

ORDINANCE NO. 2300

AN ORDINANCE OF THE DAVIS CITY COUNCIL AMENDING ARTICLE 40A.03 OF THE DAVIS MUNICIPAL CODE TO ADD AN ADJACENT AGRICULTURAL MITIGATION REQUIREMENT TO THE EXISTING AGRICULTURAL MITIGATION REQUIREMENTS AND TO SPECIFY REQUIREMENTS FOR REMAINDER MITIGATION AND AMENDING SECTION 40A.01.050 OF THE DAVIS MUNICIPAL CODE REGARDING THE AGRICULTURAL BUFFER REQUIREMENT

NOW, THEREFORE, the Davis City Council does hereby ordain as follows:

Section 1. Article 40A.03 is hereby amended to read as follows:

40A.03.010 Purpose and findings.

40A.03.020 Definitions.

40A.03.025 Agricultural land mitigation requirements.

40A.03.030 Requirements for adjacent land mitigation.

40A.03.035 Requirements for remainder land mitigation.

40A.03.040 Comparable soils and water supply.

40A.03.045 Home sites.

40A.03.050 Lands eligible for remainder mitigation.

40A.03.060 Requirements of instruments; duration.

40A.03.070 City of Davis farmland conservation program advisory committee.

40A.03.080 Reporting.

40A.03.010 Purpose and findings.

(a) The purpose of this chapter and this article is to implement the agricultural land conservation policies contained in the Davis general plan with a program designed to permanently protect agricultural land located within the Davis planning area for agricultural uses.

(b) The city, since 1995 has required agricultural mitigation for development projects that would change the general plan designation or zoning from agricultural land to nonagricultural land and for discretionary land use approvals that would change an agricultural use to a nonagricultural use, and the city council finds that this chapter and this article are necessary for the following reasons: California is losing farmland at a rapid rate; Yolo and Solano County farmland is of exceptional productive quality; loss of agricultural land is consistently a significant impact under CEQA in development projects; the Davis general plan has policies to preserve farmland; the city is surrounded by farmland; the Yolo and Solano County general plans clearly include policies to preserve farmland; the continuation of agricultural operations preserves the landscape and environmental resources; loss of farmland to development is irreparable and agriculture is an important component of the city's economy; and losing agricultural land will have a cumulatively negative impact on the economy of the city and the counties of Yolo and Solano.

(c) It is the policy of the city to work cooperatively with Yolo and Solano counties to preserve agricultural land within the Davis planning area, as shown in the "Planning Area" map found in the Davis General Plan, beyond that deemed necessary for development. It is further the policy of the city to protect and conserve agricultural land, especially in areas presently farmed or having Class 1, 2, 3, or 4 soils.

(d) The city council finds that some urban uses when contiguous to farmland can affect how an agricultural use can be operated, which can lead to the conversion of agricultural land to urban use.

(e) The city council further finds that by requiring adjacent mitigation for land being converted from an agricultural use and by requiring a one hundred fifty foot buffer, the city shall be helping to ensure prime farmland remains in agricultural use.

40A.03.020 Definitions.

(a) **Adjacent mitigation.** Agricultural mitigation land that is required to be located at the non-urbanized perimeter of a project.

(b) **Advisory committee.** The city of Davis open space and habitat commission shall serve as the advisory committee.

(c) **Agricultural land or farmland.** Those land areas of the county and/or city specifically designated and zoned as Agricultural Preserve (A-P), Agricultural Exclusive (A-E), or Agricultural General (A-I), as those zones are defined in the Yolo County zoning ordinance; those land areas designated and zoned Exclusive Agriculture (A-40), as defined in the Solano County zoning ordinance; those lands in agricultural use; those lands designated in the city's general plan as Agricultural (A); and those land areas of the city of Davis specifically designated and zoned as Agricultural (A), Agricultural Planned Development, or Urban Reserve where the soil of the land contains Class 1, 2, 3, or 4 soils, as defined by the Soil Conservation Service.

(d) **Agricultural mitigation land.** Agricultural land encumbered by a farmland deed restriction, a farmland conservation easement, or such other farmland conservation mechanism acceptable to the city.

(e) **Agricultural use.** Use of land for the purpose of producing food, fiber, or livestock for commercial purposes.

(f) **Easement stacking.** Placing a conservation easement on land previously encumbered by a conservation easement of any nature or kind.

(g) **Farmland conservation easement.** The granting of an easement over agricultural land for the purpose of restricting its use to agricultural land. The interest granted pursuant to a farmland conservation easement is an interest in land which is less than fee simple.

