

CHAPTER 17.28 – AGRICULTURAL LANDS PRESERVATION PROGRAM

17.28.010 – Chapter Title.

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Hollister.

17.28.020 – Purpose.

Due to favorable soil and topographical and climatic conditions, the City of Hollister contains large areas of local, State and Federal classified agricultural lands. These lands are environmental and economic assets that contribute to local quality of life.

The purpose of this Agricultural Lands Preservation Program is to ensure the benefits of agricultural activities are maintained by requiring that activities that convert existing agricultural lands to urban uses directly address that loss through a program that funds agricultural conservation easements.

17.28.030 – Definitions.

- A. *Agricultural Conservation Easement.* An Agricultural Conservation Easement is a legally binding deed limitation which has been executed voluntarily by the owner of the land subject to the easement, the purpose of which is to retain the land in its agricultural condition. The terms of the easement remain binding even when the land is sold or passed to heirs.
- B. *Agricultural Lands.* Agricultural Lands subject to this Program are defined as:
 1. All lands defined as Prime Agricultural Land per California Government Code 51201. These include the following:
 - a. All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.
 - b. Land which qualifies for rating 80 through 100 in the Storie Index Rating.
 - c. Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.
 - d. Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.
 - e. Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.
 2. All lands currently used for an Agricultural Use per California Government Code 51201. This means use of the land, including for greenhouses, for the purpose of producing an agricultural commodity for commercial purposes.
 3. All lands classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland or Farmland of Local Importance by the California Department of

Conservation (DOC) on the most recently published map of the Farmland Mapping and Monitoring Program (FMMP). Agricultural Lands developed for non-agricultural use prior to the adoption of this Program are not included in this definition. The four (4) classifications of farmland referenced above are defined by the DOC as follows:

- a. *Prime Farmland.* Prime Farmland has the best combination of physical and chemical features able to sustain long-term agricultural production. Prime Farmland has the soil quality, growing season, and moisture needed to produce sustained high yields. In order to qualify as Prime Farmland, land must meet the specific soil criteria required by the United States Department of Agriculture (USDA) Natural Resources Service (NRCS.)
 - b. *Farmland of Statewide Importance.* Farmland of Statewide Importance is similar to Prime Farmland, but with minor shortcomings, such as steeper slopes or less ability to store soil moisture. To qualify as Farmland of Statewide Importance, land must meet the specific soil criteria required USDA NRCS.
 - c. *Unique Farmland.* Unique Farmland consists 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.
 - d. *Farmland of Local Importance.* Farmland of Local Importance is land of importance to the local economy, as defined by each county's local advisory committee and adopted by its Board of Supervisors. Farmland of Local Importance is either currently producing or has the capability of production; but does not meet the criteria of Prime, Statewide or Unique Farmland. For the purposes of this ordinance and as adopted by the San Benito County Board of Supervisors, Farmland of Local Importance is defined as land cultivated as dry cropland for wheat, barley, oats, safflower and grain hay, as well as orchards affected by boron within the area specified in San Benito County Resolution Number 84-3. If the County of San Benito expands the definition of Farmland of Local Importance to include more lands, such lands shall also be considered to be Farmland of Local Importance under this ordinance.
4. All lands which in the reasonable judgment of the City of Hollister have the physical characteristics and yield potential to qualify as one of the classifications in Section 17.28.030.B.2 above. Whether or not the land under consideration is currently used for agricultural production shall not be a criterion in this determination.
- C. *Agricultural Lands Preservation Program Administration Fee.* The Agricultural Lands Preservation Program Administration Fee (also referred to as the Administration Fee) refers to a fee paid to the City of Hollister which will be credited to a City fund and used by the City and/or transferred to the Program Manager for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the Agricultural Conservation Easements.

