives by preserving open space as well as agricultural activity.

Qualifying Entity

A government or nonprofit entity operating in Morgan Hill and/or the surrounding portions of Santa Clara County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The City favors the use of a local government or non-profit agricultural conservation entity, a statewide government or non-profit agricultural conservation entity or entities, or the regional branch of a nationally recognized non-profit agricultural conservation entity as the easement holder. The Qualifying Entity should have appropriate representation and/or participation from the farming community. The City will consider the following criteria when considering the non-profit agricultural conservation entity for these purposes, and when monitoring the performance of Qualifying Entities over time:

1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization whose principal purpose is holding and administering Agricultural Conservation Easements for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has a long-term proven and established record for holding and administering easements for the purposes of conserving and maintaining lands in agricultural production;
3. Whether the entity has a history of holding and administering easements in Santa Clara County for the foregoing purposes;
4. Whether the entity has adopted the Land Trust Alliance's "Standards and Practices" and is operating in compliance with those Standards and Practices; and
5. Any other information that the City of Morgan Hill finds relevant under the circumstances.

Policies

The City will implement the Program in accordance with the following policies:

- 1. Agricultural Conservation Easements.** To achieve the Agricultural Lands Preservation Program objectives, activities converting Agricultural Land, such as new private or public development projects, are required to offset the conversion by directly preserving Agricultural Mitigation Land in perpetuity. Agricultural lands will be preserved through the recordation of permanent Agricultural Conservation Easements, which may be directly established by the land developer, obtained by the City or a Non-profit as an intermediary, or established through a developer-initiated transfer of development rights recorded within a development agreement. This offsetting preservation will serve as mitigation to satisfy the requirements for agricultural mitigation under the California Environmental Quality Act (CEQA) as well as to support the continuation of agriculture in and around the City of Morgan Hill consistent with community preferences and City policies.
- 2. Alternate Mitigation.** The primary means of mitigation under this program are the direct recordation of conservation easements or the payment of in lieu fees which will be applied toward conservation easements. As an alternative, agricultural mitigation through Planned Development Zoning and/or a Development Agreement is allowed only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, such alternative mitigation shall still be required to achieve a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement
- 3. Applicability.** All new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of at least one acre of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption of this Policy, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.
- 4. Mitigation Ratio.** A minimum of one (1) acre of Agricultural Land (**1:1 mitigation ratio**) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.
- 5. "Stay Ahead" Provision.** Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