(h) **Farmland deed restriction.** The creation of a deed restriction, covenant or condition which precludes the use of the agricultural land subject to the restriction for any nonagricultural

purposes, use, operation or activity. The deed restriction shall provide that the land subject to the restriction will permanently remain agricultural land.

(i) **Non-urbanized perimeter.** The agricultural land that borders the edge(s) of land that is, or is proposed to be, designated or zoned as non-agricultural land.

(j) **Priority open space acquisition areas.** Areas designated by the city council by resolution as priorities for acquisition as open space.

(k) **Qualified conservation easement appraiser.** A State certified appraiser who: (1) has conducted and prepared written appraisals on at least three agricultural conservation easement projects in the Central Valley in the past five years following the Uniform Standards of Professional Appraisal Practice and (2) has completed at least one course on the appraisal of conservation easements offered by a member organization of the appraisal foundation.

(l) **Qualifying entity.** A nonprofit public benefit 501(c)(3) corporation operating in Yolo County or Solano County for the purpose of conserving and protecting land in its natural, rural, or agricultural condition. The following entities are qualifying entities: Yolo Land Conservation Trust and Solano Farm and Open Space Trust. Other entities may be approved by the city council from time to time.

(m) **Remainder mitigation.** Required agricultural mitigation land that is not required to be located at the non-urbanized perimeter of a project.

(n) **Small project.** A development project that is less than forty (40) acres in size. A small project does not include one phase or portion of a larger project greater than 40 acres that is subject to a master, specific, or overall development plan.

40A.03.025 Agricultural land mitigation requirements.

(a) The city shall require agricultural mitigation as a condition of approval for any development project that would change the general plan designation or zoning from agricultural land to nonagricultural land and for discretionary land use approvals that would change an agricultural use to a nonagricultural use.

(b) The city has determined that effectively locating mitigation lands provides increased protection of agricultural lands threatened with conversion to non-agricultural uses. Requirements and incentives are established in this article to direct mitigation to areas that are under threat of conversion. In recognizing the importance of the location of mitigation, the city has identified two general categories of agricultural mitigation: (1) adjacent mitigation; and (2) remainder mitigation. For every applicable development project, the determination as to whether a combination of adjacent and remainder mitigation shall be required or whether only remainder mitigation shall be required shall be based on site specific factors, as specified in this article. Adjacent mitigation is addressed in section 40A.03.030; remainder mitigation is addressed in section 40A.03.035.

(c) Total mitigation for a development project shall not be less than a ratio of two acres of protected agricultural land for each acre converted from agricultural land to nonagricultural land. Location based factors (credits) for remainder mitigation contained in Section 40A.03.035 may result in ratios greater than 2:1.

40A.03.030 Requirements for adjacent land mitigation.

(a) Mitigation along the non-urbanized perimeter. All new development projects adjacent to agricultural land that are subject to mitigation under this article shall be required to provide agricultural mitigation along the entire non-urbanized perimeter of the project. The required adjacent mitigation land shall be a minimum of $\frac{1}{4}$ mile in width, as measured from the outer edge of the agricultural buffer required in section 40A.01.050. Certain land uses listed in section 40A.03.030(e) are exempt from the adjacency requirement.

(b) Satisfaction of adjacent agricultural mitigation. Adjacent agricultural mitigation shall be satisfied by:

(1) Granting a farmland conservation easement, a farmland deed restriction, or other farmland conservation mechanism to or for the benefit of the city and/or a qualifying entity approved by the city. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes.

(2) Mitigation credit for required adjacent mitigation is shown in the table below.

Required Adjacent Mitigation

Location of mitigation land	Credit factor
Required minimum adjacent mitigation	1 times the number of acres protected

(3) If more than the required 2:1 mitigation acreage is required to create the adjacent mitigation land, no more than twice the project acreage shall be required to satisfy the mitigation requirements of this chapter. If more than twice the project acreage is required to satisfy the minimum $\frac{1}{4}$ mile requirement, the configuration of the mitigation land shall be determined by the city council. In determining the configuration of the mitigation land, the city council shall consider factors such as, but not limited to, the following: (a) the shape of the mitigation land; (b) the quality of the soil in the mitigation land; (3) contamination of the mitigation land; (4) whether the mitigation land is in common ownership or owned by multiple owners; (5) fragmentation from other agricultural lands or connectivity to agricultural land; and (6) the existing use of the mitigation land.

