

ORDINANCE NO. 4308

**AN ORDINANCE ADDING CHAPTER 9-1080 OF DIVISION 10
OF TITLE 9 OF THE ORDINANCE CODE OF SAN JOAQUIN COUNTY
PERTAINING TO AGRICULTURAL MITIGATION.**

The Board of Supervisors of the County of San Joaquin ordains as follows:

Section 1. Chapter 9-1080 is hereby added to Division 10 of Title 9 of the Ordinance Code of San Joaquin County, to read as follows:

**CHAPTER 9-1080
AGRICULTURAL MITIGATION**

Sections:

- 9-1080.1 Purpose and Intent**
- 9-1080.2 Findings**
- 9-1080.3 Mitigation Requirements**
- 9-1080.4 Use of In-Lieu Fees**
- 9-1080.5 Agricultural Mitigation Lands**
- 9-1080.6 Mitigation Strategy**
- 9-1080.7 Legal Instruments**
- 9-1080.8 Agricultural Technical Advisory Committee**
- 9-1080.9 Monitoring, Enforcing and Reporting**
- 9-1080.10 Precedence**
- 9-1080.11 Severability**

Section 9-1080.1 Purpose and Intent. The purpose of this Chapter is to implement the agricultural land conservation policies contained in the San Joaquin County General Plan related to permanently protecting agricultural land within the County. The intent of this Chapter is specified as follows:

- a) **Intergovernmental Coordination.** It is the policy of San Joaquin County to work cooperatively with the cities within the County and to encourage them to adopt agricultural preservation policies and ordinances which are consistent with this ordinance in order to undertake an integrated, comprehensive Countywide approach to preservation. It is the ultimate goal of the County that all seven cities participate in or adopt an agricultural mitigation ordinance that is the same as or substantially similar to this ordinance.
- b) **Habitat Mitigation Plan.** It is the intent of the Board of Supervisors that the program set forth in this Chapter shall be coordinated with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan in order to achieve an optimal farmland protection system.

- c) **Delta Protection Commission.** It is the intent of the Board of Supervisors that the program set forth in this Chapter be coordinated with efforts of the Delta Protection Commission in order to achieve an optimal farmland protection system.

Section 9-1080.2 Findings. The Board of Supervisors finds this Chapter is necessary for the following reasons:

- a) San Joaquin County is losing farmland at a rapid rate;
- b) San Joaquin County farmland is of exceptional productive quality;
- c) The loss of farmland to development is irreparable and agriculture is an important component of the County's economy;
- d) The loss of farmland will have a cumulatively negative impact on the economy of the County and the cities located within it;
- e) The continuation of agricultural operations also preserves the landscape and environmental resources;
- f) Permanent preservation of farmland is consistent with the policies of the San Joaquin County General Plan;
- g) New development benefits from the preservation of farmlands that support the overall economy of the County; and
- h) Using only zoning and other regulatory mechanisms has been a useful, but inadequate, approach to preserving farmland.

Section 9-1080.3 Mitigation Requirements.

- a) **Mitigation Required.** The County shall require agricultural mitigation for any of the following actions:
 - 1) A General Plan Amendment that changes the designation of any land from an agricultural to a non-agricultural use; and
 - 2) A Zoning Reclassification that changes the permitted uses from agriculture to a nonagricultural use, regardless of the General Plan designation.
- b) **Mix of Uses.** Mitigation shall only be required for that portion of the land that no longer will be designated as or zoned for agricultural land. This includes any portion of the land to be used for park and recreation purposes.