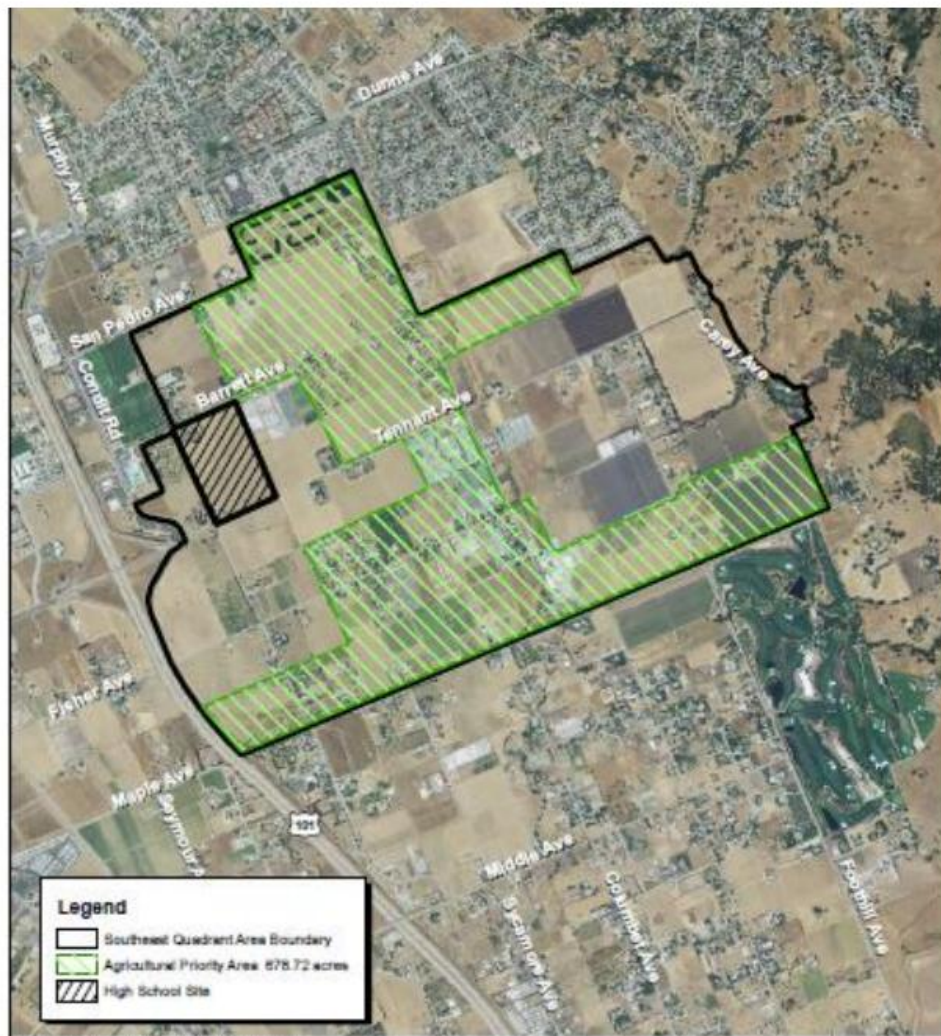
- 6. Measurement of Affected Area.** Consistent with the Santa Clara Valley HCP/NCCP plan, the areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or SRL. These land use designations allow for and typically include a large portion of land reserved for “open space/open fields” that in the future could be put back into Agricultural Use. Areas proposed to be so reserved must have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.
- 7. Mitigation Mechanism.** Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.
- 8. Eligible Mitigation Lands.** In order to meet the goals of this Program, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:

 - a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only;
 - b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
 - c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;
 - d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
 - e) The mitigation land shall be located within Santa Clara County; and
 - f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.
- 9. Ineligible Mitigation Lands.** A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

 - a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or

- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

10. **Agricultural Priority Area.** The Agricultural Priority Area within Morgan Hill's Southeast Quadrant, shown on the figure below, is the City's first priority geographic area for conservation. The Agricultural Priority Area encompasses approximately 650 acres of land. The City should use all available tools, including clustering of existing development rights within the SEQ, transfer of development rights (TDR) programs, collaborative land use planning with the County, partnering with local open space conservation agencies, and the use of available grant funding to achieve conservation within this area. Within the Agricultural Priority Area the City should focus on obtaining conservation easements first on land outside of the City's land use control, specifically focusing upon the sub-area located along the southern edge of the City's Sphere of Influence.



11. **Secondary Conservation Areas.** If it is not possible to obtain conservation easements within the Agricultural Priority Area, the City should obtain conservation easements within other areas within the Morgan Hill Sphere of Influence as the next priority. The City may also identify lands intended for conservation within these areas.
12. **Alternative Conservation Areas.** Only when conservation opportunities are not available within the Sphere of Influence will the City consider easements at other locations within the County. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee .
13. **Agricultural Sustainability.** Prioritize acquisition of easements on land that is most viable for long-term agricultural use considering factors such as soil type, water supply and location. Promote agricultural uses within easement areas including the development of high-value crops which are compatible with an urban edge condition while also economically sustainable over the long-term.
14. **Responsibility for Easement Acquisition.** The City's preference is that developers pay the Agricultural Preservation In-lieu Fee so that conservation efforts will be focused within the Agricultural Priority Area and make use of funds from multiple sources. In such cases, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity. However the City will need to be a party to easements obtained by the Qualifying Entity.
15. **Minimum Easement Size.** The minimum land area for an Agricultural Conservation Easement is 10 acres on a single parcel or on multiple adjoining parcels so that the easement area is contiguous. Developments providing less than 10 acres of agricultural mitigation land are thus required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
16. **Management and Monitoring Fee.** As with other agricultural mitigation/preservation programs, a number of responsibilities will come with holding the Agricultural Conservation Easements, including their management and monitoring. The developer will be required to pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost of these activities along with administration of the program including any administrative costs of the Qualifying Entity. The City will establish the Surcharge Fee and monitor it periodically.
17. **Implementing Entity.** The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.
18. **Mitigation Timing and Implementation.** Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or

grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

- 19. Planned Developments / Development Agreements.** Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City.
- 20. Funding for Easements.** Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of conservation easements.
- 21. Clustering of Development.** The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- 22. Educational Center.** Work with local property owners, non-profits, or other agencies to develop an agricultural educational center within the SEQ.

Implementation

Agricultural Conservation Easement Program

Agricultural conservation easements can be obtained via a number of different agricultural preservation tools through dedication, purchase, or donation. The City will focus its agricultural preservation efforts on in-perpetuity Agricultural Conservation Easements. These easements may be established by private developers either to directly off-set a specific project or as part of a transfer of development rights (provided that adequate restrictions are incorporated into the easement) or purchased by the City or Qualifying Entity as defined by this Policy (using either in-lieu fee monies or alternative revenue sources). The City has determined to focus its agricultural preservation efforts in the SEQ as the first priority area, then elsewhere within the Morgan Hill SOI as the second level of priority. This program will be implemented according to the following guidance:

6. Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management. Initially, the group responsible for managing mitigation funds and Agricultural Conservation Easements will be the City of Morgan Hill. However, it is the intent of the City to partner with an established organization or transfer the operational responsibilities for managing and maintaining the City's Agricultural Lands Preservation Program to a third party Qualifying Entity. The third party Qualifying Entity will need to include individuals with direct experience and knowledge of farming activities
7. Implementation of mitigation (whether via conservation easement or payment of fee) will be due prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.
8. The specific terms and acceptance of Agricultural Conservation Easements will be at the discretion of the City of Morgan Hill or Qualifying Entity.
9. Initially, the Agricultural Preservation In-Lieu Fee, including the Program Surcharge Fee, is anticipated to be approximately \$15,000 per acre (based upon the attached Nexus Study). The program will allow for annual adjustments to the fee based on an established index and changes in land values. The In-Lieu Fee should be based on the value of Agricultural Lands at the time of development and must be sufficient to ensure lands can be purchased to meet the City's adopted ratios.
10. The Agricultural Preservation In-Lieu Fee will only be used for the acquisition of Agricultural Conservation Easements. Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
11. The Agricultural Lands Preservation Program Surcharge Fee will be used for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of easements established through the Program.
12. The Agricultural Lands Preservation Program will allow for the use of the City's Open Space Fund for acquisition of Agricultural Conservation Easements. Agricultural Conservation Easements

acquired using Open Space funds must insure that the covered lands be protected as Open Agricultural Land.