(4) The Davis Planning Area includes clusters of rural residential parcels that, due to their size and spacing, preclude commercial farming operations. For purposes of this article, a “cluster of rural residential parcels” shall mean a group of parcels where the majority of parcels have an existing residential structure and an average size of less than ten (10) acres. If the required adjacent mitigation land includes a cluster of existing rural residential parcels, the city council may treat the cluster of rural residential parcels as part of the development project and allow the required adjacent mitigation land to be located on the outside edge of the cluster of rural residential parcels. If the city council chooses to do so, that decision shall not increase the total amount of adjacent mitigation required by the development project.

(c) Exclusion of agricultural buffer from adjacent mitigation. The land included within the agricultural buffer required by section 40A.01.050(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.

(d) Alternative mitigation proposals. The city council may approve mitigation that does not meet the adjacency requirement if an alternative mitigation proposal meets the intent of this chapter and would have extraordinary community benefits. Alternative mitigation proposals may be approved if the following three factors are present, and the city council makes appropriate findings:

- a. The alternative mitigation is threatened by demonstrated growth pressure equal to or greater than that faced by areas adjacent to the project site. Demonstrated growth pressure shall be established by a comparison of current land value of the alternative site and the adjacent site. Valuation analysis shall be prepared by an independent certified appraiser; and
- b. The alternative mitigation is strategically located and provides one or more of the following: (1) protects a locally unique resource, (2) provides connectivity between existing protected or agricultural lands, (3) due to its location provides protection of other lands and resources in the Davis Planning Area and/or (4) located within a City identified priority open space acquisition area; and
- c. The alternative mitigation is of a size that facilitates protection of the targeted resource and its long term management.

(e) Exemptions. The following land uses are exempt from the adjacent mitigation requirements of this article, but not the remaining provisions:

(1) The following projects, so long as they are not a part of a larger development project: permanently affordable housing, public schools, and public parks.

(2) That portion of a development project abutting land already protected by permanent conservation easements or by some other form of public ownership that guarantees adjacent lands will not be developed for urban uses.

(3) That portion of a development project abutting a limited access public road such as Interstate 80 or State Highway 113.

(4) Small projects, as defined in Section 40A.03.020.

40A.03.035 Requirements for remainder land mitigation.

(a) General. Remainder mitigation is mitigation land that is not required to be located at the non-urbanized perimeter of a project. Remainder mitigation may be located anywhere within the Davis planning area, subject to approval by the city council, in accordance with section 40A.03.050. Incentives shall be provided for locating the remainder mitigation in areas targeted for protection by the city as shown in the table below.

(b) Satisfaction of remainder mitigation. Remainder mitigation shall be satisfied by:

(1) Granting a farmland conservation easement, a farmland deed restriction, or other farmland conservation mechanism to or for the benefit of the city and/or a qualifying entity approved by the city. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes.

(2) The following credits shall be applied to remainder mitigation land:

Remainder Mitigation

Location of mitigation land	Credit factors
Adjacent to city limits and within ¼ mile of the city limits, excluding any land required as adjacent mitigation land.	2 times the number of acres protected
Adjacent to the required minimum adjacent mitigation land, if applicable	1 times the number of acres protected
Within city designated priority open space acquisition areas.	1 times the number of acres protected
Elsewhere in the Davis planning area	0.2 times the number of acres protected
Total	Mitigation acreage, as adjusted by the credit factors for adjacent mitigation (see section 40a.03.030) and remainder mitigation (above), must total two (2) times the acreage changed to nonagricultural. If the calculation of credit factors results in actual mitigation that is less than 2:1, additional acreage within the Davis Planning Area shall be secured to satisfy the total mitigation ratio requirement.

Location and configuration of the mitigation land must be approved by the City Council, in accordance with the factors specified in section 40A.03.035(a).

(3) In lieu of conserving land as provided above, up to 50% of the remainder mitigation requirement may be satisfied by the payment of a fee based upon the fair market value of acquiring a farmland conservation easement or farmland deed restriction located adjacent to the city limits, subject to the following:

(A) For the purpose of establishing the in lieu fee, a Qualified Conservation Easement Appraiser shall establish the fair market value by conducting an appraisal of the required minimum adjacent mitigation land for the project. If no adjacent mitigation land is required for a project, the in-lieu fee shall be based on recent land transactions for properties located on and/or near the city limits. Appraisal costs shall be paid for by the developer or project applicant, and the Qualified Conservation Easement Appraiser shall be under contract with the city.

(B) The in lieu fee shall include a 10% administrative fee to cover the city's costs to implement mitigation.