- c) **Types of Mitigation.** Agricultural mitigation shall be satisfied by granting a farmland conservation easement or other farmland conservation mechanism as set forth in Subsection (d) to or for the benefit of a Qualifying Entity. The number of acres of agricultural mitigation land shall be at least equal to the number of acres that will be changed to a non-agricultural use [a 1:1 ratio].
- d) **Direct Provision of Agricultural Mitigation Land.** The direct provision of agricultural mitigation land pursuant to Subsection (c) of this Section is subject to the following provisions:
- 1) The applicant shall pay an administrative fee equal to cover the costs of administering, monitoring and enforcing the farmland conservation easement or other instrument in an amount determined by the Board of Supervisors.
 - 2) The location and characteristics of the agricultural mitigation land shall comply with the Mitigation Strategy adopted pursuant to Section 9-1080.6.
 - 3) The Agricultural Technical Advisory Committee shall review each farmland conservation easement or other preservation instrument for consistency with the Mitigation Strategy adopted pursuant to Section 9-1080.6.
 - 4) The farmland conservation easement or other preservation instrument shall be held by the Qualifying Entity. The County shall be a co- holder or backup beneficiary of the legal instrument. If the Qualifying Entity refuses to hold the easement or other preservation instrument, it shall be held by the County.
 - 5) If the applicant for the General Plan Amendment or Zoning Reclassification makes application to the Board of Supervisors and demonstrates that the applicant has made a diligent effort to obtain a farmland conservation easement or other preservation instrument, and that the applicant has been unable to obtain such easement or other preservation instrument, the Board may grant the applicant the option to either obtain the easement or other instrument, or to pay the in-lieu fee set forth in Subsection (e). The applicant shall provide documentation he/she has met with the Qualifying Entity and San Joaquin Farm Bureau Federation and neither entity has been able to assist with the acquisition of the easement. Facts which the Board may consider in making a decision regarding applicant's request include, but are not limited to, the following:
 - (A) Multiple good faith offers to purchase an easement or other preservation instrument which offers have been declined by the seller or sellers.
 - (B) Good faith efforts to purchase an easement or other preservation instrument over an extended period of time where further efforts would make it unreasonable for the applicant to continue such efforts.
 - (C) Good faith efforts to purchase an easement or other preservation instrument, but where the high cost of such purchase makes it unreasonable for the applicant to continue such efforts.

- e) **In-lieu Fees.** The payment of an in- lieu fee is subject to the following provisions:
- 1) The in- lieu fee shall include the costs of managing the property, including the costs of administering, monitoring and enforcing the farmland conservation easement or other instrument.
 - 2) The fee shall be based on the cost of purchasing farmland conservation easements on land of comparable size and agricultural quality, plus the estimated cost of legal, appraisal and other costs, including staff time, to acquire and manage the farmland conservation easement or other agricultural mitigation instrument.
 - 3) The Board of Supervisors shall approve by resolution the amount and other terms of the in- lieu fee.
 - 4) The in-lieu fee shall be updated annually based on an inflator that takes into account the inflation of property values and should include a standard assumption for the time it takes to acquire property for agricultural mitigation. The inflator shall be calculated based on a three year running average of the most recent available data from the House Price Index (HPI) for the Stockton Metropolitan Statistical Area, as compiled by the Office of Federal Housing Enterprise Oversight. Other cost components shall be updated annually based on the Consumer Price Index (CPI).
 - 5) Within sixty (60) days after collection by the County, in- lieu fees shall be transferred to a fund administered by the Qualifying Entity.
 - 6) The annual report described in Section 9-1080.9(b), shall describe the effectiveness of the use of in-lieu fees as provided for under this ordinance. During the fifth year, the Agricultural Technical Advisory Committee shall include in the annual report recommendations to the Board of Supervisors regarding whether to maintain, amend, or remove the in-lieu fee requirement of the ordinance and to replace it with an in-kind only requirement.
- f) **Final Approvals.** Final approval of any project subject to Subsection (a) of this Section is contingent upon the execution of the legal instrument to provide agricultural mitigation land and payment of the administrative fee, or approval and payment of an in-lieu fee. Submission of the required legal instrument or payment of the in-lieu fee shall occur at the time of Grading Permit or Building Permit issuance.
- g) **Participation.** Participation in the Agricultural Mitigation Program shall be considered during the environmental review for projects pursuant to the California Environmental Quality Act.

