

MONTEREY COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

Erik V. Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

(831) 755-5025
www.co.monterey.ca.us

MEMORANDUM

Scheduled Date: April 10, 2023

To: Ad Hoc Subcommittee of the Agricultural Advisory Committee (Subcommittee)

From: Taylor Price, Assistant Planner

Subject: **Agricultural Conservation Mitigation Program** – Consider 1) recommending the draft ordinance, with input from the Subcommittee, to the AAC or 2) recommending the Subcommittee add a second meeting in April.

cc: Melanie Beretti, AICP, Principal Planner; REF220044 Public Distribution List

ACTION:

Receive the draft ordinance for Mitigation for Development on Farmland and provide feedback to staff. Consider 1) Recommending the draft ordinance for consideration by the Agricultural Advisory Committee at their April 27, 2023, meeting or 2) Recommending that the Subcommittee add a second meeting in April so staff can return with the revised draft ordinance.

SUMMARY:

At the Ad Hoc Subcommittee's (Subcommittee) February 13, 2023 meeting (Memo and attachments are available at the [link](#), Presentation is available at the [link](#)), staff presented three questions and a draft framework for the Subcommittee to consider and provide feedback to staff. Staff heard Subcommittee members and public input and reviewed the draft ordinance based on the received feedback. In addition, staff heard input from the Subcommittee and members of the public about concerns over requirements limiting mitigation within specific geographic areas and concerns that geographic limitations could potentially favor the payment of in-lieu fees over direct mitigation. Staff also heard that it would be important for County regulations to take into consideration potential future actions that may be prescribed by the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) or others toward achieving sustainable groundwater management. Staff met with SVBGSA staff to discuss ways in which the County's program and draft ordinance can protect multi-benefit and recharge lands.

Staff developed a preliminary draft ordinance and two flowcharts that were presented to the Subcommittee at its March 27, 2023 meeting (Memo and attachments are available at the [link](#)). Staff discussed and received preliminary feedback from the Subcommittee and members of the public on the draft ordinance and flowcharts and requested that Subcommittee and public members submit any additional written comments to staff by Friday, March 31, 2023. Based on feedback received, staff reviewed and updated the draft ordinance included with this report as Attachment A – Draft Chapter 21.92 Mitigation Requirements for Development on Agricultural Lands. Additionally, staff presents updated information and policy options for consideration by the Subcommittee to balance the goals

of promoting/protecting agricultural lands and the industry's viability while also encouraging growth in or near developed/developing areas away from valuable agricultural land.

Specifically, staff would like the Subcommittee's input on whether the County's ordinance needs to include mechanisms to help ensure the desired policy goals and outcomes are achieved? And if so, what are the appropriate mechanisms (e.g., adjusted base mitigation ratios)? Staff would also like the Subcommittee's input regarding options included in the County's draft ordinance regarding formal review of annexation proposals submitted through the Local Agency Formation Commission (LAFCO). In addition, staff would like the Subcommittee's input to inform the County's ongoing discussions with the Salinas Valley cities toward developing a county-wide program to mitigate the loss of Important Farmland resulting from annexation (2010 Monterey County General Plan Agricultural Element AG-1.12). See Attachment B – Presentation.

To help inform the discussion regarding annexations, staff have confirmed that LAFCO staff will be present, and Lisa Brinton, Assistant Director of the City of Salinas Community Development Department, representing the Salinas Valley Cities, will also attend the Subcommittee meeting.

AAC SUBCOMMITTEE INPUT AND/OR COMMENTS:

Staff would like to obtain the Subcommittee's input regarding the topics presented in this report and the attached presentation, as well as the Subcommittee's comments on the draft ordinance. Staff requests that the Subcommittee and members of the public provide any written comment to staff by April 16, 2023.

Staff recommends that the Subcommittee consider one of the two options below:

1. Recommend staff present the draft ordinance, with updates reflecting Subcommittee input, to the Agricultural Advisory Committee for consideration.
2. Recommend that the Subcommittee add a second meeting in April so staff can return with the revised draft ordinance.

CONTACT INFORMATION:

If you have any questions prior to the meeting, please contact the project planner, Melanie Beretti, AICP, Principal Planner, at (831) 755-5285 or at berettim@co.monterey.ca.us.

NEXT STEPS:

Based on feedback and Subcommittee direction, staff anticipates bringing forward the draft ordinance to the AAC for the committee's consideration. Staff would then bring the draft ordinance to the Planning Commission and Board of Supervisors in the late spring of 2023.

ATTACHMENTS:

Attachment A – Draft Ordinance

Attachment B – Draft Presentation

Attachment C – Public Comments Received During or after the Subcommittee on March 27, 2023

Attachment A

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 21.92 TO THE MONTEREY COUNTY CODE RELATING TO
MITIGATION REQUIREMENTS FOR DEVELOPMENT ON FARMLAND**

County Counsel Summary

This ordinance adds Chapter 21.92 to Title 21 of the Monterey County Code to establish regulations for conservation to mitigate for the loss of farmland in the County of Monterey.

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

SECTION 1. Findings and Declarations.

- 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. In section 51220 of Government Code, the State Legislature has found that “the preservation of a maximum amount of the limited...agricultural land is necessary...to the maintenance for the agricultural economy of the state” and that “discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest.”
- C. The 2010 County of Monterey General Plan Agricultural Element Goal AG-1 is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land.
- D. This ordinance is being adopted pursuant to the 2010 County of Monterey General Plan Chapter 6 Agricultural Element Policy AG-1.12, which directs the County of Monterey to adopt an agricultural conservation mitigation program.
- E. Monterey County is a significant agricultural contributor to the State and the larger nation. The County of Monterey is the fourth highest agricultural-producing County in the State of California.
- F. Regulation of the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of the County of Monterey. The success of agriculture is due to the favorable climate, fertile soils, and water availability that comprise the foundation for the largest industry and the source of more than a quarter of all employment in the County of Monterey.
- G. The purpose of this ordinance is to permanently protect Monterey County’s most productive and valuable farmland from conversion to non-agriculture use. Monterey County must balance the need to permanently protect its farmland and agricultural industry’s long-term

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sustainability and commercial viability with other critical public goals. Monterey County recognizes that permanently protecting all of its farmland is not feasible. In some cases, the conversion of farmland to other uses, such as housing, may be in the best interests of the people of Monterey County. In some circumstances, it may be appropriate to allow the conversion of farmland but also to require that such conversion be accompanied by mitigation that provides increased protection for other comparable agricultural lands.

H. The intent of this ordinance is to establish standards for the protection of the highest-quality farmland (Prime Farmland) and other Important Farmland (inclusive of Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance) in Monterey County. This ordinance also intends to promote the long-term conservation and commercial viability of agriculture in Monterey County. The regulation of farmland conversion will encourage infill development on vacant or underutilized sites within and near existing jurisdictions and infrastructure. When farmland must be converted to fulfill other public goals, this ordinance will minimize the impact on farmland and require the protection of comparable farmland.

I. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308, which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment. This ordinance establishes a program for protecting farmland in the County of Monterey. The proposed agricultural conservation mitigation program aims to avoid or reduce significant environmental impacts to agricultural land in the County of Monterey and establish a program to minimize future impacts to the County of Monterey's economy. Further, the proposed agricultural conservation mitigation program will ensure that future impacts to farmland in the County of Monterey are minimized and mitigated through a consistent and standardized regulatory program. This ordinance minimizes future alterations in land use and will not result in disturbances to agricultural or environmental resources.

SECTION 2. Chapter 21.92 is added to the Monterey County Code to read as follows:

CHAPTER 21.92

MITIGATION REQUIREMENTS FOR DEVELOPMENT ON FARMLAND

- 21.92.010 Purpose.**
- 21.92.020 Definitions.**
- 21.92.030 Applicability.**
- 21.92.040 Mitigation Plan.**
- 21.92.050 Mitigation Requirements.**
- 21.92.060 Methods of Mitigation.**
- 21.92.070 Timing of Mitigation**
- 21.92.080 Mitigation Lands.**
- 21.92.090 Qualifying Conservation Entity.**
- 21.92.100 Required Conditions on the Applicable Entitlement.**

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21.92.010 Purpose.

The purpose of this Chapter is to provide clear and consistent policies to mitigate the loss of farmland due to development or conversion to non-agricultural uses in the unincorporated inland areas of the County of Monterey. The goal of these regulations is to promote the long-term protection, conservation, and enhancement of productive and potentially productive farmland. Further, the mitigation requirements are intended to ensure the commercial viability of the County of Monterey's agricultural industry and support growth management policies that encourage growth in or near developed or developing areas and away from valuable farmland.

21.92.020 Definitions.

For the purpose of this Chapter, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 21.06 shall otherwise apply.

A. "Water Supply" means providing written evidence of a properly permitted onsite well, an easement to such a well, or surface water rights.

Commented [PT1]: Staff proposes a definition of "Water Supply" after feedback from the Subcommittee and based on discussions with Yolo County.

B. "Alternative and Complementary Mitigation" means any other mitigation method that is not an acquisition of a conservation easement, holding Farmland land in fee title, or in-lieu fees.

C. "Farmland" means land that is classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance as determined by the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation.

Commented [PT2]: Staff removed the definition of Agriculture and proposed a more precise definition of Farmland that utilizes the FMMP categories wholly.

D. "Farmland Conservation Easement" means an easement encumbering Farmland for the purposes of restricting its use to agricultural operations, accessory uses, and other uses allowed consistent with the underlying zoning.

E. "Farmland Mapping and Monitoring Program (FMMP)" means the California Department of Conservation's non-regulatory program.

F. "Farmland Mitigation Plan" means the documentation required to be submitted for review and approval by the Appropriate Authority pursuant to Section 21.92.040.

G. "Farmland of Local Importance" means land as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Local Importance.

H. "Farmland of Statewide Importance" means land as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Statewide Importance.

I. "Fee Title" means when land is acquired by either the applicant or a Qualifying Conservation Entity and held in fee title by a Qualifying Conservation Entity.