13. It is the City's goal to acquire Agricultural Conservation Easements in the immediate future utilizing available Open Space Funds. Where possible, the City of Morgan Hill will partner with conservation entities for the acquisition of easement lands.
14. The following minimum requirements shall be incorporated into all Agricultural Conservation Easements or other instruments recorded to satisfy the requirements of the Agricultural Lands Preservation Program. Nothing in this section is intended to prevent the inclusion of requirements that require a higher level of performance from the parties to a conservation easement or other instrument to ensure that the goals of the Agricultural Lands Preservation Program are achieved:
 - a) It is the intent of the City to transfer most, if not all, of the easements that are received from this program to a Qualifying Entity, as defined above, for the purpose of monitoring compliance with easement terms and taking any necessary enforcement and related actions.
 - b) All Agricultural Conservation Easements, or other farmland conservation mechanisms, shall be implemented through a legal instrument acceptable to City Council and the Qualifying Entity that will receive the easement, and signed by all owners with an interest in the mitigation land.
 - c) The instrument shall prohibit any uses or activities which substantially impair or diminish the agricultural productivity of the mitigation land or that are otherwise inconsistent with the conservation purposes of this Agricultural Lands Preservation Program. The instrument shall protect the existing water rights and retain them with the Agricultural Mitigation Land; however, the instrument shall not preclude the limited transfer of water rights on a temporary basis (i.e., not to exceed two years in any ten-year period) to other Agricultural Uses within Santa Clara County, so long as sufficient water remains available to continue Agricultural Use of the mitigation land.
 - d) The instrument shall prohibit the presence of a residence, except an existing residence or construction of a comparable replacement for such a home or construction of a single new home of 3,000 square feet or less on a site that does not already include a residence provided that such residence is not located where it would interfere with agricultural activities. (Alternatively, a portion of the subject property of up to 1.5 acres in area may be excluded from the Agricultural Conservation Easement and developed with a single new home provided that no other home is located on the property).
 - e) Instruments that convey an interest in the mitigation land to a Qualifying Entity, shall name the City as a third party beneficiary with full enforcement rights.
 - f) Interests in Agricultural Mitigation Land shall be held in trust by a Qualifying Entity and/or the City in perpetuity. Except as provided below (g), the Qualifying Entity or the City shall not sell, lease, or convey any interest in Agricultural Mitigation Land which it acquires.

- g) The Agricultural Conservation Easement, or other conservation mechanism recorded pursuant to the Agricultural Lands Preservation Program, can only be terminated by judicial proceedings. Termination shall not be effective until the proceeds from the sale of the public's interest in the Agricultural Mitigation Land is received and used or otherwise dedicated to acquire interests in other Agricultural Mitigation Land in Santa Clara County, as approved by the City and as provided for in this Program.
 - h) If any Qualifying Entity owning an interest in Agricultural Mitigation Land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City or other Qualifying Entity as acceptable and approved by the City.
 - i) The City may at its discretion terminate a relationship with a Qualifying Entity if that entity no longer satisfies the intent of this Program.
15. Utilize the City's Transfer Development Credit (TDC) program for agricultural preservation (Open Agriculture Land) in addition to the current goal of hillside preservation. The revenue comes from RDCS TDC In-Lieu fee paid by residential developers who do not purchase a TDC from a property owner.
16. Add Points to the Residential Development Control System (RDCS) scoring criteria that would be awarded to Projects that commit to support the Agriculture Preservation Program by paying a fee that could be used to pay for the residential development rights (TDR) or agriculture preservation easements for agricultural uses that could not meet the 90 percent open space requirement.

Clustering and Transfer of Development Rights

As opportunities arise, the City may utilize or develop additional methods of preserving agricultural lands through the land use entitlement process, including cooperatively working with property owners or developers to preserve agricultural lands through clustering or transfer of existing development rights. Such clustering or transferring can be implemented through the City's land use entitlement processes as described above. The City may also work with the County to develop a program that would allow transferring of development rights between the County and City in order to further preserve agricultural lands.

General Plan Policies

In addition to the preservation of Agricultural Land through Agricultural Conservation Easements and/or the clustering or transfer of development rights, a broader policy framework is important to support the Program's objectives. In particular, strengthening land use policies that define supporting land uses, limiting speculation associated with the conversion of Agricultural Land, and allowing for agriculture-supporting infrastructure will play an important role in the implementation of the Agricultural Lands Preservation Program. Accordingly, goals, policies, and actions that address the following objectives should be maintained within the General Plan:

- Continue Agricultural Land uses and production in and around the City of Morgan Hill to promote the City's identity and agricultural heritage.