Section 9-1080.4 Use of In-Lieu Fees. The in- lieu fees shall be administered by the Qualifying Entity in fulfillment of its programmatic responsibilities. These responsibilities cover, without exception, acquiring interests in land and administering, monitoring and enforcing the farmland conservation easement or other instrument designed to preserve the agricultural values of the land for farmland mitigation purposes.

The location and characteristics of the agricultural mitigation land shall comply with the provisions of Section 9-1080.5 and the Mitigation Strategy adopted pursuant to Section 9-1080.6. The in- lieu fees shall not be used for purposes inconsistent with this Section.

Section 1080.5 Agricultural Mitigation Lands.

- a) **Allowable Uses.** Agricultural mitigation land must be shown on the County General Plan as Agriculture and zoned for agricultural uses. Agricultural mitigation land shall include the Delta. The type of agricultural related activity allowed on mitigation land will be specified in an agricultural easement or related legal instrument, as described in Section 9-1080.7.
- b) **Soil Quality.** The agricultural mitigation land should be of comparable or better soil quality than the agricultural land whose use is being changed to nonagricultural use. Priority shall be given to lands with prime agricultural soils, which are located in areas of greatest potential development.
- c) **Water Supply.** The agricultural mitigation land shall have an adequate water supply to support the agricultural use of the land. The water supply on the agricultural mitigation land shall be protected in the farmland conservation easement or other document evidencing the agricultural mitigation.
- d) **Plan Consistency.** The use of the agricultural mitigation land shall be consistent with the County General Plan.
- e) **Previous Encumbrances.** Land already effectively encumbered by a conservation easement of any nature is not eligible to qualify as agricultural mitigation land.
- f) **Location.** The agricultural mitigation land shall be located in San Joaquin County and comply with the Mitigation Strategy adopted pursuant to Section 9-1080.6.

Section 9-1080.6 Mitigation Strategy.

- a) **Initiation and Approval.** The Agricultural Technical Advisory Committee shall develop and recommend a Mitigation Strategy with approval by the Board of Supervisors occurring one (1) year after adoption of this Chapter. Thereafter, the Mitigation Strategy should be updated periodically with a formal update approved by the Board of Supervisors every five (5) years.
- b) **Purpose and Contents.** The purpose of the Mitigation Strategy is to ensure that the acquisition of agricultural mitigation land, from both direct provision and in-lieu fees, achieves maximum benefits to the residents of San Joaquin County. The Mitigation Strategy may consist of any combination of policies, evaluation criteria, maps, and other useful decision-making tools. It shall be of sufficient specificity to provide adequate guidance on location and other factors to people reviewing the proposed encumbrance of agricultural mitigation land.

- c) **Issues to be Considered.** The Mitigation Strategy shall consider the following issues:
- 1) The need to include contiguous parcels and areas large enough to preserve agricultural operations.
 - 2) The qualities of high priority farmland and the type of activities allowed on agricultural mitigation lands.
 - 3) Coordination with other public and private land conservation programs.
 - 4) Other relevant factors that would result in the more effective provision of agricultural lands.
- d) **Transmittal.** The Mitigation Strategy shall be transmitted immediately after approval to the Qualifying Entity for its use in acquiring and managing interests in agricultural mitigation land.

Section 9-1080.7 Legal Instruments for Preservation of Agricultural Land.