J. "Good Faith Effort" means an applicant has: 1) entered into a written agreement and worked in good faith with a Qualifying Conservation Entity to locate Mitigation Land suitable

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for fee acquisition or encumbrance by a Farmland Conservation Easement in satisfaction of the applicant's mitigation requirement under this Chapter; and 2) has made not less than (1) bona fide offer for the fee title or Farmland Conservation Easement at the full appraised fair market value, but no seller has accepted the applicant's offer. The forgoing must be supported by reasonable documentation as may be required by the Appropriate Authority and must be confirmed by the Qualified Conservation Entity.

Commented [PT3]: Staff revised the definition of good faith effort based on feedback and input from the Subcommittee and members of the public.

K. "Important Farmland" means lands as identified and mapped by the FMMP of the California Department of Conservation, classified as Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance.

L. "In-lieu Fees" means fees that the applicant pays to a Qualifying Conservation Entity.

M. "Mitigation Land" means land encumbered by a Farmland Conservation Easement or other permanent protection measures for the purposes of mitigating development impacts.

N. "Prime Farmland" means land as identified and mapped by the FMMP of the California Department of Conservation classified as Prime Farmland. Farmland shall also be considered prime farmland for purposes of this section if it meets the definition of "prime agricultural land" in Government Code Section 51201.

O. "Qualifying Conservation Entity" means an entity qualified and approved to hold Farmland in fee title, conservation easements, or in-lieu fees in compliance with Section 21.92.090 and 21.92.100.

P. "Unique Farmland" means land as identified and mapped by the FMMP of the California Department of Conservation classified as Unique Farmland.

21.92.030 Applicability.

A. The provisions in Chapter 21.92 are applicable to projects in the unincorporated inland areas of the County of Monterey. This Chapter applies to all projects that directly result in the conversion of agricultural land to non-agricultural use.

B. Activities subject to this Chapter:

1. Redesignation of land subject to an agricultural designation to any designation other than an agricultural designation or zoning district (e.g., Commercial, Industrial, Residential, or Public/Quasi-Public);

2. Rezoning of land in an agricultural zone to any zone other than an agricultural zone;

3. Projects that require a discretionary permit where Farmland is converted to non-agricultural use.

C. Activities not subject to this Chapter:

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1. Subdivision of Farmland that preserves agricultural viability and is consistent with the minimum parcel size imposed by the agricultural zone;
2. Use allowed not needing a discretionary permit consistent with the underlying zoning;
3. Acreage used for inclusionary housing as defined in Chapter 18.40 of the Monterey County Code;
4. Acreage use for affordable housing as defined in Section 21.06.005 of the Monterey County Code;
5. A Community Area or Rural Center with a Plan that includes an agricultural mitigation program;
6. Agricultural employee housing as defined in Section 21.06.014 of the Monterey County Code;
7. Agricultural processing plant and agricultural support service as defined in Sections 21.06.020 and 21.06.030 of the Monterey County Code.

21.92.040 Farmland Mitigation Plan.

A. The applicant shall submit a Farmland Mitigation Plan to the Appropriate Authority for projects subject to this Chapter at the time an application is submitted to the County.

B. The Farmland Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this section:

1. Evidence of the Qualifying Conservation Entity's approval as required pursuant to Section 21.92.090 and 21.92.100, if applicable;

2. An agreement between the applicant and the Qualifying Conservation Entity to identify, assist in the negotiation for and accept and hold Mitigation Land in fee title, an Agricultural Conservation Easement, or in-lieu fees;

a. If the applicant is not working with a Qualifying Conservation Entity, the applicant must utilize the most recent California Department of Conservation Model Easement, and the applicant's mitigation methods must be either Mitigation Land held in fee title (with a deed restriction) or an Agricultural Conservation Easement;

3. Map and calculation of applicable project and proposed mitigation acreage of the following: Prime Farmland; and Important Farmland;

4. The type of mitigation that will be provided in order to mitigate for conversion of Farmland;

5. The acreage that would be preserved through mitigation and/or the amount of in-lieu fees that would be paid;

Commented [PT4]: Clarified the Farmland Mitigation Plan process and explained the process for applicants not working with a Qualified Conservation Entity.

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6. The location of the Mitigation Land, if applicable;

7. The proposed Farmland Conservation Easement or deed restriction, if applicable;
and

8. That the proposed Mitigation Land adheres to the mitigation requirements pursuant to Section 21.92.080, if applicable.

C. The Farmland Mitigation Plan shall adhere to the mitigation requirements pursuant to Section 21.92.050 and include the proposed methods and timing of mitigation pursuant to Section 21.92.060 and 21.92.070, respectively.

21.92.050 Mitigation Requirements.

A. Mitigation shall be required for all activities subject to this Chapter pursuant to Section 21.92.030.

B. **OPTIONS** – The base mitigation ratio shall be determined by the Important Farmland classification mapped by the FMMP of the California Department of Conservation five years prior to the time the application is submitted.

C. The applicant cannot utilize to satisfy their mitigation Mitigation Land or the portion of Mitigation Land that was previously dedicated from a separate project.

D. The appraisal of the applicable project shall be completed no less than 90 days from the date that the Farmland Mitigation Plan is submitted to the Appropriate Authority, if applicable.

E. The appraisal of the Mitigation Land or In-lieu Fees shall be completed no less than 90 days from the date that the Farmland Mitigation Plan is submitted to the Appropriate Authority, if applicable.

F. Activities that are subject to mitigation requirements shall be mitigated for at the following base ratios (on an acre-for-acre basis):

1. Prime Farmland shall be mitigated for at a replacement ratio of 2:1.
2. Important Farmland shall be mitigated for at a replacement ratio of 1.5:1.

G. All activities subject to mitigation requirements shall be required to locate a Farmland Conservation Easement or Fee Title.

1. The proposed Mitigation Land for Farmland Conservation Easement or Fee Title shall be within the same General Plan Planning Area as the proposed project and cannot move from a sustainable subbasin to an overdrafted subbasin as identified by the recognized Groundwater Sustainability Agency. The Mitigation Land shall also comply with the provisions set forth under Section 21.92.080.

H. If, after one Good Faith Effort, the applicant cannot locate a Farmland Conservation Easement or Fee Title pursuant to the criteria in 21.92.050.G.1, then the applicant shall be

Commented [PT5]: Staff added this clarification to the Farmland Mitigation Requirements based on feedback from the Subcommittee and members of the public.

Commented [PT6]: OPTIONS
1 – Provide a different timeline for years.
2 – Triggering event could be prior to application deemed complete.

Commented [PT7]: Staff added this clarification to when the base mitigation ratio for a project will be determined.

Commented [PT8]: Staff heard feedback from the Subcommittee and members of the public that the proposed mitigation land should only be utilized for a single project.

Commented [PT9]: Staff heard feedback that the regulations should clarify and codify the appraisal process to ensure consistency among applicants and Qualified Conservation Entities.

Commented [PT10]: Staff clarified that mitigation is based on an acre-for-acre basis after feedback from the Planning Commission, AAC, and Subcommittee.

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required to locate a Farmland Conservation Easement or Fee Title elsewhere in the County as long as the Mitigation Land complies with the provisions set forth under Section 21.92.080.

I. If, after one additional Good Faith Effort, the applicant cannot locate a Farmland Conservation Easement or Fee Title pursuant to the criteria in 21.92.050.H, then the applicant shall be required to pay in-lieu fees to a Qualifying Conservation Entity.

J. Adjustment Factors. The following adjustment factors shall be applied, where relevant, to modify the base mitigation ratio.

1. **OPTIONS** – If an applicant's proposed project is on land in an active Williamson Act contract, per Government Code section 51200 et seq., the base mitigation ratio shall be increased by 25%.

2. **OPTIONS** – If the applicant's proposed project is within a Community Area or Rural Center, the base mitigation ratio shall be reduced by 10%.

21.92.060 Methods of Mitigation.

A. Direct Acquisition of a Farmland Conservation Easement:

1. The location and characteristics of the Farmland Conservation Easement shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.

2. It shall be the applicant's sole responsibility to obtain the required Farmland Conservation Easement.

3. Farmland Conservation Easements on Mitigation Land shall be in perpetuity; unless the County, Qualified Conservation Entity, if applicable, and the landowner agree to move or transfer the easement.

4. The applicant shall provide written evidence to the Appropriate Authority that the Qualifying Conservation Entity or the applicant has acquired a Farmland Conservation Easement funded directly by the applicant and the Farmland Conservation Easement has been recorded and validly encumbers the Mitigation Land.

5. The applicant, if applicable, shall pay the one-time price to purchase the Farmland Conservation Easement and all associated transaction costs (including, but not limited to, escrow, recording, title policy, appraisal, the Qualifying Conservation Entity's administrative costs), plus a one-time payment sufficient to cover the costs of administering, monitoring, and enforcing the Farmland Conservation Easement.

B. Hold Farmland in Fee Title:

1. The location and characteristics of the Mitigation Land shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.

Commented [PT11]: Draft language for how applicants will work through the mitigation process. This is the written regulations based on the Flowchart presented to the Subcommittee on March 27.

Commented [BM12]: OPTIONS:
1 – Increase by a different %
2 – Do not adjust base mitigation ratio for development on Williamson Act parcels

Commented [BM13]: OPTIONS:
1 – Reduce by a different %
2 – Do not adjust base mitigation ratio for development within Community Area or Rural Center

Commented [PT14]: Staff heard feedback from the Subcommittee and members of the public that it is important to allow Williamson Act land to be used for mitigation. Allowing projects within Community Areas or Rural Centers to reduce the required base mitigation ratio may also be desirable.

Commented [PT15]: Based on feedback from members of the public, Subcommittee, AAC, and Planning Commission, and to respond to changing conditions, staff added language that allows the easement to be transferred or moved if all parties agree.

Commented [PT16]: Staff is researching the feasibility the County and a Qualified Conservation Entity as easement holders, as was suggested by a Subcommittee member.

Commented [PT17]: Based on feedback, staff clarified the mitigation process for acquiring Farmland Conservation Easements.

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2. It shall be the applicant's sole responsibility to obtain the required Mitigation Land.

