

STAFF REPORT

DATE: May 24, 2016

TO: City Council

FROM: Mike Webb, Assistant City Manager
Katherine Hess, Community Development Administrator
Tracie Reynolds, Property Management Coordinator

SUBJECT: Agricultural Land Mitigation Requirements

Recommendation

This item is informational. Staff will present this information to the City Council on May 24.

Executive Summary

This staff report provides information about the City's agricultural land mitigation requirement, which is part of the City's Right to Farm and Farmland Preservation Ordinance, passed by the City Council in 1995. The term "agricultural land mitigation" means that developers must "mitigate" for any agricultural land they develop into urban uses. They must pay to protect other land (i.e., they must buy land outright or buy conservation easements on land) as "mitigation" for the land that will be permanently removed from agriculture production.

The City Council requested this presentation in anticipation of the June 7, 2016 vote by Davis residents on the proposed Nishi Gateway Innovation District, which would be required to provide agricultural land mitigation if approved by Davis voters. Members of the Open Space and Habitat Commission will also be in attendance during staff's presentation on this topic on May 24. Commissioners heard a similar presentation from staff at their meeting on May 2, 2016.

Council Goals

This presentation is related to Goal 3 (Pursue Environmental Sustainability) and the objective to pursue implementation of farmland protection and habitat conservation through acquisition of open space/easements (Objective 2).) It is also related to the community engagement process currently underway on the separate, but related, Measure O open space parcel tax and how these taxes are prioritized for acquisitions and maintenance of agricultural and habitat lands/easements.

Fiscal Impact

This staff report provides information to the City Council and does not ask the City Council to take action on any particular recommendation. As such, there is no fiscal impact to the City. Costs of compiling data and preparing this staff report have been absorbed into the approved budget for the Community Development and Sustainability Department.

Background and Analysis

In 1995, the City Council approved the Right to Farm and Farmland Preservation Ordinance. The main goals of the ordinance are to: (1) preserve and encourage agricultural land use and operations within the Davis Planning Area, (2) reduce the occurrence of conflicts between agricultural and non-agricultural land uses, and (3) reduce the loss of agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.

To achieve the ordinance's objectives, the City Council included two key requirements that developers must comply with if a proposed project is adjacent to agricultural land and converts agricultural land to non-agricultural land. These requirements, which were updated and strengthened by the City Council in 2007, are the agricultural land mitigation requirement and the agricultural buffer requirement, two key implementing tools in the City's Open Space Program. This staff report focuses on the agricultural land mitigation requirement. Other implementing tools in the City's Open Space Program are identified in Attachment 1.

How does the agricultural land mitigation requirement work?

Under the City's agricultural land mitigation requirement, developers must permanently protect at least two acres of agricultural land somewhere within the Davis Planning Area to "mitigate" for every acre of agricultural land they convert to urban uses (i.e., the 2:1 requirement). Permanently protecting the land means either buying it outright or buying a conservation easement on the land. Developers must first preserve the land directly adjacent to their project (the "Adjacent Mitigation Land"). If this adjacent land is not enough to satisfy the 2:1 agricultural land mitigation requirement, then the developer must look elsewhere within the Davis Planning Area (the "Remainder Mitigation Land"). Both of these categories are briefly discussed below:

- **Adjacent Mitigation Land.** The developer must first protect the land along the entire non-urbanized perimeter of the project. For example, if a proposed housing development abuts farmland, the housing developer must protect that farmland. If the developer cannot protect this land for some reason, then the developer must provide the Adjacent Mitigation Land on the development site itself. The Adjacent Mitigation Land must be of a size that is economically viable as farmland (i.e., it must be a minimum 1/4 mile in width). Developers do not have to mitigate for the land being used as the required on-site agricultural buffer.
- **Remainder Mitigation Land.** If the Adjacent Mitigation Land is not enough to satisfy the 2:1 agricultural land mitigation requirement, then the developer must look to protect land elsewhere within the Davis Planning Area (See Attachment 2). Incentives, or location-based "credits," are provided to the developer to protect land in areas targeted for permanent protection by the City, such as land within a 1/4 mile of the city limits and land within "priority acquisition areas" as determined by the City Council (See Attachment 3). These priority acquisition areas currently include land adjacent to the city limits, land separating the City from neighboring cities, and land providing particular agricultural, biological/natural and/or scenic benefits.