- Support the development of urban agriculture, and the preservation of the existing Agricultural Lands within or adjacent to Morgan Hill to increase the supply of locally-grown, healthful foods.
- Strengthen the link between the community and local farms and farmers.
- Leverage Agricultural Lands to create and maintain a unique community character, provide open space, link to the region's history, support local agri-tourism, contribute to the local economy, and add to the quality of life.
- Identify potential sites within a centralized urban area of the City appropriate and suited for a community garden.

ATTACHMENT A – Background Information

The City engaged a consultant team to analyze the viability of agricultural activities in and around Morgan Hill and to make policy recommendations for how the City of Morgan Hill could best accomplish its goals of preserving viable agricultural lands. The consultant team, Economic & Planning Systems, Inc. and House Agricultural Consultants, submitted a report in December 2011 that provides background analysis and preliminary recommendations, much of which is incorporated into this Policy. Key findings from this Report are presented within the following Background information.

Agricultural Lands within Morgan Hill

As of 2010, the Morgan Hill SOI included approximately 9,894 acres of agricultural and grazing land, of which 7,739 acres was grazing land. The remaining 2,155 acres were irrigated or irrigable agricultural land uses, which are the focus of the Agricultural Lands Preservation Program (i.e., Farmland Mapping and Monitoring Program (FMMP) classifications of prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance). About two-thirds of this land, approximately 1,436 acres, was classified as prime farmland.

While the FMMP Map identified approximately 2,155 acres of irrigated or irrigable agricultural lands, some of this acreage had already been developed or committed for development at the time of this Policy’s drafting.

The table below identifies the total acreage of agricultural and grazing land within the Morgan Hill SOI, City Limits, and unincorporated areas within the SOI based on the 2010 FMMP Map.

FMMP Classification	City Limits	Unincorporated Areas within SOI	Grand Total
Prime Farmland	320	1,116	1,436
Farmland of Statewide Importance	18	187	205
Farmland of Local Importance	153	184	337
Unique Farmland	25	152	177
Grazing Land	1,284	6,455	7,739
Grand Total	1,800	8,094	9,894

Long-term Viability of Agricultural Lands

A simple definition of *agricultural viability* is: agriculture that is economically feasible to maintain and continue. To be viable agricultural activity:

- Land continues to be farmed, returning a net profit, on a multi-year basis.
- Natural resources are stewarded for the long term.
- Agricultural operations are supported by the local community.

This definition makes no distinction as to the type or scale of viable agriculture, which may change along with national and international economic trends. Farmers can be either full-time or part-time. It does, however, exclude hobby farming, meaning farming that does not return a profit. "Supported by the local community" means that agricultural activities are accepted as part of the commerce of the area by the residents of the area, that housing is available to farm laborers and small farmers, that agriculture is integrated into the policies and regulations of the City, and that trade and commerce between the farming enterprises and the residents flourishes, through such means as local sales, including on-site direct sales, and farmers' markets.

Based on data provided by the United States Department of Agriculture (USDA) Economic Research Service (ERS) in 2008, approximately 43 percent of farmers nationally indicate that farming is their major occupation, while 42 percent state that work other than farming is their major occupation; 15 percent do not consider themselves to be in the workforce. In 2008, 88 percent of all farm household income nationally came from non-farm sources. USDA ERS data indicate a long-term trend toward increasing non-farm income and decreasing farm income among United States farmers.

According to a study by the University of California (UC) Davis Small Farm Center, an annual gross income level of approximately \$25,000 per farm business is a threshold for sustainability. A majority of California farm businesses grossing more than \$25,000 annually are profitable, based on data from the 2007 USDA Census of Agriculture. There is no implication that "a living" can be made if a farm grosses \$25,000. The study does imply, however, that since a profit can be expected in this situation, it is likely that small farming will continue to be an occupation, if perhaps only a part time one. Since small farming is profitable in a majority of cases if the gross revenues exceed \$25,000, it is implied that the small acreages in the Morgan Hill area will continue to be farmed.

Examples of small-scale agriculture are:

- Nursery and flowers.
- Farms emphasizing local sales and marketing.
- Community farms and education centers.

