

Attachment D

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**Before the Planning Commission in and for the
County of Monterey, State of California**

RESOLUTION NO. 14-037

Resolution of the Monterey County Planning Commission recommending that the Board of Supervisors take the following actions:

- 1) Find that the Ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15060 (c)(3) and 15378 (b)(5); and
- 2) Adopt the Ordinance (Attachment 1) amending Chapter 16.40 "Protection of Agricultural Activities" ("Right-to-Farm" Ordinance) of the Monterey County Code.

[REF130040, Right to Farm Ordinance, County-wide]

The proposed Ordinance (REF130040) amending Chapter 16.40 of Title 16 of the Monterey County Code regarding "Protection of Agricultural Activities" commonly referred to as the "Right-to-Farm Ordinance" came on for public hearing before the Monterey County Planning Commission on June 25, 2014 and on August 27, 2014. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:

RECITALS

1. The 2010 Monterey County General Plan, adopted on October 26, 2010, includes Policy AG-1.9 which states as follows:

Agricultural operations in accord with all applicable laws and regulations and consistent with properly accepted customs and practices shall be given increased protection from nuisance claims through strengthening the County's "Right-to-Farm" ordinance. Said ordinance shall establish the strongest, most effective possible noticing requirements to make property owners located near agricultural operations aware of potential conditions that are accepted practices within Monterey County.

This ordinance implements Policy AG-1.9 by strengthening the County's "Right to Farm" Ordinance which is codified at Chapter 16.40 of the Monterey County Code.

2. The Board of Supervisors has also recognized the importance of protection of agricultural activities in the coastal zone through its enactment of regulations that apply countywide codified at Chapter 16.40 of the Monterey County Code. Currently, the majority of the Coastal Land Use Plans have agricultural protection policies such as the North County Land Use Plan (LUP 2.6.1), the Big Sur Land Use Plan (LUP 3.6.1), and the Carmel Land Use Plan (LUP 2.6.2). While the ordinance would apply in both the coastal and

non-coastal zones and is consistent with the Local Coastal Program, Chapter 16.40 is not a part of the Local Coastal Program per Chapter 20.96 of Title 20 of the Monterey County Code. Accordingly, this ordinance does not need certification by the California Coastal Commission.

3. This Ordinance is intended to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land and to minimize the potential conflict between agricultural and non-agricultural land uses within the County. Where non-agricultural land uses, especially residential development, extend into agricultural lands or are located in the vicinity of agricultural lands, agricultural operations may be subject to nuisance claims due to lack of information about such operations. As a result, such complaints may cause the curtailment of agricultural operations and discourage investment for the improvement of agricultural land to the detriment of the economic viability of the agricultural industry of the County. Agricultural operations, in accord with all applicable laws and regulations, and consistent with properly accepted customs and practices, shall be given increased protection from nuisance claims. It is the intent of this Chapter to increase the protection of agricultural operations from nuisance claims, thus promoting the long-term protection, conservation and enhancement of productive and potentially productive agricultural lands.
4. This Chapter also establishes a voluntary dispute resolution procedure that is less formal and less expensive than court proceedings, which is intended to resolve complaints about agricultural operations.
5. This Ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15060(c) (3) and 15378(b)(5) because the Ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.
6. A public hearing on the proposed Ordinance was duly noticed for March 12, 2014 in the Monterey County Weekly at least ten (10) days prior to the hearing, and notice was also given to interested parties. To enable staff to revise the draft ordinance and obtain the input of the County's Agricultural Advisory Committee (AAC), the Planning Commission duly continued the hearing on April 9, 2014 and May 14, 2014 to June 25, 2014. On June 25, 2014 the Planning Commission continued the item to August 27, 2014, to further revise the ordinance on issues found with the dispute resolution process. Staff made revisions in accordance with the Planning Commission direction and presented the revised draft ordinance to the AAC on July 24, 2014. The AAC recommended approval of the revised draft ordinance to the Planning Commission and the Board of Supervisors with a vote of 10-0 (2 absent members). This revised draft ordinance is attached as Attachment 1.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors take the following actions:


- 1) Find that the Ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15060 (c)(3) and 15378 (b)(5) because the

Ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment; and

- 2) Adopt the Ordinance (Attachment 1) amending Chapter 16.40 (“Protection of Agricultural Activities”) (“Right-to-Farm” Ordinance) of Title 16 of the Monterey County Code.