3. The Mitigation Land shall have a permanent deed restriction that restricts the future transfer or sale for agricultural purposes. The permanent deed restriction may be canceled if the landowner, County, and Qualified Conservation Entity agree to move or transfer the deed restriction.

4. The applicant shall provide written evidence to the Appropriate Authority that the Qualifying Conservation Entity or applicant has acquired the Fee Title funded directly by the applicant and that the Farmland Conservation Easement has been recorded and validly encumbers the Mitigation Land.

5. The applicant, if applicable, shall pay the one-time price to purchase the Fee Title and all associated transaction costs (including, but not limited to, escrow, recording, title policy, appraisal, the Qualifying Conservation Entity's administrative costs), plus a one-time payment sufficient to cover the costs of administering, monitoring, and enforcing the Fee Title.

C. In-Lieu Fees: The payment of an in-lieu fee shall be subject to the following provisions:

1. The amount of the In-lieu Fee shall be determined based on the appraised fair market value of acquiring a conversation easement on the land being converted. The values of conservation easements shall be determined by an independent real property appraiser with experience valuing Agricultural Conservation Easements for the California Department of Conservation Sustainable Agricultural Lands Conservation Program (SALC) or a similar program.

2. In addition to the one-time In-lieu Fee for mitigation, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing an easement, including the cost to administer, monitor, and enforce a Farmland Conservation Easement and the payment of the estimated transaction costs associated with acquiring an easement.

3. In-lieu Fees may be used to satisfy the entire mitigation requirements for an applicant, or In-lieu Fees may be a component of the applicant's proposed mitigation.

4. Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding any proposed In-lieu Fees.

D. Alternative and Complementary Mitigation:

1. **OPTIONS:** The applicant may propose Alternative and Complementary Mitigation, up to 5% of the total acreage of the required mitigation.

a. To qualify as an Alternative and Complementary Mitigation, the proposed alternative shall satisfy all the following criteria:

Commented [PT18]: Based on feedback from members of the public, Subcommittee, AAC, and Planning Commission, and to respond to changing conditions, staff added language that allows the easement to be transferred or moved if all parties agree.

Commented [PT19]: Based on feedback, staff clarified the mitigation process for holding farmland in fee title.

Commented [PT20]: Staff heard feedback that the regulations should clarify and codify the appraisal process to ensure consistency among applicants and Qualified Conservation Entities.

Commented [PT21]: Clarification that in-lieu fees are a one-time payment by the applicant to the Qualified Conservation Entity.

Commented [PT22]: Clarification that in-lieu fees can be a component of mitigation or the entire mitigation from the applicant.

Commented [BM23]: OPTIONS:
1 – Limit alternative or complimentary mitigation to up to a different % of total required mitigation
2 – Do not include limits on alternative and complementary mitigation

Commented [PT24]: Clarification on the maximum percentage of allowable Alternative and Complementary Mitigation.

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i. The proposed mitigation shall promote the long-term protection, conservation, and enhancement of:

1. Productive or potentially productive Farmland in the County of Monterey; and

ii. The applicant shall bear all the costs of reviewing, approving, managing, and enforcing the mitigation; and

iii. Means for achieving Alternative and Complementary Mitigation measures are:

1. Projects that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

2. Projects that support the next generation of farmers and farmer training programs for the benefit of agriculture in the County of Monterey.

3. Or other projects as deemed acceptable by the Appropriate Authority.

iv. Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding any proposed Alternative and Complementary Mitigation measure.

21.92.070 Timing of Mitigation.

A. The timing of mitigation for all applicable projects shall meet the following criteria.

1. Projects that change the zoning or land use designation of Farmland provide the Farmland Conservation Easement, Farmland held in Fee Title, payment of In-lieu Fees, or Alternative and Complementary Mitigation prior to or concurrent with recordation of a parcel or final map, prior to issuance of the first construction permit, or at an earlier time required by the Appropriate Authority, whichever occurs first.

2. Projects that require a discretionary permit shall provide the Farmland Conservation Easement, Farmland held in Fee Title, payment of In-lieu Fees, or Alternative and Complementary Mitigation prior to or concurrent with the recordation of a parcel or final map, prior to issuance of first construction permit, or at an earlier time required by the Appropriate Authority, whichever occurs first.

21.92.080 Mitigation Lands.

A. Mitigation Lands acquired through a conservation easement, fee title, or by a Qualifying Conservation Entity purchased using in-lieu fees shall meet all of the following criteria.

1. Be designated as Farmland and zoned for agricultural use;

Commented [BM25]: Staff will verify if an exception or clarification may be needed to allow for a portion of a parcel to be zoned/designated to allow a multibenefit water project.

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2. Acquired from willing sellers only;
3. Be of adequate size, configuration, and location to be viable for continued agricultural operations and use;
4. Be of the same FMMP category or better;
5. Have a Water Supply available for the agricultural operations and use. The Farmland Conservation Easement or deed restriction shall protect the water rights on the Mitigation Land;
6. Located within the County of Monterey;
7. Not be on land that has an existing easement or deed restriction that prevents converting the property to nonagricultural use;
8. Adjustment Factors. The following adjustment factors shall be applied, where relevant, to modify the base mitigation ratio.

a. **OPTIONS**-If the Mitigation Land is identified as a multi-benefit site for agriculture or a groundwater recharge site as identified by a recognized Groundwater Sustainability Agency, the base mitigation ratio shall be reduced by 10%.

b. **OPTIONS**-If the Mitigation Land is located in identified priority areas as listed below, the base mitigation ratio shall be reduced by 10%.

i. Along the boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan;

ii. Along the boundary of permanent growth boundaries or permanent agricultural edges in approved agreements between the County and Cities as of the date of the adoption of the ordinance.

21.92.090 Qualifying Conservation Entity.

A. The Qualifying Conservation Entity must be a nonprofit 501(c)(3) corporation eligible to hold a conservation easement, hold Farmland in fee title, or collect in-lieu fees under California law, including but not limited to Civil Code Section 815.3, operating in Monterey, Santa Cruz, San Benito, or San Luis Obispo County and one of their primary purposes is conserving and protecting land in agriculture. The County of Monterey may consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

1. Whether the entity is a non-profit organization that has an office in the State of California and has direct knowledge and experience working in Monterey, Santa Cruz, San Benito, or San Luis Obispo County whose purpose is holding and administering conservation easements or holding Farmland in fee title for the purposes of conserving and maintaining lands in agricultural production;

Commented [PT26]: Staff proposes a definition of Water Supply in the Definitions section.

Commented [BM27]: OPTIONS
1 – reduce ratio at a different %

Commented [BM28]: OPTIONS
1 – No reduced mitigation for priority sites along edges of certain boundaries
2 – Reduced ratio at different %
3 – Include sites within set distance of Sphere of Influence or City Boundary (1/4 mile? 1/2 mile? Other?)

Commented [PT29]: Staff heard feedback from members of the public and saw examples in other regulations that this is an important requirement for Qualifying Conservation Entities.

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2. Whether the entity has the legal and technical ability to hold and administer conservation easements, in-lieu fees, or hold Farmland in fee titles for the purposes of conserving and maintaining lands in agricultural production and have an established record for doing so;
3. The extent and duration of the entity's involvement in agricultural land conservation within the County of Monterey; and
4. Demonstrate that they have an annual monitoring and reporting program.

21.92.100 Required Conditions on the Applicable Entitlement.

A. The Appropriate Authority shall ensure that if a Qualifying Conservation Entity receives a conservation easement, in-lieu fees, or Farmland in fee title for mitigation purposes under this Chapter that the Qualifying Conservation Entity shall conform to the following requirements.

1. Enforcement and Monitoring – The Qualifying Conservation Entity shall monitor all conservation easements, in-lieu fees, or Farmland in fee title for mitigation purposes 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. It shall enforce compliance with the terms of the Farmland Conservation Easement and Farmland held in fee title.

2. Reporting – The Qualifying Conservation Entity shall, on or before January 31, each year, make available upon request of the Appropriate Authority an annual report describing the activities undertaken by the entity within the past calendar year under Chapter 21.92. The report(s) shall provide the Appropriate Authority an accounting of the use of in-lieu fees remitted to it and the status of all new and existing Farmland Conservation Easements or Farmland held in fee title maintained by the Qualifying Conservation Entity in the County of Monterey.

3. Termination – If a Qualified Conservation Entity intends or reasonably expects to cease operations, it shall assign any Farmland Conservation Easements, in-lieu fees, or Farmland held in fee titles resulting from this regulation to another Qualified Conservation Entity as acceptable and approved by the County of Monterey.

4. Use of in-lieu fees – The Qualifying Conservation Entity shall administer in-lieu fees. These responsibilities cover, without exception, ensuring that in-lieu fees are held in a separate account adequate to cover the cost of acquiring a Farmland Conservation Easement or Farmland held in fee title and administering, monitoring, and enforcing their long-term use for agricultural mitigation purposes.

SECTION 3. 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 sections, subsections, sentences, clauses, or phrases be declared invalid.

Attachment A

PRELIMINARY DRAFT DOCUMENT SUBJECT TO CHANGE

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: _____

Luis Alejo, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: _____
Deputy

KELLY DONLON
Chief Deputy County Counsel

Attachment B



Agricultural Mitigation Ordinance Work Session

AAC – Ad Hoc Subcommittee

April 10, 2023

Goals & Outcomes of Ag. Mitigation

- Protect productive and potentially productive farmland.
- Ensure commercial viability of the agricultural industry.
- Encourage growth in or near developed or developing areas.





Key Question?

Does the ordinance need mechanisms to help ensure desired policy goals and outcomes are achieved?

Defining “Urban-Ag Edges”

□ Community Areas & Rural Centers

- *Mapped*
- *Adopted Boundaries*
- *Within set distance*

□ Incorporated Cities

- ***Sphere of Influence (LAFCO)***
- ***Agreements with Cities***
 - *Urban Growth Boundary*
 - *Permanent Ag Edge*

□ Other?