There are national trends supporting small farming:

- Urban peoples' interest in health, open space, and community encourages small farming.
- "Buy local" makes economic, social, and ecological sense.
- There is strong interest by college-age persons in farming.
- There is strong interest by government and nonprofits in small farms.
- Small organic farms have, for the most part, enjoyed economic success in recent years.

The Report indicated that while large-scale agriculture (agriculture generally conducted on 600+ acre farms with minimum lots of at least 40 acres and general separation from urban uses) is not viable in the Morgan Hill area, the outlook for small-scale agriculture is good.

The Report identified key threats to agricultural viability in the Morgan Hill SOI as:

1. High land market values difficult for strictly agricultural producers to afford.
2. Urban proximity conflicts with many farming operations.
3. The incompatibility of small parcel size with large-scale agribusiness.

Policy Context

The Report identified the following overarching contextual issues as important to the development of an agricultural program for the City of Morgan Hill:

- **County and LAFCO Policies and Inter-agency Coordination.** For lands proposed to be annexed into the City of Morgan Hill, the successful preservation of agriculture in and around Morgan Hill will require collaboration and coordination with both the County and the Local Agency Formation Commission (LAFCO). Santa Clara County supports the continued agricultural use of lands in the unincorporated County through the use of large-lot agricultural zoning. Santa Clara LAFCO has developed a series of policies regarding agricultural mitigation and will play a critical role in the evolution of the Morgan Hill SOI in its review of boundary adjustment applications. It is important to note, though, that the City of Morgan Hill has the authority to enter into development agreements with property owners outside the Morgan Hill city limits for the purposes of preserving agricultural lands.
- **Southeast Quadrant.** The SEQ of the City is of particular importance as the last major, contiguous area of agricultural land in the Morgan Hill SOI and due to its potential as a permanent “greenbelt” between Morgan Hill and the neighboring rural residential area of San Martin.
- **Scale and Cost.** The City’s Agricultural Lands Preservation Program must recognize its unique circumstances, including: (1) the relatively small area in agricultural use in the Morgan Hill SOI; (2) the relatively high percentage of agricultural lands that are 10 acres or less in size; (3) the relatively high value of land relative to its potential for agricultural income due to rural-residential demand and speculative influences; and (4) the uncertainty in locating willing sellers of land for preservation purposes.
- **Other Goals.** The City of Morgan Hill has multiple goals for its undeveloped land within its SOI in addition to agricultural preservation. Such goals include the establishment of a greenbelt, the development of sports, recreation and leisure (SRL) amenities and uses of public benefit within the SEQ, including a new high school, and the location of appropriate and consistent uses around the adjacent freeway interchange.

Agricultural Mitigation Costs

Agricultural mitigation requirements, whether through land dedications or mitigation fees, result in additional cost to any development that converts agricultural land. In combination with other agricultural land preservation policies, these mitigation requirements increase the costs to new development and could create feasibility challenges. Under a typical agricultural mitigation program, a project found to result in the loss of agricultural land must mitigate the loss through the preservation of agricultural land elsewhere. Preserving land for agriculture means acquiring land in fee title or purchasing a conservation easement that restricts uses on the property. The cost burden of the agricultural preservation required will primarily depend on the non-agricultural value component of the land being preserved.

Land sales for agricultural land in Santa Clara County and around Gilroy steadily averaged between \$15,000 and \$45,000 per acre based on a review of transactions and listings between 2006 and 2009.

Higher agricultural land values in and around Morgan Hill relative to other Santa Clara County areas indicate the greater development pressures in the Morgan Hill SOI than the other agricultural areas in the County. In addition, Morgan Hill's agricultural parcels tend to be smaller in size compared with other County locations.