PASSED AND ADOPTED this 27th day of August, 2014 upon motion of Commissioner Diehl, seconded by Commissioner Brown, by the following vote:

AYES: Brown, Vandevere, Getzelman, Rochester, Salazar, Hert, Roberts, Diehl, Mendez
NOES: None
ABSENT: Padilla
ABSTAIN: None


Mike Novo, Secretary

Attachment 1

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 16.40 OF THE MONTEREY COUNTY CODE RELATING TO PROTECTION OF AGRICULTURAL ACTIVITIES

County Counsel Summary

This Ordinance amends Chapter 16.40, commonly referred to as the "Right-to-Farm Ordinance," of the Monterey County Code in order to increase the protection of agricultural operations from nuisance claims, with the goal of promoting the long-term protection, conservation and enhancement of productive and potentially productive agricultural lands in Monterey County. This Ordinance establishes two types of noticing requirements to increase awareness of property owners, potential purchasers of property near agricultural operations, and the general public of the County's "Right to Farm" Ordinance. This ordinance also updates the process for administrative resolution of disputes relating to agricultural operations by establishing a voluntary dispute resolution process to be administered by the Office of the Agricultural Commissioner. This ordinance applies to the unincorporated area of Monterey County.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

B. Through adoption of Policy AG-1.9 of the 2010 Monterey County General Plan which applies to the non-coastal area of the County and through prior enactment of Chapter 16.40 of the Monterey County Code which applies countywide, the Board of Supervisors has recognized the need to strengthen protection of properly conducted agricultural operations from nuisance claims. Additionally, the Coastal Act requires that the maximum amount of prime agriculture land shall be maintained in production to assure the protection of the area's economy. Currently, the majority of the Coastal Land Use Plans have agricultural protection policies such as the North County Land Use Plan (LUP 2.6.1), the Big Sur Land Use Plan (LUP 3.6.1), and the Carmel Land Use Plan (LUP 2.6.2). While the ordinance would apply in both the coastal and non-coastal zones and is consistent with the Local Coastal Program, Chapter 16.40 is not a part of the Local Coastal Program per Chapter 20.96 of Title 20 of the Monterey County Code. Accordingly, this ordinance does not need certification by the California Coastal Commission.

C. This ordinance protects the public health, safety and welfare and provides increased protections to properly conducted agricultural operations by establishing certain "Right to Farm" notifications and invigorating the County's process for resolution of disputes associated with inconveniences or discomforts occasioned by agricultural operations.

D. This ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15060(c) (3) and 15378(b)(5) because the ordinance is

an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

SECTION 2. Section titles of Chapter 16.40 of the Monterey County Code are amended as follows:

Sections:

16.40.005 Purpose.

16.40.008 Applicability.

16.40.010 Definitions.

16.40.030 Properly operated farm not a nuisance.

16.40.040 Disclosure.

16.40.050 Voluntary Dispute Resolution Process.

SECTION 3. Section 16.40.005 is added to the Monterey County Code to read as follows:

16.40.005 Purpose.

A. The purpose of this Chapter is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land and to minimize potential conflict between agricultural and non-agricultural land uses within the County. Where non-agricultural land uses, especially residential development, extend into agricultural lands or are located in the vicinity of agricultural lands, agricultural operations may be subject to nuisance complaints which may be the result of lack of information about such operations. Such complaints may cause the curtailment of agricultural operations and discourage investment for the improvement of agricultural land to the detriment of the economic viability of the agricultural industry of the County. The intent of this Chapter is to accord increased protection from nuisance claims to agricultural operations that are conducted in accord with all applicable laws and regulations and consistent with proper and accepted customs and practices. By increasing the protection of agricultural operations from nuisance claims, the provisions of this Chapter are intended to promote the long-term protection, conservation and enhancement of productive and potentially productive agricultural lands of Monterey County.

B. An additional purpose of this Chapter is to promote a good neighbor policy by increasing the awareness of property owners located near agricultural operations, potential purchasers of real property located near agricultural operations, residents of the County, and the general public of the potential conditions that result from accepted agricultural practices in Monterey County and of the potential inconveniences or discomforts associated with living in and/or visiting a county with a strong rural character and healthy agricultural sector and with related "Right- to-Farm" protections, so long as the agricultural operations are conducted in a manner consistent with proper and accepted customs and standards. These potential inconveniences or discomforts may include, but are not limited to, noises, odors, lights, reflective surfaces, fumes, insects, dust, chemicals, smoke, the operation of machinery (including aircraft), agricultural truck traffic, crop rotation, and impacts associated with the presence of a large labor force. Informing the populace about the importance of agriculture to

the economy and lifestyle of Monterey County and the nature of agricultural operations is critical to public support for continued agricultural operations.

C. This Chapter also establishes a voluntary dispute resolution process that is less formal and less expensive than court proceedings, with the goal of resolving complaints about agricultural operations without litigation.

SECTION 4. Section 16.40.008 of the Monterey County Code is added as follows:

16.40.008 Applicability.

The provisions of this Chapter apply countywide.