Monterey County Farmland

Farmland

- Total \approx 1.4 million agriculture, of which 220,000 acres are irrigated farmland
- Williamson Act Acres \approx 800,000 acres (farm & grazing)
- Ag Easements \approx 80,000 acres (farm & grazing)

Unincorporated County

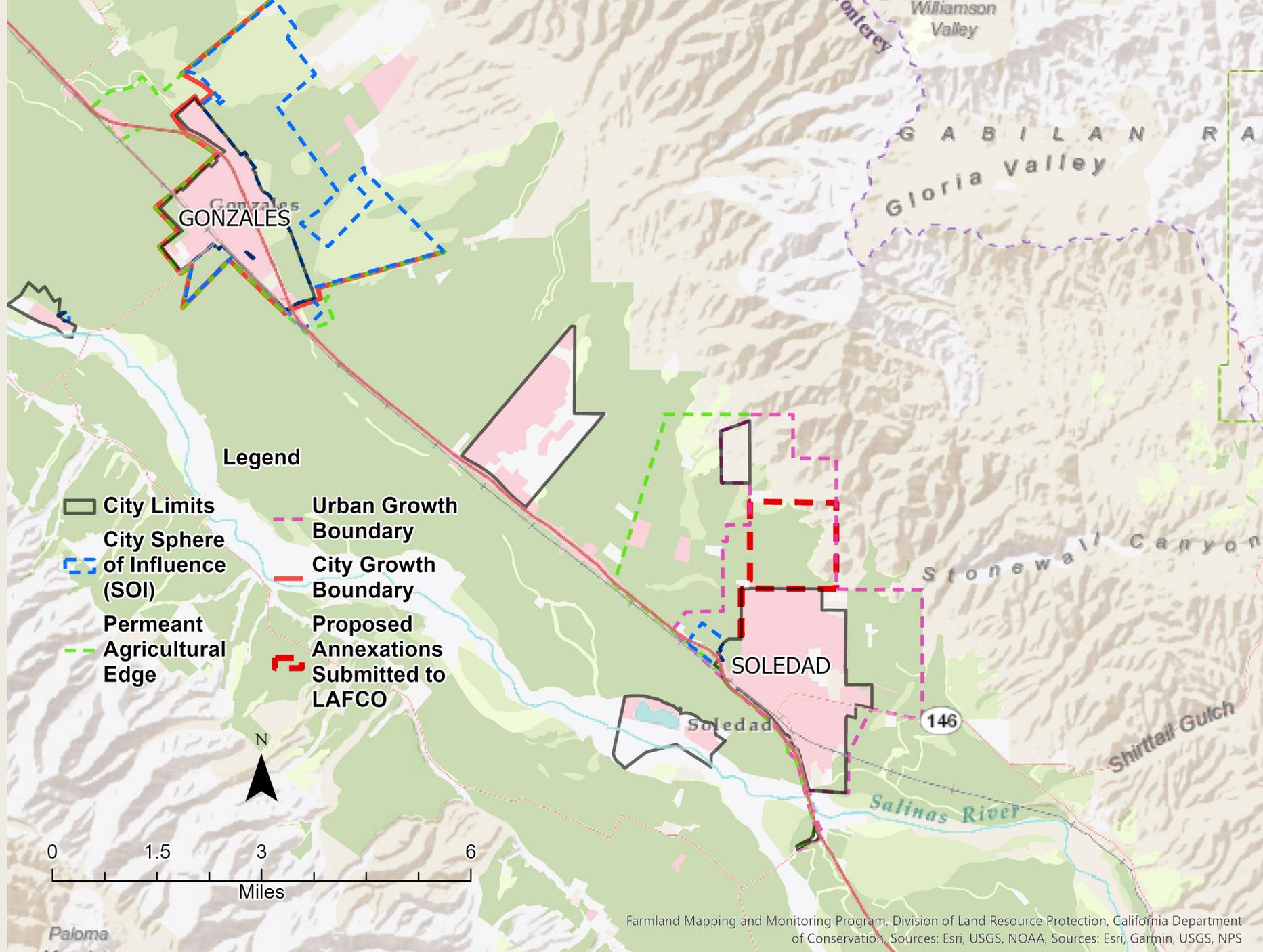
- Community Areas \approx 463 acres
- 1 mile Radius of Community Area \approx 15,018 acres



Community Areas & Rural Centers

	Staff Recommendation	Options
Exemptions	Affordable Housing Ag Employee Housing Ag Support	Public Uses
“Urban-Ag Edge”	Community Area/Rural Centers <ul style="list-style-type: none"> < Unincorporated 	Community Area/Rural Centers = Unincorporated
Mitigation Ratio	<ul style="list-style-type: none"> • See Ordinance 	<ul style="list-style-type: none"> • See Ordinance
Mitigation Priority Areas	<ul style="list-style-type: none"> • See Ordinance 	<ul style="list-style-type: none"> • See Ordinance

City Boundary



Monterey County Farmland

Farmland

- Total \approx 1.4 million agriculture, of which 220,000 acres are irrigated farmland
- Williamson Act Acres \approx 800,000 acres (farm & grazing)
- Ag Easements \approx 80,000 acres (farm & grazing)

Incorporated Cities (Salinas Valley Cities + Marina)

- Cities Total Area \approx 3,321 acres
- Spheres of Influence \approx 4,189 acres
- 1 mile Radius of City \approx 37,114 acres

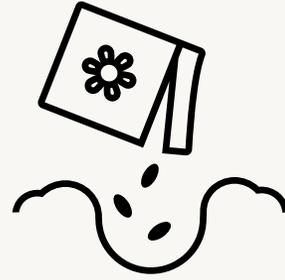
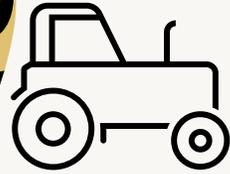




County Annexation Application Review

Draft Ordinance

- Do not include - Status quo County informally review
- Review annexation using criteria for Community Area/Rural Center, until such time as there is a Valley-wide Program.
- Review annexation per other criteria



Valley-Wide Program

HOW

- County & Cities adopt valley-wide ordinance(s)
- Negotiate/update County-City agreements

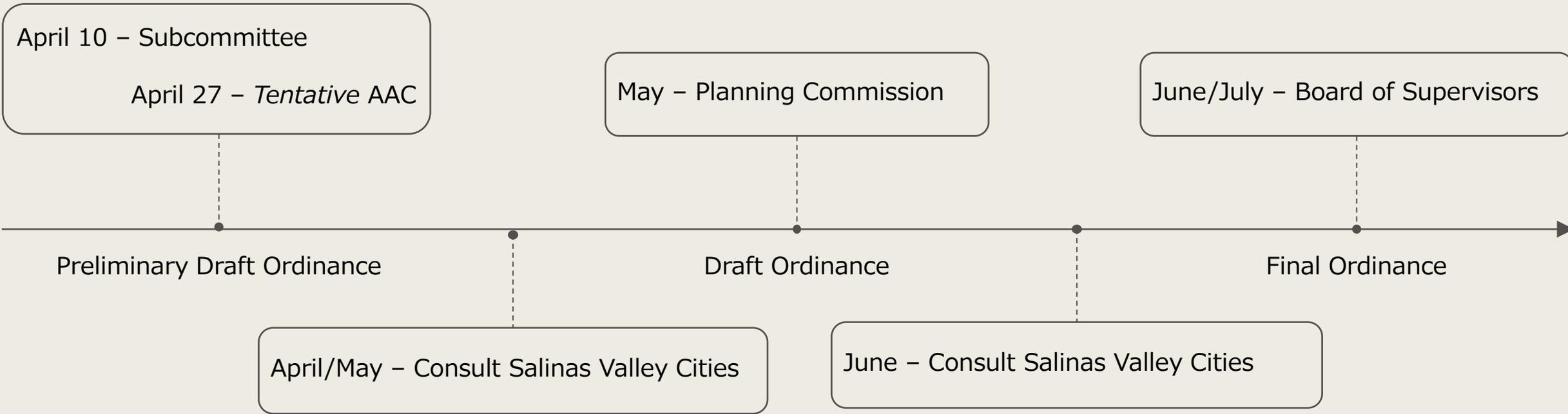
WHAT

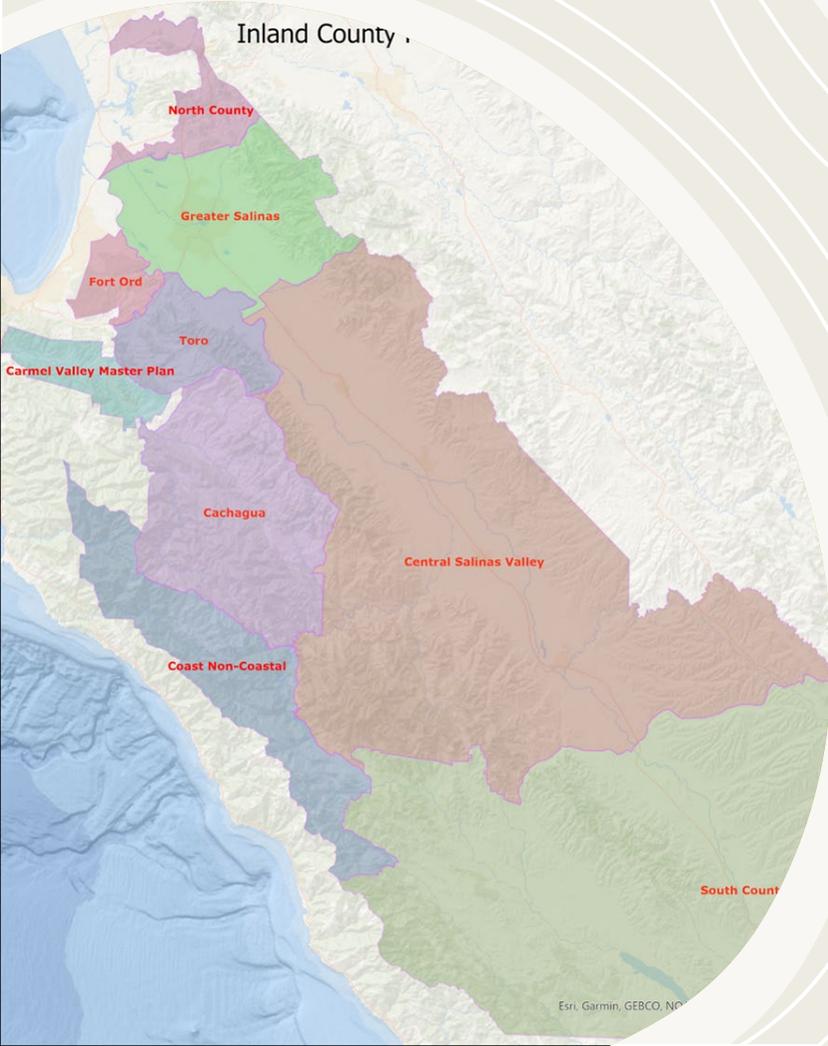
- Target orderly growth to avoid prime/important farmland & critical recharge/multi-benefit sites
- Standard, consistent regulations & best practices
- “Exemptions” for affordable housing (others?)