These incentives, or location-based "credits," are summarized in the table below:

If 1 acre of mitigation land is located:	Then developer gets "credit" for protecting:
Adjacent to city limits and within ¼ mile of the city limits	2 acres (2:1)
Adjacent to the required adjacent mitigation land	1 acre (1:1)
Within city designated priority open space acquisition areas	1 acre (1:1)
Elsewhere in the Davis Planning Area	1/5 of an acre (0.2:1)

As shown in the table above, if the developer protects one acre either adjacent to the required Adjacent Mitigation Land or within priority acquisition areas, then the developer would be able to “count” one acre toward the 2:1 agricultural land mitigation requirement. If the developer protects one acre adjacent to the city limits or within ¼ of the city limits, then the developer would be able to “count” two acres toward the 2:1 agricultural land mitigation requirement.

If the developer protects one acre anywhere else within the Davis Planning Area, then the developer would be able to “count” only 1/5 of that acre toward the 2:1 agricultural land mitigation requirement. So, five acres protected anywhere else within the Davis Planning Area equal only one acre toward the 2:1 agricultural land mitigation requirement.

An example of how the City’s agricultural land mitigation requirement might work in the real world is shown in the table below:

Example: If a development project converts 250 acres of ag land to urban uses			
Acres of ag land converted to urban uses:		250	
Acres needed to satisfy the 2:1 ag mitigation requirement:		500	
	Applicable Ratio	Actual Acres Protected	Acres Needed To Satisfy Ag Mit Requirement
Adjacent Mitigation Land			
Acres adjacent to project; along non-urbanized perimeter of project	1:1	50	50
Remainder Mitigation Land			
Acres adjacent to city limits and within ¼ mile of the city limits	2:1	125	250
Acres adjacent to the required minimum adjacent mitigation land	1:1	0	0
Acres within city designated priority open space acquisition areas	1:1	0	0
Acres elsewhere in the Davis planning area	0.2:1	1,000	200
	Total	1,175	500

In this example, a developer plans to develop 250 acres of agricultural land into urban uses. The City’s agricultural land mitigation requirement requires the developer to permanently protect 500 acres of agricultural land (2:1, or twice the acres being developed). In this example, the developer is able to protect 50 acres adjacent to his project as his Adjacent Mitigation Land requirement. So, his Remainder Mitigation Land requirement is 450 acres. In this example, he gets those 450 acres by permanently protecting: (1) 125 acres within ¼ mile of the city limits (250 credited acres), and (2) 1,000 acres far from the city limits but within the Davis Planning Area (200 credited acres). Those 1,000 acres only “count” as 200 acres toward the City’s

agricultural land mitigation requirement because the 1,000 acres protected far from the city limits count less than the acres the developer protected close to the city limits.

As shown in this example, due to the location-based factors or “credits,” the actual acreage protected can be significantly more than twice the acres being developed.

Finally, it is important to note that the developer may satisfy up to 50% of the agricultural land mitigation requirement by paying an in-lieu fee based on the appraised value of agricultural land near the city limits.

What qualifies as Remainder Mitigation Land?

In general, Remainder Mitigation Land must (1) be within the Davis Planning Area; (2) have comparable soil quality/capability/type; (3) have comparable water quality/supply; and (4) be developable (i.e., it is not subject to any easements, contamination, or physical conditions that would make it impossible to develop).

Has the current agricultural land mitigation requirement been used yet? No.

As mentioned, the City Council strengthened the City’s agricultural land mitigation requirement in 2007. Since that time, there hasn’t been a development project that has had to implement the City’s now-strengthened agricultural land mitigation requirement. The Wildhorse, Evergreen, and El Macero Estates developments all were built under the City’s pre-2007 agricultural land mitigation requirement, which required developers to protect the same number of acres that were being developed (1:1, or 1-for-1) and/or pay an in-lieu fee. The Cannery development was zoned for industrial development so the City’s agricultural land mitigation requirements did not apply. The Covell Village development complied with the post-2007 agricultural land mitigation requirement, but the project was ultimately denied by Davis voters, so the proposed agricultural land mitigation plan was never implemented.