- a) **Requirements.** The legal instrument encumbering agricultural mitigation land shall meet the following requirements:
- 1) It shall be executed by all owners of the agricultural mitigation land.
 - 2) It shall be in form suitable for recordation.
 - 3) It shall contain an accurate legal description setting forth the description of the agricultural mitigation land.
 - 4) It shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land, as determined by the Agricultural Technical Advisory Committee and approved by the Board of Supervisors. However, all activities or land uses currently allowed under the County's AG-40 zoning designation would be allowed on mitigation land.
 - 5) It shall prohibit new residential and/or commercial development on agricultural mitigation land that is not directly needed for agricultural production, regardless of existing zoning.
 - 6) It shall protect the existing water rights and retain them with the agricultural mitigation land.
- b) **County Interests.** The County shall be named a co-holder or backup beneficiary under any instrument conveying the interest in the agricultural mitigation land to a Qualifying Entity.
- c) **Disposition of Land.** Interests in agricultural mitigation land shall be held in trust by a Qualifying Entity and/or by the County in perpetuity. Except as provided in Subsection (d) of this Section, the Qualifying Entity or the County shall not sell, lease, or convey any interest in agricultural mitigation land it acquires. The legal instrument encumbering the agricultural mitigation land shall include the provisions of this Subsection.

- d) **Change in Circumstances.** If judicial proceedings find that the public purpose described in Section 9-1080.1 of this Chapter can no longer reasonably be fulfilled as to an interest acquired, the Qualifying Entity's interest in the agricultural mitigation land, as secured by the legal instrument, may be extinguished through sale, and the proceeds shall be used to acquire interests in other agricultural mitigation land in San Joaquin County, pursuant to the provisions of this Chapter and subject to approval by the Board of Supervisors.
- e) **Cessation of Qualifying Entity.** 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 co-holder or backup beneficiary of the legal instrument. The County, acting as co- holder or backup beneficiary, may designate another Qualifying Entity to assume the responsibilities to hold, administer, monitor and enforce the interest.

Section 9-1080.8 Agricultural Technical Advisory Committee.

- a) **Creation.** An Agricultural Technical Advisory Committee, as defined in Section 9-110.4, is hereby created to carry out the functions authorized by this Chapter.
- b) **Powers.** The Agricultural Technical Advisory Committee shall exercise the following powers:
 - 1) Adopt rules of procedure and bylaws governing the operation of the advisory committee and the conduct of its meetings.
 - 2) Develop and recommend a Mitigation Strategy, consistent with Section 9-1080.6, which includes providing the Board of Supervisors with a report, within one year from the effective date of this Chapter, recommending conditions under which land with overlapping encumbrances could be considered as Agricultural Mitigation Land .
 - 3) Develop a report for consideration by the Board of Supervisors within one year from the effective date of this Chapter concerning different agricultural mitigation ratios and definitions for the Delta and for Prime Agricultural land.
 - 4) Consider and make recommendations to the Board of Supervisors regarding future consideration of the inclusion of land outside the County as allowable Agricultural Mitigation Land, and regarding agricultural mitigation strategies other than the hybrid in-lieu fee/in-kind land approach set forth in this Chapter.
 - 5) Explore the concept of establishing a Mitigation Bank.
 - 6) Assume other responsibilities as set forth in this Chapter.
- c) **Composition.** The Agricultural Technical Advisory Committee shall consist of three (3) representatives appointed by the San Joaquin Farm Bureau Federation, three (3) representatives appointed by the Building Industry Association, and three (3) representatives appointed by the Board of Supervisors, in which the

appointees from the San Joaquin Farm Bureau Federation and the Building Industry Association are ratified by the Board of Supervisors and in which a supermajority vote (i.e., a two-thirds (2/3) vote of its members) is a requirement for, and a decision by, the Agricultural Technical Advisory Committee.

- d) **Term.** The terms of the Agricultural Technical Advisory Committee shall be as follows:
 - 1) Five (5) members shall be initially appointed for two-year terms. Said two-year terms shall be applicable to two (2) of the appointees of the Building Industry Association, two (2) of the appointees of the San Joaquin Farm Bureau Federation, and one (1) of the appointees of the Board of Supervisors.
 - 2) Four (4) members shall be appointed for four-year terms. Said four-year terms shall be applicable to one (1) of the appointees of the Building Industry Association, one (1) of the appointees of the San Joaquin Farm Bureau Federation, and two (2) of the appointees of the Board of Supervisors.
- e) **Staff.** The County shall provide the Agricultural Technical Advisory Committee with staff support.