	Yolo County	Woodland (City)	Valley Cities Proposal
Exemptions	None	Affordable Housing Public Uses	RHNA Housing Public Uses Ag Support
“Urban-Ag Edge”	SOI & Esparto UGB	None	County Unincorporated > Annex
Mitigation Ratio	<ul style="list-style-type: none"> • 3:1 • 2:1 (.25-1 mi SOI/UGB) 	<ul style="list-style-type: none"> • 1:1 • 2:1 = 0-4 mi urban limit line • 3:1 4+ mi existing easement 	<ul style="list-style-type: none"> • County 3:1 or 2:1 • Annex 1:1
Mitigation Target Areas	1:1 (Yolo Habitat Conservation Area)	1:1 (Yolo Habitat Conservation Area)	None Proposed
Timing	None	Final parcel/subdivision map OR building permit (if no map)	Building issuance/disturbance (not annexation/use change)



Timeline





Thank You

Melanie Beretti, AICP, Principal Planner

BerettiM@co.monterey.ca.us

Taylor Price, Associate Planner

PriceT1@co.Monterey.ca.us

21.92.020 Definitions

Definition of Agricultural Conservation Easement restricting the land use to “agricultural operations and accessory uses” could arguably not permit building envelopes, which are permitted under the F, RG, RP zoning. I am hesitant, however to soften it to “primarily agricultural operations” but I would want to allow family homes and training centers like ALBA has.

Definitions of Fee Title and In Lieu Fees should refer to a Qualifying Conservation Entity, instead of land trust.

*****Definition of Good Faith Efforts** needs be clarified, though it does not appear to be used in the draft ordinance yet, though it is contemplated in the flowchart. **Assuming the definition will be used, consider: “Good Faith Efforts” means an applicant has (1) entered into a written agreement and worked in good faith with a Qualifying Conservation Entity to locate land suitable for fee acquisition or encumbrance by an Agricultural Conservation Easement in satisfaction of the applicant’s mitigation requirement under this Chapter; and (2) has made not less than two (2) bona fide offers for the fee interest or Agricultural Conservation Easement at the full appraised fair market value and on commercially reasonable terms, but no seller has accepted the applicant’s offer. The forgoing must be supported by reasonable documentation as may be required by the Appropriate Authority and must be confirmed by the Qualified Conservation Entity.**

Definition of Qualified Conservation Entity: See comments under 21.92.090 re: agricultural land vs. Agricultural Land.

21.92.030: Applicability

As written in 21.92.030, this ordinance would apply to more than just Prime & Important Farmland and land in F, RG, and PG. This conflicts with the way “Agricultural Land” is used later in the ordinance which is defined to mean just those lands. The ordinance is a work in progress, so this may be just drafting issues, but it is worth thinking about ag land generally vs Ag Land as specifically defined as we work through the ordinance.

B(1), (2) and C(1): Same questions as above with regard the application of this ordinance to other zones/definition of “agricultural zone.”

C(2): “Use allowed consistent with the underlying zoning” is vague—this should be clarified to say Uses allowed by the underlying zoning without administrative or use permit,” to be consistent with B(3) above.

3/21/23 Submitted hardcopy Attachment C (Public Comments)
Marc Del Piero / ALT

21.92.020 Definitions

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To: M. Beretti

3/27/23
submitted at
Meeting

Comments by Marc Del Piero
Attachment C - Public Comments
Please review for incorporation into the Ordinance

March 25, 2023

Eileen's Questions and Comments to the draft ordinance adding Chapter 21.92.

21.92.010 Purpose

As written, this ordinance will apply to projects that directly result in the conversion of agricultural land designation to non-agricultural land use designation. What does "designation" mean? Is it intended to mean zoning? Or does it mean any kind of designation, such land subject to a Williamson Act contract (so canceling and phasing out a Williamson Act contract would be a change in designation)? Or terminating a private deed restriction or easement (between and only enforceable by private parties)? Terminating a public deed restriction or open space easement (can be enforced by a public entity)?

With reference to zoning, zones other than F, RG, and PG permit ag use. For example, O zones have crop, tree farming, and grazing as permitted uses; RC allows various ag, some with, some without an administrative permit; and many others. Would zones that permit ag use as one of many permitted uses be considered "agricultural land use designation" or an "agricultural zone"?

Where is "inland" defined? Does it mean outside the coastal zone? Based on the draft, mitigation under this ordinance would not be required for conversion of ag land along the coast? I am thinking of the areas from the Pajaro River mouth to the south of the Salinas River mouth and somewhat inland from there, plus the little bit of Prime & Important Farmland down toward Big Sur? Is that because mitigation is otherwise required through coastal development permits?

21.92.020 Definitions

Definition of Agricultural Conservation Easement restricting the land use to "agricultural operations and accessory uses" could arguably not permit building envelopes, which are permitted under the F, RG, RP zoning. I am hesitant, however to soften it to "primarily agricultural operations" but I would want to allow family homes and training centers like ALBA has.

Definitions of Fee Title and In Lieu Fees should refer to a Qualifying Conservation Entity, instead of land trust.

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Definition of Qualified Conservation Entity: See comments under 21.92.090 re: agricultural land vs. Agricultural Land.

Definition

?

Attachment C - Public Comments

March 25, 2023

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As written in 21.92.030, this ordinance would apply to more than just Prime & Important Farmland and land in F, RG, and PG. This conflicts with the way "Agricultural Land" is used later in the ordinance which is defined to mean just those lands. The ordinance is a work in progress, so this may be just drafting issues, but it is worth thinking about ag land generally vs Ag Land as specifically defined as we work through the ordinance.

B(1), (2) and C(1): Same questions as above with regard the application of this ordinance to other zones/definition of "agricultural zone."

C(2): "Use allowed consistent with the underlying zoning" is vague—this should be clarified to say Uses allowed by the underlying zoning without administrative or use permit," to be consistent with B(3) above.

C(5) Should provide a cross reference to Community Area and Rural Center Plans.

21.92.040 Agricultural Mitigation Plan.

B(1)—should be rewritten to be clearer and chronological (Plan should include (1) evidence of the Qualifying Conservation Entity's approval as required under 21.92.090 and 21.92.100, and (2) an agreement between applicant and the QCE to identify, assist in the negotiation for, and accept and hold Agricultural Mitigation Land in fee or an Agricultural Conservation Easement, and/or in lieu fees.)

Who is the Appropriate Authority that would approve the Qualifying Conservation Entity? Proposed section 21.92.090 just says County of Monterey—would it be Planning or HCD?

B(2)—Is the map of Prime and Important Farmland for both the proposed project property and for the mitigation property?

B(3): An example of the use of Agricultural Land (meaning Prime, Important, and land in F, RG, PG only) vs agricultural land. What if the project land isn't Agricultural Land, as so defined?

B(4)—"The acreage that would be preserved through mitigation and/or the amount of in lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment)"--the parenthetical needs to be clarified.

I think this means, practically speaking, that another appraisal or an appraisal update, using the same extraordinary assumptions, will need to be done for both the project property and the mitigation property (if applicable) with a date of value within XX days (90?) of the actual closing on the mitigation land or the payment of the in lieu fee. Based on the new or updated appraisal, then an in lieu fee to make up the difference or the adjustment of the in lieu fee (up or down) as necessary. The ordinance should more clearly include that the timing of the valuation of the mitigation requirement and the timing of the satisfaction of the mitigation obligation needed to be close in time. What if the new appraisal shows the Agricultural Mitigation Land is worth more than the project land?

I have a question whether the mitigation ratio obliquely referenced here and set out in the flow chart for 21.92.050.C is referring to value or acreage? Practically, those things should be same if the mitigation is like for like (Prime land paved and Prime land conserved), but there may be a times when Prime is paved and Important is conserved, for example. I am assuming this would be done on an appraised

Attachment C - Public Comments

March 25, 2023

value per acre basis with the extraordinary assumption that the highest and best use is commercial ag. Is that correct? We may want to be clearer on how the mitigation requirement is measured either in the ordinance or in guidance to HCD or planning.

B(5): If the flowchart for 21.92.050.C is adopted, the Mitigation Ag Land will be known or an entire in lieu fee paid, so, we don't need to say, "if known," rather "if applicable." In addition, the Mitigation Plan should include the form of ACE or deed restriction, so that it is approved by the County as compliant with this Chapter.

B(6): "Information on the specific measures adopted by the applicant to mitigate for impacts to adjacent agricultural lands"—where in the Code is the obligation to mitigate for impacts to adjacent lands? Include a cross reference and say, "any specific measures."

21.92.050 Mitigation Requirements

Subsection B is really unclear. It needs rewording. I think they are saying that the project land must have been mapped under the FMMP in order for the application to be complete. Need more information to understand the concern and perhaps clarify the issue.

On the flow chart, I question having a blanket reduced ratio for areas with Community Area Plans—consider Castroville that has a lot of ag land in the CAP—though it is in the coastal zone, so perhaps this ordinance won't apply.

Not a legal question, but ... In annexation, the harm is the same because these valley cities are built on and amid Prime and Important Farmland. And that land is actively farmed. I don't see the logic in reducing the mitigation ratio when the harm is the same just because some land is next to a city and other land is not.