- D. *Agricultural Use*. Agricultural Use means the use of land, including for greenhouses, for the purpose of producing an agricultural commodity for commercial purposes, per California Government Code 51201.
- E. *Arm's Length Transaction*. An Arm's Length Transaction is a business deal in which buyers and sellers act independently without one party influencing the other.
- F. *Developer*. A Developer is a person or entity who files an application to develop land under the jurisdiction of the City of Hollister.
- G. *Development Project*. A Development Project is a project to convert the use of land that is subject to an application under the jurisdiction of the City of Hollister.
- H. *Easement Holder*. An Easement Holder is a government entity or 501(c)(3) tax-exempt nonprofit corporation that takes ownership of, or authority over, real property and/or Agricultural Conservation Easements at the behest of an owner. The City will consider the following criteria when selecting an Easement Holder:
1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization, with preference given to a locally-based organization;
 2. Whether the entity has an established record of holding easements for the purposes of conserving Agricultural Land;
 3. Whether the entity has a history of holding easements in San Benito County;
 4. Whether the entity is operating in compliance with the most recent version of the Land Trust Alliance's "Standards and Practices" available at the Land Trust Alliance Resource Center.
- An Easement Holder may also serve as the Program Manager. The City of Hollister may also serve as an Easement Holder.
- I. *Highest and Best Use*. Highest and Best Use refers to the legal use of vacant or improved land that is physically possible and financially feasible, and that results in the highest value.
- J. *Legal Parcel*. A Legal Parcel is a portion of land separated from another parcel or portion of land in accordance with the Subdivision Map Act. A separate Assessor's Parcel Number (APN) alone shall not constitute a legal parcel.
- K. *Program Manager*. The Program Manager is a government entity or 501(c)(3) tax-exempt nonprofit organization selected by and accountable to the City of Hollister to serve as the manager of the Agricultural Lands Preservation Program. The City will consider the following criteria when selecting the Program Manager:
1. Whether the entity is based locally, is statewide, or is a regional branch of a national organization, with a preference given to a locally-based organization;
 2. Whether the entity has an established record of managing Agricultural Land;
 3. Whether the entity has a history of managing easements in San Benito County;

4. Whether the entity is operating in compliance with the most recent version of the Land Trust Alliance's "Standards and Practices" available at the Land Trust Alliance Resource Center.

The Program Manager may also serve as an Easement Holder. The City of Hollister may also serve as the Program Manager.

17.28.040 – Applicability.

The regulations and provisions of this chapter shall apply to all public and private Development Projects under the jurisdiction of the City of Hollister which would result in the conversion of at least one (1) acre of Agricultural Land for uses other than Agricultural Uses.

17.28.050 – Overall Requirement.

Before any Development Project that involves conversion of one (1) acre or more of Agricultural Land to uses other than Agricultural Uses may occur, Agricultural Conservation Easements on other Agricultural Lands that comply with criteria established in Section 17.28.090 shall be dedicated to the City of Hollister or to an Easement Holder selected by the City of Hollister, at a rate of at least one (1) acre of Agricultural Land for each one (1) acre of Agricultural Land to be converted [1:1 ratio].

The total acreage for which Agricultural Conservation Easements are dedicated shall be calculated based on the total acreage subject to conversion, not the total size of the Legal Parcel(s) on which the development is to be located, unless the total size of the area of the subject Legal Parcel(s) not subject to conversion is ten (10) acres or less, in which case the total acreage for which Agricultural Conservation Easements are dedicated shall be calculated based on the total size of the subject Legal Parcel(s).

17.28.060 – Timing.

Agricultural Conservation Easements shall be dedicated to the City of Hollister or to an Easement Holder specified by the City of Hollister prior to the issuance of grading permits or building permits that would result in the conversion of Agricultural Land.

17.28.070 – Program Mechanism.