A market analysis included within the 2011 Report estimated that the cost to preserve agricultural land through fee simple purchases would range from \$50,000 to \$80,000 per acre in Morgan Hill and that the unit cost of agricultural land preservation through easement acquisition would range from \$30,000 to \$48,000 per acre within Morgan Hill's SOI and from \$9,000 to \$27,000 per acre for land outside of the City's SOI. A quick survey of agricultural mitigation programs around the state indicated that most programs result in costs of less than \$30,000 per acre. The actual land costs that individual applicants will face could vary considerably depending on market conditions at the time of land purchase; the availability of willing sellers; and the size, location, and condition of land being preserved, etc. In addition, ongoing costs are incurred to manage and monitor the agricultural conservation easements.

Agricultural Mitigation Costs for Typical Projects:

- **Preservation inside Morgan Hill SOI.** With mitigation required to take place within the Morgan Hill SOI, the mitigation cost associated with acquiring an easement was estimated to be \$30,000 to \$48,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$6,000 and \$9,600 per unit. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$2.30 and \$3.60 per building square foot.
- **Preservation in Santa Clara County.** With mitigation allowed to occur anywhere in Santa Clara County, the mitigation cost associated with acquiring an easement was estimated to be \$9,000 to \$27,000 per acre. For a residential subdivision development with an average density of 5 units per gross acre, this would represent an additional development cost of between \$1,800 and \$5,400 per acre. For a nonresidential development with a floor-area-ratio of 0.3, this would represent an additional development cost of between \$0.70 and \$2.05 per building square foot.

ATTACHMENT B – Nexus Study

The Nexus Study supporting adoption of the Agricultural Preservation In-lieu fee is available at:
<http://www.morgan-hill.ca.gov/DocumentCenter/View/12622>

EXHIBIT – Draft Agricultural Preservation General Plan Policies for Consideration

The City of Morgan Hill will evaluate the current General Plan policies related to preservation of Agricultural Land and consider updates to those policies that address the following proposed policies and actions.

Policies and Actions

Agricultural Lands Preservation

- Preserve Agricultural Lands and prime soils in non-urban areas in order to provide local and regional fresh food supplies, reduce dependence on foreign products, conserve energy, and retain the aquifer recharge capacity of these lands. Give highest priority to the preservation of Agricultural Lands with the greatest long-term potential to support sustained Agricultural Use.
- Establish and/or maintain General Plan and Zoning land use designations to support Agricultural Uses.
- Encourage contractual protection for Agricultural Lands, such as Williamson Act contracts, Agricultural Conservation Easements, transfers of development rights, or other property tax relief measures as incentives for preservation of these lands.
- Implement the City's Agricultural Lands Preservation Program to preserve Agricultural Lands as part of new annexations or development projects.
- Offer landowners fair market value for their development rights on prime farmland.
- Allow alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement only if it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.
- Expand the City's Transfer Development Credit (TDC) program to include agricultural preservation as well as hillside preservation. Use the revenue from new purchases of TDCs, in part, to support the purchase of Agricultural Conservation Easements.
- Award points to projects that compete through the Residential Development Control System (RDCS) competition that commit to purchase TDCs for the purpose of agricultural preservation.
- Partner with a conservation organization for the administration of the Agricultural Lands Preservation Program and management of protected lands based on clear definitions of the agency(ies) roles and standards and criteria for the program administration and management.
- Promote legislation to establish Countywide and Statewide agricultural preservation programs, including identifying sources of funding necessary for implementation of such programs.
- Avoid the creation of small (i.e. less than 10 acres) and/or isolated areas for Agricultural Mitigation Lands.
- Amend existing General Plan Policy 2o in the Open Space and Conservation Element to be consistent with the provisions of this Program.