21.92.060 Methods of Mitigation

A—Direct Acquisition of an ACE. Generally fine, but all of the drafting needs to be a bit more precise to reflect that the applicant is funding and the QCE is acquiring the ACE (e.g., subsection 2).

Subsection 4 should read something like: The applicant shall provide evidence to the Appropriate Authority (HCD? Planning?) that the Qualifying Conservation Entity has acquired an Agricultural Conservation Easement funded directly by the applicant, and the Agricultural Conservation Easement has been recorded and validly encumbers the Agricultural Mitigation Land.

Subsection 5 should be rewritten to be more logical and chronological: applicant pays the purchase price, all transactional costs, including all costs of the QCE (including, but not limited to, escrow, recording, title policy, appraisal, QCE legal, QCE staff, costs of preparing the baseline), plus a one time payment sufficient to cover the costs of XX years of administering and monitoring the ACE, and an amount for the QCE's legal defense fund to fund ACE enforcement costs.

Question—does ALT do a PAR (property analysis record) calculation to determine the stewardship costs of the easements? If not, ALT should consider developing one in connection with this program.

B. Hold Agricultural Land in Fee Title (use of the defined term Agricultural Land to be scrutinized here). Similar clarifications as in the ACE section needed to clarify the applicant is funding the QCE's acquisition of the Ag Mitigation Land.

March 25, 2023

If a deed restriction will be required, the County should consider drafting a form of deed restriction that is acceptable and allow only modest modifications only as necessary for property-specific requirements—substantive changes to the form should be approved by the Appropriate Authority (Planning? HCD?).

Subsection 3 is really poorly worded, but it appears to want to restrict transfer to anyone other than to another QCE. If the transfer restriction is not carefully drafted, then this can be really problematic for a number of reasons—here are a few things that come to mind: the QCE may choose to have the property held in a subsidiary single member LLC for liability reasons; the QCE may want to do a long-term lease that is treated like a transfer; the QCE may want to transfer the fee to another nonprofit with a slightly different mission than the QCE but will use the land for ag, like ALBA, or a public, quasi-public, or private entity like a university or trade school that would use the land for ag, and the QCE would reserve a conservation easement to ensure it remains in ag in accordance with the mitigation requirements; the QCE may want transfer the land to the County or to a district. There are probably more instances when a narrow transfer restriction would prevent good stewardship of the land.

One element of a reasonable transfer restriction would prohibit fee lands from being used for collateral for a debt.

Same issues as in subsection A above; re-wording subsections 4 and 5 is needed for clarity and reflecting how the recording works. The applicant should pay for the costs of the QCE preparing a long term management plan for all fee lands acquired.

C. In Lieu Fees

Section needs to be clarified that in lieu fees may be used to pay for the mitigation obligation entirely, or to make up the difference between the value of the project land and Ag Mitigation Land or ACE, if approved in the Mitigation Plan.

D. Alternative and Complementary Mitigation.

It looks like this section is still being fleshed out.

Clarify what the 5% refers to. Is it an amount equal to the value of 5% of the project acreage required to be mitigated that must be spent in Alternative and Complementary Mitigation? Or a 5% acre-for-acre reduction in the calculation of impacted acreage by improving the same amount of acreage elsewhere (e.g., by moving topsoil, granting water rights, etc.). Who oversees and approves this kind of mitigation to ensure it is completed timely and accordance with commercial standards and paid for? I assume the County would need to verify.

How would the Alternative and Complementary Mitigation be as protective as an ACE or fee purchase by a QCE? Seems like (iii) could not be satisfied under the proposed methods in (iv).

21.92.070 Timing of Mitigation

No comments

21.92.080 Agricultural Mitigation Lands

Attachment C - Public Comments

March 25, 2023

A(1, 4) I like this requirement to ensure the best land is conserved, and that there is no loophole to try to conserve low quality land. There may be push-back on this requirement as too restrictive in the long term, especially for smaller sized mitigation requirements, and include a provision that the County may approve other lands if Agricultural Land is not available. I would resist that, if possible. If it became a problem, then the legislation could be amended later.

I like the suggestion of conservation in the same geographic area to encourage density in development with higher ratios and/or fees for development away from established City boundaries.

21.92-090 Qualifying Conservation Entity

The requirements in this section should conform to and/or reference Civil Code section 815.3(a), which sets out the requirements for a nonprofit easement holder: "A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use."

So, "or other nonprofit entity" should be deleted from subsection A.

As used in this Section "agricultural land" is not capitalized, but in the definition of QCE it is capitalized, which creates inconsistencies, since "Agricultural Land" is specifically defined.

21.92.100 Required Conditions

Subsection A.(4): Revise the last sentence, since, as written it conflicts with the prior sentence that allows the QCE to also use the fees for long term management costs of fee-owned lands. I would delete the sentence entirely and require under .040 or .050 that the Applicable Authority approve the Mitigation Plan once the mitigation land is located and the ACE drafted so the QCE doesn't have to make an independent determination of whether the ACE complies with section 21.92.080.

Other questions that go to the form the easement that the County may want to require, or specific provisions that the County may want to include:

How will the County want to deal with future easement amendments if any are needed?

Does the County want to address condemnation? It makes sense that proceeds from any condemnation that takes fee Ag Mitigation Land or ACE encumber lands would go into the same fund as in lieu fees for acquisitions or long-term management and enforcement.

Attachment C - Public Comments

From: [Mike Novo](#)
To: [Beretti, Melanie](#); [Price, Taylor](#)
Subject: Ag Mitigation
Date: Tuesday, March 28, 2023 10:57:14 AM

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Something that I may raise today is to figure out how the County ordinance interacts with the LAFCO process for annexations. We are not a party to that process, so not sure how you are thinking about addressing it in the ordinance.

We do participate by getting a referral from LAFCO and then commenting. So perhaps the ordinance should provide what we would be looking for to address in our comment letters. Haven't thought about that yet, so not sure what to tell you. Perhaps you have been thinking about it and that is why annexation is identified as a placeholder.

Thanks,
Mike

Attachment C - Public Comments

From: [Beretti, Melanie](#)
To: [Price, Taylor](#)
Subject: FW: LandWatch comments on preliminary draft Agricultural Mitigation Program
Date: Wednesday, March 29, 2023 4:17:45 PM

From: Michael DeLapa <execdir@landwatch.org>
Sent: Wednesday, March 29, 2023 10:57 AM
To: Beretti, Melanie <BerettiM@co.monterey.ca.us>
Cc: Janet Brennan <Brennan_Janet@comcast.net>
Subject: LandWatch comments on preliminary draft Agricultural Mitigation Program

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Dear Melanie,

LandWatch Monterey County has reviewed the preliminary draft Agricultural Mitigation Program and has the following comments:

- 21.92.080 Agricultural Mitigation Lands (5) provides that the land “Have an adequate water supply to maintain the continued agricultural use...” *The final policy should define "adequate water supply" for those subbasins that are critically overdrafted per the Salinas Valley Basin Groundwater Sustainability plans.*
- Section 1 (H) finds “The Regulation of agricultural land conversion will encourage infill development on vacant or underutilized sites within and near existing jurisdictions and infrastructure.” Section 21.92.030 (D) Activities not subject to this Chapter include ... acreage used for inclusionary housing, affordable housing, employee housing and agricultural processing plant and agricultural support services. *Only those uses identified in Section 21.92.030 (D) that meet the criteria of infill development on vacant or underutilized sites within and near existing jurisdictions and infrastructure should be exempt.*

We look forward to reviewing the revised draft.

Best regards,

Michael

Please subscribe to the LandWatch newsletter, "like" us on Facebook and follow us on Twitter.

Michael D. DeLapa
Executive Director
[LandWatch Monterey County](#)
execdir@landwatch.org
650.291.4991 m

[Subscribe](#) • [Facebook](#) • [Twitter](#)

Attachment C - Public Comments

From: [Mike Novo](#)
To: [Price, Taylor](#); [Beretti, Melanie](#)
Cc: [Marc Del Piero](#)
Subject: Ag Mitigation Ordinance comments
Date: Thursday, March 30, 2023 11:49:36 AM
Attachments: [AAC DRAFT Aq Mitigation Ordinance - ALT Suggestions.docx](#)

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Please find my comments (attached) related to the draft ordinance, in “track changes” mode. I am representing the Ag Land Trust through these comments, although we may also submit additional comments through our Executive Director.

We believe the ordinance is well crafted and have suggestions to make it more inclusive and consistent with county plans, county practice, and for practical application. We are providing an attached “track changes” version of the draft ordinance with our suggestions. We are looking forward to some of the sections “Under Development,” as they require some important discussion and decisions.

The following provides some of our global comments:

- The ordinance should be drafted to cover both the coastal zone and the Inland area of the County.
- Conversion of prime agricultural land should be mitigated at a ratio of 2:1, as recommended by the full Agricultural Advisory Committee
- Easements or land that will be acquired through this mitigation program that form a city permanent edge should be incentivized through a reduced ratio of 1:1.
- The cities of the Salinas Valley should adopt the same ordinance requirements to ensure a level playing field in the Salinas Valley
- It is difficult, if not impossible, to quantify the water quality actions supported in the Alternative and Complementary Mitigation section (21.92.060.D.1.a.iv.1)
- Land under Williamson Act should be eligible to be permanently conserved through this program. It is excluded under 21.92.080.A.8. The Williamson Act is a temporary restriction on land.
- Land proposed for an easement should be included in the project application. If it is required later in the process through a condition of approval, the property owner will likely not receive a tax benefit for the donation.
- Qualifying Conservation Entity should include the County itself.

Thanks,
Mike Novo
Ag Land Trust

The Ag Land Trust Suggestions
PRELIMNAY DRAFT DOCUMENT- MARCH 23, 2023

ORDINANCE NO.

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 21.92 TO THE MONTEREY COUNTY CODE RELATING TO
MITIGATION REQUIREMENTS FOR DEVELOPMENT ON AGRICULTURAL
LANDS**

County Counsel Summary

This ordinance adds Chapter 21.92 to Title 21 of the Monterey County Code to establish regulations for conservation to mitigate for the loss of agricultural land in the County of Monterey.