(C) The in lieu fee shall include an inflator that takes into account the inflation of property values and shall include a standard assumption for the time it takes the city to acquire

property for agricultural mitigation. The inflator shall be calculated based on a three year average of the House Price Index (HPI) for the Sacramento Metropolitan Statistical Area compiled by the Office of Federal Housing Enterprise Oversight. The inflator shall be based on the three most recent years for which HPI data are available and shall be based on an assumption that the City will spend the in lieu fee within three years from the payment date.

(D) The in lieu fee option must be approved by the city council.

(E) The in lieu fee, paid to the city, shall be used for farmland mitigation purposes, with priority given to strategically located lands with prime agricultural soils and high habitat value.

(c) Exclusion of agricultural buffer from mitigation land. The land included within the agricultural buffer required by section 40A.01.050(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.

(d) It is the intent of this article that the city shall work in a coordinated fashion with the habitat conservation objectives of the Yolo County Natural Heritage (NCCP/HCP) program. It is the intent of this article to not allow stacking of easements, except easements covering riparian corridors that may be subject to agricultural and habitat easements and that do not generally exceed five percent (5%) of the total area on any particular easement of agricultural mitigation land shall be permitted.

40A.03.040 Comparable soils and water supply.

(a) The remainder agricultural mitigation land shall be comparable in soil quality with the agricultural land whose use is being changed to nonagricultural use.

(b) The agricultural mitigation land shall have adequate water supply to support the historic agricultural use on the land to be converted to nonagricultural use and the water supply on the agricultural mitigation land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation.

40A.03.045 Home sites.

Agricultural mitigation lands shall not be permitted to have a new home site.

40A.03.050 Lands eligible for remainder mitigation.

This Section 40A.03.050 shall only apply to remainder mitigation.

(a) The agricultural mitigation land shall be located within the Davis planning area as shown in the Davis general plan. In making their determination to accept or reject proposed mitigation land, the following factors shall be considered by the city council:

(1) The lands shall be compatible with the Davis general plan and the general plans of Yolo and Solano counties.

(2) The lands shall include agricultural land similar to the acreage, soil capability and water use sought to be changed to nonagricultural use.

(3) The lands shall include comparable soil types to that most likely to be lost due to proposed development.

(4) The property is not subject to any easements, contamination, or physical conditions that would legally or practicably preclude modification of the property's land use to a nonagricultural use.

(5) The easement configuration(s) would be grossly irregular such that it precludes efficient agricultural operation or bisects existing farm irrigation systems and does not protect other natural resources, such as stream corridors.

(b) The advisory committee shall recommend to the city council acceptance of agricultural mitigation land of twenty acres or more by a qualifying entity and/or the city, except that it may consider accepting smaller parcels if the entire mitigation required for a project is less, or when the agricultural mitigation land is adjacent to larger parcels of agricultural mitigation land already protected. Contiguous parcels shall be preferred.

(c) Land previously encumbered by a conservation easement of any nature or kind is not eligible to qualify as agricultural mitigation land.

40A.03.060 Requirements of instruments; duration.

(a) To qualify as an instrument encumbering agricultural mitigation land, all owners of the agricultural mitigation land shall execute the instrument.

(b) The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the agricultural mitigation land.

(c) The instrument shall prohibit any activity which substantially impairs or diminishes the agricultural productivity of the land, as determined by the advisory committee.

(d) The instrument shall protect the existing water rights and retain them with the agricultural mitigation land.

(e) The applicant shall pay an agricultural mitigation fee equal to cover the costs of administering, monitoring and enforcing (including legal defense costs) the instrument in an amount determined by city council. The fee shall include development of a property baseline report and monitoring plan.

(f) The city shall be named a beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualifying entity.

(g) Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the city in perpetuity. Except as provided in subsection (h) of this section, the qualifying entity or the city shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire.

(h) If judicial proceedings find that the public interests described in section 40A.03.010 of this chapter can no longer reasonably be fulfilled as to an interest acquired, the interest in the agricultural mitigation land may be extinguished through sale and the proceeds shall be used to

acquire interests in other agricultural mitigation land in Yolo and Solano counties, as approved by the city and provided in this chapter.

(i) 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.

(j) The instrument conveying the interest in the agricultural mitigation land shall be recorded at the same time as any final map for the development project is recorded or at such other time as required as a condition of approval.

40A.03.070 City of Davis farmland conservation program advisory committee.

(a) The Davis open space and habitat commission shall serve as the Davis farmland conservation advisory committee.