Section 9-1080.9 Monitoring, Enforcing, and Reporting.

- a) **Monitoring and Enforcing.** The Qualifying Entity shall monitor all lands and easements acquired under this Chapter and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. It shall also enforce compliance with the terms of the conservation easements or other agricultural mitigation instruments.
- b) **Reporting by Qualifying Entity.** Annually, beginning one year after the adoption of this Chapter, the Qualifying Entity shall provide to the Agricultural Technical Advisory Committee an annual report delineating the activities undertaken pursuant to the requirements of this Chapter and an assessment of these activities. The report(s) shall describe the status of all lands and easements acquired under this Chapter, including a summary of all enforcement actions.
- c) **Reporting by Agricultural Technical Advisory Committee.** Annually, the Agricultural Technical Advisory Committee shall review the reports submitted to it by the Qualifying Entity as well as any other relevant material. It shall prepare an Annual Report that provides an independent assessment of the effectiveness of the agricultural mitigation program and its consistency with the Mitigation Strategy. The Report shall document the funds collected and or direct provision of mitigation lands pursuant to the provisions of this Chapter. It shall also document the size and location of the land that is to be converted to a non-agricultural use, which generated the mitigation requirements of this Chapter. The Committee shall forward the Report, along with other relevant material received, to the Board of Supervisors.

Section 9-1080.10 Precedence. This Chapter shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions with which it is in conflict.

Section 9-1080.11 Severability. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 2. Section 9-110.4, Chapter 9-110 of Division 1 of Title 9 of the Ordinance Code of San Joaquin County is hereby amended by adding the following definitions, to read as follows:

Agricultural Technical Advisory Committee. “Agricultural Technical Advisory Committee” means a committee consisting of three (3) representatives appointed by the San Joaquin Farm Bureau Federation, three (3) representatives appointed by the Building Industry Association, and three (3) representatives appointed by the Board of Supervisors, in which the appointees from the San Joaquin Farm Bureau Federation and the Building Industry Association are ratified by the Board of Supervisors and in which a supermajority vote (i.e., a two-thirds (2/3) vote of its members) is a requirement for, and a decision by, the Agricultural Technical Advisory Committee.

Agricultural Land or Farmland. “Agricultural land” or “farmland” means those areas designated in the General Plan of, or zoned by, the County or any city for agricultural uses as of the effective date of this Chapter, unless a final approval for a non-agricultural use has been granted by the County or city. This includes land zoned by the County as Agricultural-Urban Reserve.

Agricultural Mitigation Land. “Agricultural mitigation land” means agricultural land encumbered by a farmland conservation easement or other farmland conservation mechanism acceptable to the County.

Farmland Conservation Easement. “Farmland conservation easement” means an easement over agricultural land for the purpose of restricting its use for the term set forth in the Chapter for primarily agricultural and agricultural-compatible uses.

Qualifying Entity. “Qualifying Entity” means a nonprofit public benefit 501(c)(3) corporation or other appropriate legal entity operating in San Joaquin County for the purpose of conserving and protecting land in agriculture, and approved for this purpose by the Board of Supervisors. The County may be designated as a Qualifying Entity.

Section 3. This ordinance shall take effect and be in force sixty (60) days after its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published once (1) in The Record, a newspaper of general circulation which is published in the County of San Joaquin, State of California, with the names of the members of the Board of Supervisors voting for and against the same.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this 21st day of November 2006, by the Board of Supervisors, to wit:

AYES: Ornellas, Sieglock, Gutierrez, Marengo

NOES: Mow

ABSENT: None

Dario L. Marengo
DARIO L. MARENCO, CHAIRMAN
Board of Supervisors
County of San Joaquin
State of California

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
County of San Joaquin
State of California

By Caroline Junco
Deputy Clerk