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

SECTION 1. Findings and Declarations.

- 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. In section 51220 of Government Code, the State Legislature has found that “the preservation of a maximum amount of the limited...agricultural land is necessary...to the maintenance for the agricultural economy of the state” and that “discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest.”
- C. The 2010 County of Monterey General Plan Agricultural Element Goal AG-1 is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land.
- D. This ordinance is being adopted pursuant to the 2010 County of Monterey General Plan Chapter 6 Agricultural Element Policy AG-1.12, which directs the County of Monterey to adopt an agricultural conservation mitigation program.
- E. Monterey County is a significant agricultural contributor to the State and the larger nation. The County of Monterey is the fourth highest agricultural-producing County in the State of California.
- F. Regulation of the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of the County of Monterey. The success of agriculture is due to the favorable climate, fertile soils, and water availability that comprise the foundation for the largest industry, and the source of more than a quarter of all employment, in the County of Monterey.
- G. The purpose of this ordinance is to permanently protect Monterey County’s most productive and valuable agricultural land from conversion to non-agriculture use. Monterey

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County must balance the need to permanently protect its agricultural land and agricultural industry's long-term sustainability and commercial viability with other critical public goals. Monterey County recognizes that permanently protecting all of its agricultural lands is not feasible. In some cases, the conversion of agricultural land to other uses, such as housing, may be in the best interests of the people of Monterey County. In some circumstances, it may be appropriate to allow the conversion of agricultural land but also to require that such conversion be accompanied by mitigation that provides increased protection for other comparable agricultural lands.

H. The intent of this ordinance is to establish standards for the protection of the highest-quality farmland (Prime Farmland) and other Important Farmland (inclusive of Farmland of Statewide Importance, Unique Farmland and Farmland of Local Importance) in Monterey County. This ordinance also intends to promote the long-term conservation and commercial viability of agriculture in Monterey County. The regulation of agricultural land conversion will encourage infill development on vacant or underutilized sites within and near existing jurisdictions and infrastructure. When agricultural land must be converted to fulfill other public goals, this ordinance will minimize the impact on agricultural land and require the protection of comparable agricultural land.

I. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308, which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. This ordinance establishes a program for protecting agricultural land in the County of Monterey. The proposed agricultural conservation mitigation program aims to prevent-avoid or reduce significant environmental impacts to agricultural land in the County of Monterey and establish a program to minimize future impacts to the County of Monterey economy. Further, the proposed agricultural conservation mitigation program will ensure that future impacts to agricultural land in the County of Monterey are minimized and mitigated through a consistent and standardized regulatory program. This ordinance minimizes future alterations in land use and will not result in disturbances to agricultural or environmental resources.

SECTION 2. Chapter 21.92 is added to the Monterey County Code to read as follows:

CHAPTER 21.92
MITIGATION REQUIREMENTS FOR DEVELOPMENT ON AGRICULTURAL LANDS

- 21.92.010 Purpose.**
- 21.92.020 Definitions.**
- 21.92.030 Applicability.**
- 21.92.040 Agricultural Mitigation Plan.**
- 21.92.050 Mitigation Requirements.**
- 21.92.060 Methods of Mitigation.**
- 21.92.070 Timing of Mitigation**

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- 21.92.080 Agricultural Mitigation Lands.
- 21.92.090 Qualifying Conservation Entity.
- 21.92.100 Required Conditions on the Applicable Entitlement.

21.92.010 Purpose.

The purpose of this Chapter is to provide clear and consistent policies to mitigate the loss of agricultural land due to development or conversion to non-agricultural uses in the unincorporated inland areas of the County of Monterey. The goal of these regulations is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land. Further, the mitigation requirements are intended to ensure the commercial viability of the County of Monterey’s agricultural industry and support growth management policies that encourage growth in or near developed or developing areas and away from valuable agricultural land.

21.92.020 Definitions.

For the purpose of this Chapter, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 21.06 shall otherwise apply.

- A. “Agricultural Land” as defined in Section 16.40.010(A), ~~which includes all land that is designated as agricultural land by the 2010 County of Monterey General Plan, which includes Farmland (F), Permanent Grazing (PG), and Rural Grazing (RG) and land that is classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance as determined by the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation;~~
- B. “Agricultural Conservation Easement” means an easement encumbering Agricultural Land for the purposes of restricting its use to agricultural operations and accessory uses.
- C. “Agricultural Mitigation Land” means land encumbered by an Agricultural Conservation Easement or other permanent protection measures for the purposes of mitigating development impacts.
- D. “Agricultural Mitigation Plan” means the documentation required to be submitted for review and approval by the Appropriate Authority pursuant to Section 21.92.040.
- E. “Alternative and Complementary Mitigation” means any other alternative mitigation method that is not direct acquisition of a conservation easement, holding agricultural land in fee title, or in-lieu fees.
- F. “Farmland of Local Importance” means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Local Importance.

Commented [KM1]: Or use LAFCO definition at <https://www.co.monterey.ca.us/home/showpublisheddocument/118535/638083554390330000>

Commented [PT1]: Even though rangeland is part of the discussion staff recommends it comes out. The General Plan policy is for prime farmland and it has raised more questions with developers and cities, etc.

Commented [KM2]: spell out

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G. "Farmland of Statewide Importance" means ~~farm~~land as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Statewide Importance.

H. "Farmland Mapping and Monitoring Program (FMMP) means the State of California Department of Conservation's ~~non-regulatory program-Important Farmland Finder mapping tool.~~

I. "Fee Title" means when land is acquired by either the applicant or a land trust and held in fee title by a land trust.

J. "Good Faith Effort" means making not less than two attempts ~~through a Qualifying Conservation Entity~~ to purchase an Agricultural Conservation Easement at the appraised market value of the ~~conservation~~ ~~conservation~~ easement and being declined by the seller(s). ~~The applicant shall provide documentation that they worked with a Qualified Conservation Entity to locate an Agricultural Conservation Easement and those results were unsuccessful. Further, the offers to purchase an Agricultural Conservation Easement must be shown to meet the criteria of this policy and that the offers have been made with the intention of purchasing the easement.~~

K. "In-lieu Fees" means fees that the applicant pays to a ~~Qualifying Conservation Entity~~ ~~land trust~~

L. "Important Farmland" means ~~collectively farmlands defined as identified and mapped by the FMMP of the California Department of Conservation classified as~~ Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance.

M. "Prime Farmland" means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Prime Farmland. Farmland shall also be considered prime farmland for purposes of this section if it meets the definition of "prime agricultural land" in Government Code Section 51201.

N. "Qualifying Conservation Entity" means a ~~government or non-profit~~ entity qualified and approved to hold Agricultural Land in fee title or Agricultural Conservation Easement or in-lieu fees in compliance with Sections 21.92.090 and 21.92.100.

O. "Unique Farmland" means ~~farm~~land as identified and mapped by the FMMP of the California Department of Conservation classified as Unique Farmland.

21.92.030 Applicability.

A. The provisions in Chapter 21.92 are applicable to projects in the unincorporated ~~inland~~ areas of the County of Monterey. This Chapter applies to all projects that directly result in the conversion of agricultural land ~~designation to non-agricultural land use designations. This Chapter also applies to discretionary projects on the following inland zoning: Farmland (F), Rural Grazing (RG), and Permanent Grazing (PG).~~

B. Activities also subject to this Chapter:

1. Redesignation of land subject to an agricultural designation to any designation

Commented [KM3]: move this to regulation

Commented [KM4]: make this countywide

Commented [KM5R4]: Could also tie to FMMP categories here, rather than land use designation.

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other than an agricultural designation [or zoning district](#) (e.g., Commercial, Industrial, Residential, or Public/Quasi-Public);

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2. Rezoning of land in an agricultural zone to any zone other than an agricultural zone;
 3. ~~Projects that require a discretionary administrative or use permit where agricultural land is converted to non-agricultural use.~~
 4. UNDER DEVELOPMENT [Annexations]
- C. Activities not subject to this Chapter:
1. Subdivision of Agricultural Land ~~(F, RG, or PG)~~ that preserves agricultural viability and is consistent with the minimum parcel size imposed by the agricultural zone;
 2. Use allowed not needing a discretionary permit consistent with the underlying zoning;
 3. Acreage used for inclusionary housing as defined in Chapter 18.40 of the Monterey County Code;
 4. ~~Acreage use for affordable housing as defined in Section 21.06.005 of the Monterey County Code;~~
 5. ~~A Community Area or Rural Center with a Board of Supervisors' adopted Plan that includes an agricultural mitigation program;~~
 6. ~~Housing for Agricultural employees housing as defined in Section 21.06.014 of the Monterey County Code when permanently deed restricted for such use;~~
 7. ~~Agricultural processing plant that supports on-site farming and agricultural support service as defined in Sections 21.06.020 and 21.06.030 of the Monterey County Code.~~

21.92.040 Agricultural Mitigation Plan.

- A. The applicant shall submit an Agricultural Mitigation Plan to Monterey County Housing and Community Development (HCD) for projects subject to this Chapter at the time an application is submitted to the County, or at the time an annexation proposal is submitted to Local Agency Formation Commission of Monterey County (LAFCO).
- B. The Agricultural Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this section:
1. An agreement between an applicant and a Qualifying Conservation Entity approved by the Appropriate Authority to hold land, easements, or in-lieu fees or documentation that the Qualifying Conservation Entity the applicant is working with complies with Sections 21.92.090 and 21.92.100;
 2. Map and calculation of acreage of the following: Prime Farmland; and Important Farmland;

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3. The type of mitigation that will be provided in order to mitigate for conversion of Agricultural Lands (i.e., purchase of fee title or easement or payment of in-lieu fees);

4. The acreage that would be preserved through mitigation and/or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment);

5. The location of the Agricultural Mitigation Land, when possible; and

6. Information on the specific measures ~~adopted~~ proposed by the applicant to mitigate for impacts to adjacent agricultural lands

C. The Agricultural Mitigation Plan shall adhere to the mitigation requirements pursuant to Section 21.92.050 and include the proposed methods and timing of mitigation pursuant to Sections 21.92.060 and 21.92.070, respectively.