(b) It shall be the duty and responsibility of the open space and habitat commission to exercise the following powers:

(1) To recommend the areas where mitigation zones would be preferred in the Davis planning area;

(2) To promote conservation of agricultural land in Yolo and Solano counties by offering information and assistance to landowners and others;

(3) To recommend tentative approval of mitigation proposals to city council;

(4) To certify that the agricultural mitigation land meets the requirements of this chapter;

(5) Any denial from the advisory committee may be appealed to city council.

(c) The open space and habitat commission shall ensure all lands and easements acquired under this article are properly monitored and shall review and monitor the implementation of management and maintenance plans for these lands and easement areas.

(d) All actions of the open space and habitat commission shall be subject to the approval of the Davis city council.

40A.03.080 Reporting.

Periodically, Parks and Community Services Department staff shall provide to the advisory committee reports delineating the activities undertaken pursuant to the requirements of this chapter and an assessment of these activities. The report shall list and report on the status of all lands and easements acquired under this chapter.

Section 2. Section 40A.01.050 of the Davis Municipal Code is hereby amended to read as follows:

40A.01.050 Agricultural buffer requirement.

(a) In addition to the right to farm deed restriction and notice requirement, the city has determined that the use of property for agricultural operations is a high priority. To minimize future potential conflicts between agricultural and nonagricultural land uses and to protect the public health, all new developments adjacent to designated agricultural, agricultural reserve, agricultural open space, greenbelt/agricultural buffer, Davis greenbelt or environmentally

sensitive habitat areas according to the land use and open space element maps shall be required to provide an agricultural buffer/agricultural transition area. In addition, development limits or restricts opportunities to view farmlands. Public access to a portion of the agricultural buffer will permit public views of farmland. Use of nonpolluting transportation methods (i.e., bikes), and use of the land to fulfill multiple policies including, but not limited to, agricultural mitigation and alternative transportation measures meets the policy objectives of the Davis general plan. The agricultural buffer/agricultural transition area shall be a minimum of one hundred fifty feet measured from the edge of the agricultural, greenbelt, or habitat area. Optimally, to achieve a maximum separation and to comply with the five hundred foot aerial spray setback established by the counties of Yolo and Solano, a buffer wider than one hundred fifty feet is encouraged.

(b) The minimum one hundred fifty foot agricultural buffer/agricultural transition area shall be comprised of two components: a fifty foot wide agricultural transition area located contiguous to a one hundred foot wide agricultural buffer located contiguous to the agricultural, greenbelt, or habitat area. The one hundred fifty foot agricultural buffer/transition area shall not qualify as farmland mitigation pursuant to article III of this chapter.

(c) The following uses shall be permitted in the one hundred foot agricultural buffer: native plants, tree or hedge rows, drainage channels, storm retention ponds, natural areas such as creeks or drainage swales, railroad tracks or other utility corridors and any other use, including agricultural uses, determined by the planning commission to be consistent with the use of the property as an agricultural buffer. There shall be no public access to the one hundred foot agricultural buffer unless otherwise permitted due to the nature of the area (e.g., railroad tracks). The one hundred foot agricultural buffer shall be developed by the developer pursuant to a plan approved by the parks and community services director or his/her designee. The plan shall include provision for the establishment, management and maintenance of the area. The plan shall incorporate adaptive management concepts and include the use of integrated pest management techniques. The property shall be dedicated to the city in fee title, or, at the discretion of the city, an easement in favor of the city shall be recorded against the property, which shall include the requirements of this article.

(d) The following uses shall be permitted in the fifty foot agricultural transition area: bike paths, community gardens, organic agriculture, native plants, tree and hedge rows, benches, lights, trash enclosures, fencing, and any other use determined by the planning commission to be of the same general character as the foregoing enumerated uses. There shall be public access to the fifty foot agricultural transition area. The fifty foot agricultural transition area shall be developed by the developer pursuant to a plan approved by the parks and community services director or his/her designee. Once the area is improved, approved, and accepted by the parks and community services department, the land shall be dedicated to the city.

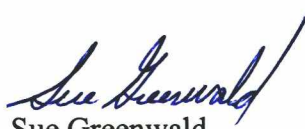
(e) The city reserves its right to form a special benefit assessment district, or other applicable district as is permitted under state law, and to maintain the agricultural buffer and transition area once the land is improved, dedicated, and annexed.

INTRODUCED ON the twenty-third day of October, 2007 and PASSED AND ADOPTED by the City Council of the City of Davis on the twenty-seventh day of November, 2007 by the following vote:

AYES: Asmundson, Heystek, Saylor, Souza, Greenwald

NOES: None

ABSENT: None


Sue Greenwald
Mayor

ATTEST:



Margaret Roberts, CMC
City Clerk