Will it be applied to the Nishi Gateway Innovation District? Yes.

The Nishi Gateway Innovation District (“Nishi”) totals about 47 acres, including a portion of the Putah Creek Parkway. Because Nishi is surrounded by urban development, it is not possible for the developer to provide Adjacent Mitigation Land. The project’s Remainder Mitigation Land has not been identified, but the City Council has stipulated that it cannot be City-owned land. When Nishi’s proposed agricultural land mitigation plan is finalized, the plan will be presented to the Open Space and Habitat Commission for its consideration and then to the City Council for its approval.

Attachments:

1. Tools in the City’s Open Space Program Toolbox
2. Map of Davis Planning Area
3. Map of Priority Open Space Acquisition Areas

Attachment 1 Tools in the City's Open Space Program Toolbox

The City and Davis community primarily rely on four tools to implement the City's Open Space Program, which primarily strives to protect farmland and habitat areas that surround the city:

1. ***The agriculture mitigation requirement.*** Developers must secure (through fee title or easement) at least two acres of agricultural land elsewhere within the Davis Planning Area to "mitigate" for every acre of agricultural land converted to urban uses due to their project. Mitigation lands are first directed to the newly created agricultural edge of the development project (i.e., the non-urbanized edge) to create a permanent edge of the City. This non-urbanized edge/conservation area must be of a size that is economically viable as farmland (a minimum 1/4 mile in width). If additional mitigation acreage is required after the non-urbanized edge is secured, the developer is incentivized to secure lands that have been prioritized by the City for permanent protection.