The requirements of this Agricultural Lands Preservation Program may be satisfied in one of the following two ways:

- A. *Dedication of Agricultural Conservation Easement(s).* The Developer shall dedicate Agricultural Conservation Easement(s) to either the City of Hollister or to an Easement Holder specified by the City of Hollister, subject to the following provisions:
 1. The location and characteristics of all lands acquired for Agricultural Conservation Easements shall comply with the eligibility requirements established in Section 17.28.090 and Section 17.28.100.
 2. A Developer dedicating the Agricultural Conservation Easement(s) shall pay the Agricultural Lands Preservation Program Administration Fee as described in Section 17.28.110.A.

3. Water rights deemed essential to the conservation of the agricultural purpose and ongoing support of the Agricultural Use of the land shall be conditioned in the Agricultural Conservation Easement.
4. The City Council and Program Manager shall review each potential Agricultural Conservation Easement prior to contribution by the Developer for consistency with the purpose and mechanisms established in this ordinance.
If the Agricultural Conservation Easement is dedicated to an Easement Holder other than the City of Hollister, the dedication shall include the stipulation that the Agricultural Conservation Easement shall revert to the City of Hollister if the Easement Holder ceases to operate or fulfill the terms of this Agricultural Lands Preservation Program.

B. *Payment of In-Lieu Fees.* The payment of an Agricultural Conservation Easement in-lieu fee is subject to the following provisions:

1. Rather than dedicating an Agricultural Conservation Easement(s), the Developer may pay a fee to the City of Hollister calculated to be equal to the cost of acquiring required Agricultural Conservation Easement(s).
2. The dollar amount of the in-lieu fee shall be determined by the City Council following review of a study prepared by the Developer, peer reviewed by the Program Manager and/or a consultant selected by the City, and recommended by the Planning Commission. The peer review shall be paid for by the Developer.
3. The in-lieu fee shall be calculated based on the actual value of the required Agricultural Conservation Easement(s) and on transaction costs associated with transactions to acquire such easements.
4. The Planning Commission shall review the in-lieu fee proposal for consistency with these guidelines prior to submitting it for approval by the City Council. The Commission shall make a formal recommendation to the Council for consideration.
5. The City Council shall approve by resolution the amount and other terms of the in-lieu fee.
6. A Developer paying an in-lieu fee instead of dedicating Agricultural Conservation Easement(s) shall also pay the Agricultural Lands Preservation Program Administration Fee as described in Section 17.28.110.A.

17.28.080 – Administration of the Overall Program and In-Lieu Fees.

A. *Program Administration.*

1. Agricultural Conservation Easements generated by this Program shall be dedicated to the City of Hollister or an Easement Holder approved by the City under the terms of this ordinance, and shall be recorded in San Benito County.
2. If an Agricultural Conservation Easement is held by an Easement Holder other than the City of Hollister, the Easement Holder may be compensated for costs incurred related to holding the easement, as may be agreed among the City, the Program Manager and the Easement Holder, based on the character and acreage of the Agricultural Conservation Easement, using funds collected through the Agricultural Lands Preservation Program Administration Fee.

B. In-Lieu Fee Administration.

1. Within sixty (60) days after collection by the City, in-lieu fees shall be transferred to a fund administered by the Program Manager.
2. In-lieu fees shall be used to acquire Agricultural Conservation Easements on eligible Agricultural Lands, which shall be dedicated to the City of Hollister or an Easement Holder approved by the City of Hollister under the terms of this ordinance, and shall be recorded in San Benito County.

17.28.090 – Eligible Lands.

To achieve the purpose of this chapter, lands proposed for acquisition of Agricultural Conservation Easements shall share the characteristics of Agricultural Land and meet the following criteria:

- A. The lands shall be located in the City of Hollister Planning Area, as defined in the City of Hollister General Plan.
- B. The farmland classification shall be equal to or better than the classification of the land converted.
- C. The lands shall support an active Agriculture Use at the time that easements are acquired, or shall be capable of supporting an Agricultural Use within one (1) year as determined by the Program Manager. Lands not actively supporting an Agricultural Use shall be brought into Agricultural Use by the Program Manager, using funds paid for by the Developer, in excess of other funds required by this Program, within one (1) year of dedication. The amount of funds to be paid to bring the land into Agricultural Use shall be agreed upon by the Developer, Program Manager and City in advance of the acceptance of the easement and approval of the Development Project.
- D. Where a dedication of twenty (20) or more acres is required, lands shall be composed of legal parcel(s) of twenty (20) net acres or more in size. Parcels less than twenty (20) net acres in size shall only be allowed for dedication if merged to meet the minimum size requirement prior to execution of the Agricultural Conservation Easement.
- E. Where a dedication of less than 20 acres is required, lands shall be composed of a single legal parcel. In this case, multiple parcels shall only be allowed for dedication if merged to meet the minimum size requirement prior to execution of the Agricultural Conservation Easement.
- F. The lands shall be served by a water supply adequate to support Agricultural Use of the land, and the water rights on the lands proposed for acquisition of Agricultural Conservation Easements shall be protected in the Agricultural Conservation Easement in accordance with State water rights law.
- G. The dedication shall be consistent with a plan for overall acquisition of Agricultural Conservation Easements in the City of Hollister Planning Area if such a plan is adopted by the City of Hollister.

17.28.100 – Ineligible lands.

A property is ineligible for acquisition of Agricultural Conservation Easements if it does not meet the requirements of Section 17.28.090 or if any of the circumstances below apply:

- A. The property is currently encumbered by any conservation, flood or other easement that cannot be subordinated to the Agricultural Conservation Easement.

- B. The property is under public ownership at the time of the proposed acquisition of the Agricultural Conservation Easement.
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

17.28.110 – Agricultural Lands Preservation Program Administration Fee.

The Developer shall pay a one-time Agricultural Lands Preservation Program Administration Fee to cover the cost of stewardship and administration of the Agricultural Lands Preservation Program by the City and Program Manager, which shall be calculated as follows:

- A. *Dedicated lands.* If the Developer dedicates existing Agricultural Conservation Easement(s), the fee shall be ten percent (10%) of the value of the easements dedicated.
 - 1. If the easements were acquired through an Arm's Length Transaction in the one-year period prior to dedication to the City of Hollister, the value of the easements on which the Administration Fee shall be based will be the acquisition cost of the easements.
 - 2. If the easements were not acquired through an Arm's Length Transaction and/or were acquired more than one-year prior to dedication to the City of Hollister, the value of the easements on which the Administration Fee shall be based will be determined by the City Council after review of a report prepared by a real estate appraiser certified in agricultural conservation easement appraisals and licensed in California, and paid for by the Developer, which shall be peer reviewed by a consultant selected by the City and Program Manager and reviewed by the Planning Commission. The appraisal and peer review shall both be paid for by the Developer.
- B. *In-lieu fees.* If the Developer pays an in-lieu fee, the Administration Fee shall be ten percent (10%) of the in-lieu fee.

17.28.120 – Monitoring, Enforcing and Reporting.

Easements acquired in accordance with this Chapter shall be monitored and enforced in compliance with the following provisions:

- A. *Monitoring.* The Program Manager shall annually monitor all easements acquired in accordance with these regulations and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas.
- B. *Enforcing.* The Program Manager shall enforce compliance with the terms of the Agricultural Conservation Easement. Any costs incurred in enforcing the terms of the Agricultural Conservation Easement, including costs of suit and reasonable attorneys fees, and any costs of restoration necessitated by the Developer's violation of the terms of the Agricultural Conservation Easement (including costs of routine monitoring compliance) from such time as the violation was first identified through completion, to the satisfaction of the Program Manager, of any required restoration, shall be borne by the Developer.
- C. *Reporting.* The Program Manager shall provide to the City Development Services Director an annual report delineating the activities undertaken pursuant to the requirements of these guidelines and assessment of these activities. The report shall describe the status of all lands

and easements acquired in accordance with this Chapter, including a summary of all enforcement actions (if any), a detailed statement of financial activities, and the status of all easements acquired via the provisions of this ordinance.