SECTION 5. Section 16.40.020 of the Monterey County Code is repealed.

SECTION 6. Subsection D of Section 16.40.030 of the Monterey County Code is amended to read as follows:

D. Persons who have a complaint that an agricultural operation interferes with private property or personal well-being are encouraged to pursue the voluntary dispute resolution process provided in Section 16.40.050 of this Chapter. This Subsection shall not prevent a public agency from enforcing the provisions of other applicable laws without first resorting to the dispute resolution process.

SECTION 7. Section 16.40.040 is added to the Monterey County Code to read as follows:

16.40.040 Disclosure.

A. Notice to Purchasers of Real Property.

Any authorized agent for a transferor of real property that is located in the County of Monterey, or the transferor if he or she is acting without an agent, shall provide a "right to farm" notice to the potential purchaser of said real property in substantially the following form:

NOTICE TO PURCHASERS OF REAL PROPERTY:

Notice is hereby provided that the Monterey County Board of Supervisors has adopted an ordinance (codified at Chapter 16.40 (Protection of Agricultural Activities) of the Monterey County Code) to protect agricultural resources and agricultural operations from nuisance claims. It is the policy of the County of Monterey to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land and to minimize potential conflict between agricultural and non-agricultural land uses within the County. Where non-agricultural land uses, especially residential development, extend into agricultural lands or are located in the vicinity of agricultural lands, agricultural operations may be subject to nuisance complaints which may be the result of lack of information about such operations. Such complaints may cause the curtailment of agricultural operations and discourage investment for

improvement of agricultural land to the detriment of the economic viability of the agricultural industry of the County. Therefore, it is the intent of Chapter 16.40 of the Monterey County Code to promote a good neighbor policy by advising property owners, potential purchasers of real property located near agricultural operations, residents of the County, and the general public of the potential inconveniences or discomforts associated with living and/or visiting a County with a strong rural character and healthy agricultural sector, so long as the agricultural operations are conducted in a manner consistent with proper and accepted customs and standards. These potential inconveniences or discomforts may include, but are not limited to, noises, odors, lights, reflective surfaces, fumes, insects, dust, chemicals, smoke, the operation of machinery (including aircraft), agricultural truck traffic, and crop rotation, and impacts associated with the presence of a large labor force.

Thus, as a resident or visitor of Monterey County, you are hereby notified that you must be prepared to accept certain inconveniences or discomforts that are caused by agricultural operations as a normal and necessary aspect of living in a County with a strong rural character and a healthy agricultural sector. The Board of Supervisors has also established a voluntary dispute resolution process to assist in resolving complaints about agricultural operations without litigation.

For further information regarding County policies in respect to agriculture or the voluntary dispute resolution process, you are invited to contact the Monterey County Office of the Agricultural Commissioner.

B. Notice to Building Permit Applicants.

The County Building Services Department shall provide notice to all applicants applying for construction permits in the unincorporated area of Monterey County of the existence of Chapter 16.40 (Protection of Agricultural Activities) of the Monterey County Code. This notice shall refer the applicant to Chapter 16.40 for detailed information on the protection of agricultural activities in the County.

SECTION 8. Section 16.40.050 of the Monterey County Code is amended to read as follows:

16.40.050 Voluntary Dispute Resolution Process

A. Voluntary Dispute Resolution Process. Should any dispute arise regarding any inconvenience or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation of the parties involved, the parties may choose to submit the dispute to the voluntary dispute resolution process as set forth in this Section in an attempt to resolve the matter prior to the filing of any court action.

B. The Monterey County Agricultural Commissioner or his or her designee in the Monterey County Office of the Agricultural Commissioner (hereafter "Agricultural Commissioner") shall serve as the County official to hear and mediate disputes relating to inconveniences or discomforts associated with adjacency to agricultural operations. The Agricultural Commissioner shall convene meetings among the parties to the dispute as needed,

shall provide notice of such meetings to all known parties to the dispute, and shall provide an opportunity for all known parties to the dispute to be heard. .

D. Cooperation. The effectiveness of the voluntary dispute resolution process is dependent upon full discussion and complete presentation by the parties of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the dispute.

E. Process. The dispute resolution process shall be initiated by written request of one of the parties. Thereafter the Agricultural Commissioner or his or her designee may investigate the facts of the dispute but must, within twenty-five (25) days or as soon thereafter as is feasible, hold a meeting among all known parties to the dispute to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, the parties shall have an opportunity to present what each considers pertinent facts. The time limits provided in this Subsection for action by the Agricultural Commissioner may be extended upon written agreement of all known parties to the dispute.

SECTION 9. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase should be declared invalid.

SECTION 10. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ___ day of _____, 2014, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel

By _____
Deputy