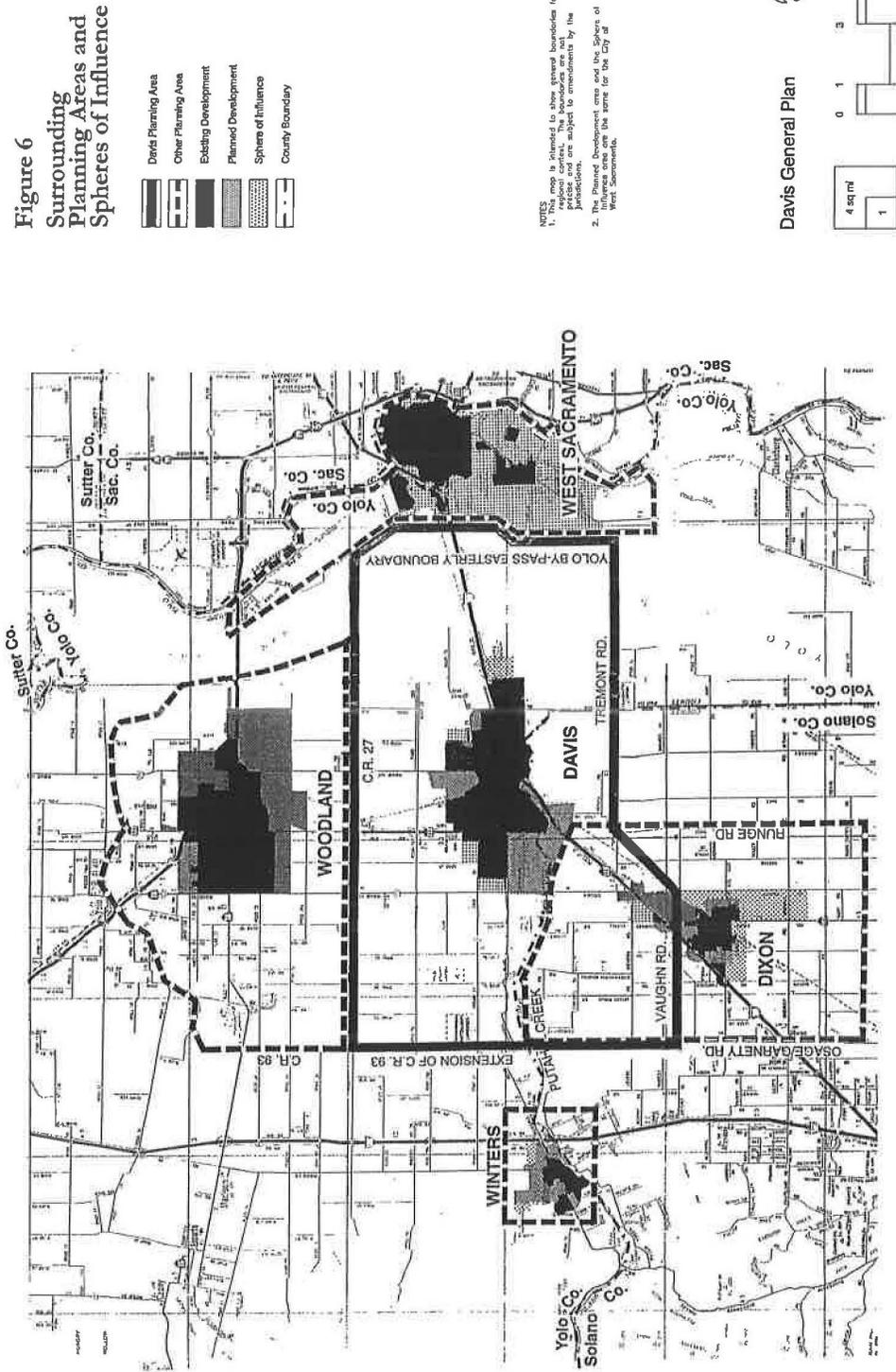
For example, if a project results in the permanent loss of 100 acres of agricultural land and the establishment of the non-urbanized edge requires 75 acres, the developer has the option to locate the remaining mitigation acreage anywhere in the Davis Planning Area with credit determined by where the remainder acreage is located. If the remainder acreage is located in a priority acquisition area, less acreage is required; if the remainder acreage is located in a non-priority area, more acreage is required. This tool incentivizes developers to protect agricultural land at the city's edge.

2. ***The agricultural buffer requirement.*** Developers also must provide an agricultural buffer (i.e., an agricultural transition area, greenbelt or habitat area) that is at least 150 feet wide between their project and adjacent agricultural uses. This tool aims to address potential conflicts between urban and rural land uses. This tool supports farming adjacent to urban uses; thereby helping to protect agricultural land at the city's edge.
3. ***Money (Measure O parcel tax, agriculture mitigation fees, development impact fees).*** The Measure O Special Tax Fund (Fund 135) is one of three funds the City uses to acquire open space and conservation easements. The City also uses Fund 190 (Agriculture Mitigation Fees) and Fund 475 (Development Impact Fees for Open Space) to finance open space acquisitions. This money can be used as matching funds for grants to acquire land and easements with willing sellers at fair market value. This tool leverages grant dollars to purchase land and easements to protect farmland and habitat.
4. ***Measure R/J Vote.*** Measure J (the Citizens' Right to Vote on Future Use of Open Space and Agricultural Lands Ordinance) was first passed by Davis voters in 2000. Measure J was included on the City of Davis' June 2010 ballot as Measure R and was approved for renewal, which extended the sunset date to December 31, 2020. Measure R requires an affirmative citizen vote for General Plan Amendments that re-designate land from agricultural or open space to urban uses. After completion of environmental review and public hearings, the City Council may choose to put a proposed land use change on the ballot for voter consideration. This tool gives the community the ability to weigh in on development proposals at the city's edge.