Sustainable Agricultural Industry

- Require ancillary non-Agricultural Land uses on Agricultural Lands to be ancillary and compatible with Agricultural Land uses, agricultural production, and the rural character of the area, and to enhance the economic viability of agricultural operations.
- Promote an agricultural support system including physical components (such as farm labor housing, retail sales, equipment supply and repair) and institutional components (such as agricultural education and training).
- Pursue additional funding available through State and federal grant programs sources for Agricultural Land preservation, educational/outreach programs, and other activities that support Agricultural Land use.
- Conduct outreach to farmers/landowners about Agricultural Conservation Easements and farming succession planning.
- Encourage Agricultural Uses which follow ecologically sound agricultural practices and minimize the use of chemicals and pesticides in order to promote healthy soils and ground water, provide healthful foods, reduce energy use, and reduce the resource demand attributed to local agricultural industry.
- Seek conservation program funding for farmers planning and implementing conservation practices that improve soil, water, plant, air and related resources on their land.
- Work with agricultural entities (e.g., farming industry, non-profits, land owners), the County, other Santa Clara County cities and the Local Agency Formation Commission and other stakeholders to promote public education to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Local Agricultural – Economic Development

- Enhance viability and profitability of ongoing use of Agricultural Lands by supporting ancillary commercial uses such as produce stands, small-scale environmental and agricultural tourism, and the processing of agricultural products.
- Facilitate the long-term viability of farming within the City's SOI through educational, resource and mentoring programs, including partnerships with educational institutions (e.g. Gavilan College), industry organizations (e.g., California FarmLink), and financial institutions that provide business planning and mentoring for new farmers.
- Work with industry groups, business groups and other organizations to institute direct marketing programs, branding campaigns, and other incentives and programs that increase purchasing agreements between local farmers and local retailers, such as grocery stores, markets, restaurants and local institutional uses, and increase consumer awareness and purchases of local agriculture.
- Support partnerships between school districts and organizations to promote and implement farm to school programs.
- Incorporate agri-tourism destinations on City signage, e.g. farm stands and farms within the city's SOI.
- Encourage and support interested farmers to create public access opportunities through farming areas (e.g., school and public farm tours, roadside stands, and farm trails).

Urban Agriculture

- Maintain existing and support the development of new community gardens, farmer's markets and produce stands at suitable locations throughout Morgan Hill.
- Periodically review and amend the Zoning Code to streamline permit/use regulations to encourage and support the sale of agricultural products within the City.
- Support urban agriculture opportunities such as backyard gardens and edible landscapes that produce ecologically sound food for local consumption.
- Encourage developers of new development projects to incorporate food-producing areas within their project landscape plans.
- Encourage healthful food choices, exercise, and the production of locally grown agriculture for personal use by providing community garden facilities either on public lands or as part of new private developments.

Urban/Agriculture Interface

- Establish an agricultural buffer between urban and rural uses. The buffer's size, location and allowed uses must be sufficient to minimize urban edge conflicts, provide safety to urban residents, and allow the broadest possible farming practices on the urban edge boundary.
- Establish a minimum agricultural buffer requirement around new development adjacent to the City's Agricultural Priority Area and County land with an Agricultural land use designation.
- Restrict land uses within and adjacent to Agricultural Lands that would compromise the agricultural viability of these lands. Require new adjacent land uses to mitigate any impacts on the use of Agricultural Lands.
- When considering annexation applications involving land that is mapped or used for agricultural production, or is located adjacent to such land, implement land use designation(s) and pre-zoning(s) to minimize the potential conflict with surrounding Agricultural Uses in the area.
- Require new development projects to record an agricultural buffer easement on the land that will make up the buffer concurrently with the permitting of any development/grading.
- Strengthen zoning development standards, where necessary, to encourage development placement, scale, and design that are consistent with the preferred rural character adjacent to the City's edge.

Inter-agency Cooperation

- Cooperate with other jurisdictions to achieve agricultural preservation goals.
- Continue to identify opportunities to work with other jurisdictions and organizations in supporting Agricultural Land preservation and the agricultural industry in and around Morgan Hill. Work with the County as a critical partner in these efforts and outreach to other organizations where efforts and resources can be pooled to support agriculture.

Access to Healthy Foods

- Support an enhanced role for local Agricultural Land in providing community farms and local food sources.
- Promote broad access within the community to healthful food, as defined by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.
- Encourage and support the marketing, sale and consumption of locally-grown produce.