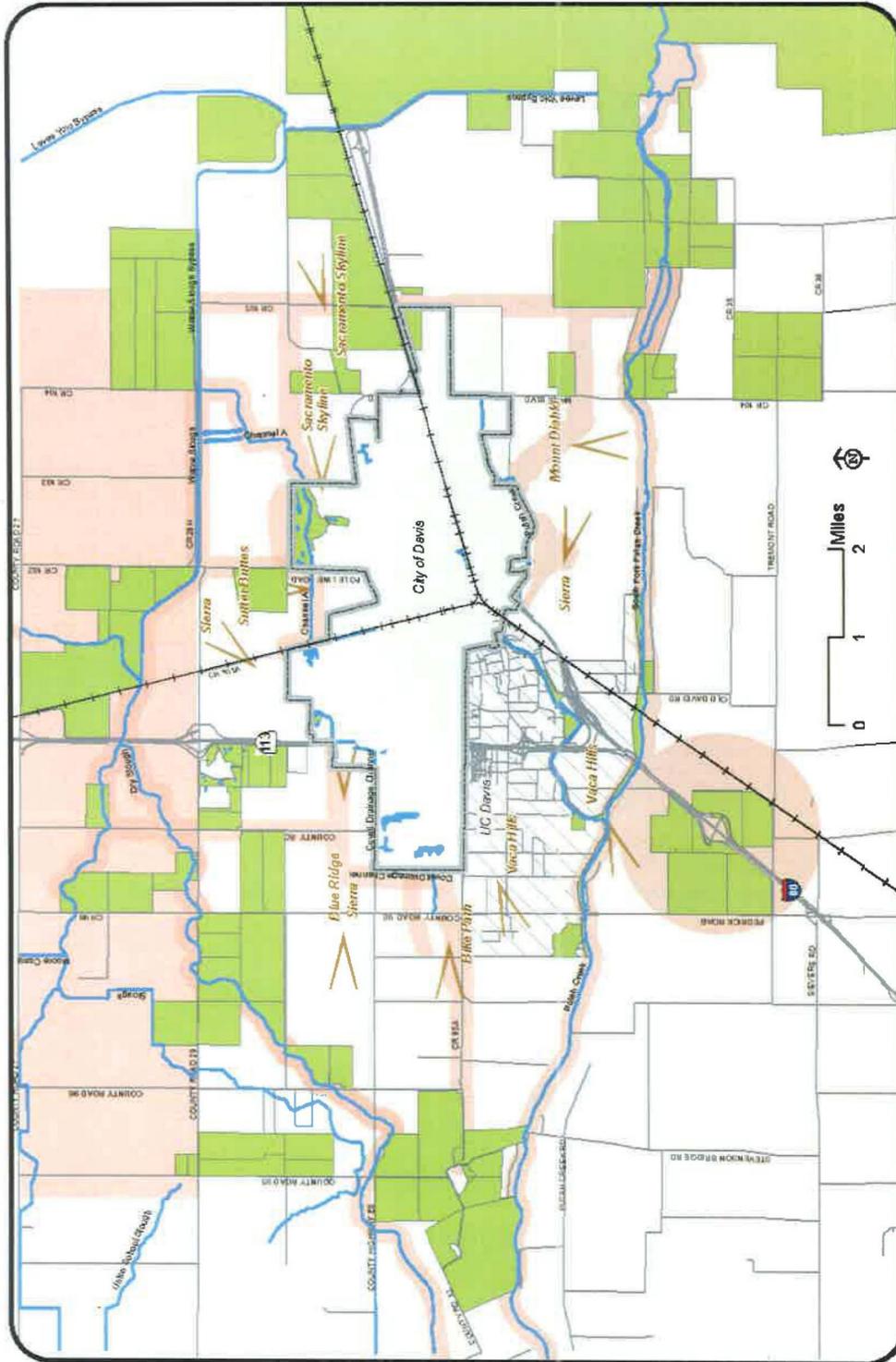
Attachment 2 Map of Davis Planning Area

Davis General Plan
Adopted May 2001 / Amended Through January 2007

Section II: Planning Context



**Attachment 3
Map of Priority Open Space Acquisition Areas**



**Open Space Priorities with Public Lands
as of 2013**

Priority Areas From:
Davis City Council Priority Areas, 2004
Davis Greenway Plan, 1989

Priority Areas
Public Lands and Easements

Open Space Priorities post Measure 0.mxd