21.92.050 Mitigation Requirements.

A. Agricultural mitigation shall be required for all activities subject to this Chapter pursuant to Section 21.92.030.

B. The farmland classification of ~~land~~ what is to be mitigated ~~for~~ is determined by the Important Farmland classification mapped by the FMMP of the California Department of Conservation at the time the application is deemed complete.

C. UNDER DEVELOPMENT [Refer to Flowchart]

21.92.060 Methods of Mitigation

A. Direct Acquisition of an Agricultural Conservation Easement:

1. The location and characteristics of the Agricultural Conservation Easement shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.

2. It shall be the applicant's sole responsibility to obtain the required Agricultural Conservation Easement.

3. Agricultural Conservation Easements on Agricultural Mitigation Land shall be in perpetuity.

4. The applicant shall provide written evidence to the Appropriate Authority ~~that of~~ the direct acquisition of an Agricultural Conservation Easement and that the easement is recorded in the deed of the Agricultural Mitigation Land.

5. In addition to the cost of acquiring the conservation easement, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the easement, including the cost to administer, monitor, and enforce the Agricultural Conservation

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Easement and the payment of the estimated transaction costs associated with acquiring the easement

B. Hold Agricultural Land in Fee Title:

1. The location and characteristics of the Agricultural Mitigation Land shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.
2. It shall be the applicant's sole responsibility to obtain the required Agricultural Mitigation Land.
3. The Agricultural Mitigation Land shall have a permanent restriction placed in the deed that restricts the future transfer or sale to agricultural purposes and to a County approved Qualifying Conservation Entity.
4. The applicant shall provide written evidence to the Appropriate Authority that the acquisition of the land has occurred and that the deed restriction requiring the land be held in perpetuity for agricultural purposes has been recorded in the deed of the Agricultural Mitigation Land.
5. In addition to the cost of holding the land in fee title the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the easement, including costs to administer, monitor, and enforce the deed restriction and the payment of the estimated transaction costs associated with recording the deed restriction.

C. In-Lieu Fees: The payment of an in-lieu fee shall be subject to the following provisions:

1. The amount of the in-lieu fee shall be determined based on the appraised fair market value of acquiring a conversation easement on the land being converted. The values of conservation easements shall be determined by an independent real property appraiser with experience valuing Agricultural Conservation Easements for the California Department of Conservation SALCP or similar program.
2. In addition to the in-lieu fee for mitigation, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the-an easement, including the cost to administer, monitor, and enforce the-an Agricultural Conservation Easement and the payment of the estimated transaction costs associated with acquiring the-an easement.
3. The Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding the-any proposed in-lieu fees.

D. Alternative and Complementary Mitigation:

1. The applicant may propose alternative and complementary mitigation, up to 5% of the required total mitigation.
 - a. To qualify as an alternative and complementary mitigation, the proposed

Commented [KM6]: Non-profit could get income, so leave this to the Agreement between the parties

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alternative shall satisfy all the following criteria:

i. The proposed mitigation shall promote the long-term protection, conservation, and enhancement of:

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Productive or potentially productive Agricultural Land in the County of Monterey; and

ii. The applicant shall bear all the costs of reviewing, approving, managing, and enforcing the mitigation; and

iii. The proposed mitigation must be in all respects at least as protective of Agricultural Land as the mitigation required by Sections 21.92.060.A and 21.92.060.B; and

iv. Means for achieving alternative and complementary mitigation measures are:

1. Projects that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

2. Projects that support the next generation of farmers and farmer training programs for the benefit of agriculture in the County of Monterey.

3. Other projects as deemed acceptable by the Appropriate Authority.

v. Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding the proposed alternative and complementary mitigation measure.

21.92.070 Timing of Mitigation

A. The timing of Mitigation for all applicable projects shall meet the following criteria.

1. Projects that change the zoning or land use designation of Agricultural Land and do not include annexation shall ~~have the acquisition of~~ provide the Agricultural Conservation Easement, Agricultural Land held in fee title, payment of In-lieu Fees, or Alternative and Complementary Mitigation ~~occur~~ prior to or concurrent with recordation of an approved vesting tentative parcel or final map, prior to issuance of construction permits, or at an earlier time required by the Appropriate Authority, whichever occurs first.

2. Projects that require ~~an administrative or use a discretionary~~ permit shall ~~have the acquisition of~~ provide the Agricultural Conservation Easement, Agricultural Land held in fee title, payment of In-lieu Fees, or Alternative and Complementary Mitigation ~~occur~~ prior to or concurrent with project entitlement or final approval of the recordation of a parcel or final map, prior to issuance of construction permits, or at an earlier time required by the Appropriate Authority, whichever occurs first.

3. UNDER DEVELOPMENT [Annexations]

21.92.080 Agricultural Mitigation Lands.

A. Agricultural Mitigation Lands acquired through direct conservation easement, fee title, or Agricultural Land Conservation Mitigation Ordinance – Draft Version 03.07.2023
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1. Be designated as Agricultural Land ~~in the 2010 Monterey County General Plan~~ and zoned for agricultural use;
2. Acquired from willing sellers only;
3. Be of adequate size, configuration, and location to be viable for continued agricultural operations and use;
4. Be of the same FMMP category or better;
5. Have an adequate water supply to maintain the continued agricultural operations and use. The Agricultural Conservation Easement shall protect the water rights on the Agricultural Mitigation Land;
6. Located within the same General Plan Planning Area in the County of Monterey;
7. Not be on land that has an existing easement or deed restriction that prevents converting the property to nonagricultural use;
- ~~8. The Agricultural Mitigation Land shall not be on land in an active Williamson-Act contract, per Government Code section 51200 et seq.;~~
- ~~9-8.~~ Located within the same 2010 County of Monterey General Plan Planning Area as the project being mitigated;
- ~~10-9.~~ UNDER DEVELOPMENT [Priority and Other Ag Mit Land Criteria]; and
- ~~11-10.~~ UNDER DEVELOPMENT [Policy options that may reduce mitigation ratio amount to incentivize mitigation that achieves highest desired value and outcomes].

21.92.090 Qualifying Conservation Entity.

A. The Qualifying Conservation Entity must be a nonprofit 501(c)(3) corporation or other non-profit entity eligible to hold a conservation easement, hold agricultural land in fee title, or collect in-lieu fees, operating in Monterey, Santa Cruz, San Benito, or San Luis Obispo County with a one of their primary purposes ~~is~~ of conserving and protecting land in agriculture. The County of Monterey also is a Qualifying Conservation Entity. The County of Monterey may consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

1. Whether the entity is a non-profit organization that has an office in the State of California and has direct knowledge and experience working in Monterey, Santa Cruz, San Benito, or San Luis Obispo County whose purpose is holding and administering conservation easements or holding land in fee title for the purposes of conserving and maintaining lands in agricultural production;
2. Whether the entity has the legal and technical ability to hold and administer conservation easements, in-lieu fees, or hold agricultural land in fee titles for the purposes of

Commented [KM7]: or tie to categories in FMMP

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conserving and maintaining lands in agricultural production and ~~preferably~~ have an established record for doing so;

3. The extent and duration of the entity's involvement in agricultural land conservation within the County of Monterey; and
4. ~~Demonstrate that they have~~Evidence of an annual monitoring and reporting program and compliance with state or federal submittal requirements;

21.92.100 Required Conditions on the Applicable Entitlement.

A. The Appropriate Authority shall ensure that if a Qualifying Conservation Entity receives a conservation easement, in-lieu fees, or agricultural land in fee title for mitigation purposes under this Chapter that the Qualifying Conservation Entity shall conform to the following requirements.

1. Enforcement and Monitoring – The Qualifying Conservation Entity shall monitor all conservation easements, in-lieu fees, or agricultural land in fee title for mitigation purposes 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. It shall enforce compliance with the terms of the Agricultural Conservation Easement and Agricultural Land held in fee title.

2. Reporting – The Qualifying Conservation Entity shall, on or before January 31, ~~one each year after the adoption of this chapter~~, make available upon request of the Appropriate Authority an annual report describing the activities undertaken by the entity within the past calendar year under Chapter 21.92. The report(s) shall provide the Appropriate Authority an accounting of the use of in-lieu fees remitted to it and the status of all new and existing Agricultural Conservation Easements or Agricultural Lands held in fee title maintained by the Qualifying Conservation Entity in the County of Monterey.

3. Termination – If a Qualified Conservation Entity intends or reasonably expects to cease operations, it shall assign any Agricultural Conservation Easements, in-lieu fees, or Agricultural Land held in fee titles resulting from this regulation to another Qualified Conservation Entity as acceptable and approved by the County of Monterey.

4. Use of in-lieu fees – The Qualifying Conservation Entity shall administer in-lieu fees. These responsibilities cover, without exception, ensuring that in-lieu fees are held in a separate account adequate to cover the cost of acquiring ~~the an~~ Agricultural Conservation Easement or Agricultural Land held in fee title and administering, monitoring, and enforcing their long-term use for agricultural mitigation purposes. The Qualified Conservation Entity shall expend in-lieu fees solely to acquire and manage Agricultural Conservation Easements ~~in agricultural mitigation~~ or purchase land that meets the criteria outlined in Section 21.92.080.

SECTION 3. 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,

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irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: _____

Luis Alejo, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: _____
Deputy

KELLY DONLON
Chief Deputy County Counsel

Price, Taylor

From: Beretti, Melanie
Sent: Friday, March 31, 2023 4:56 PM
To: Kathryn Avila
Cc: Price, Taylor
Subject: Re: Ag Mitigation Ordinance - comments

Follow Up Flag: Follow up
Flag Status: Completed

Received, thank you!

~Melanie

On Mar 31, 2023, at 13:58, Kathryn Avila <Kathryn@avilaconst.com> wrote:

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Hi Taylor and Melanie,

Happy Friday 😊

Please see attached mark up of the proposed ag mitigation ordinance draft.

If you need any clarification on my comments please let me know.

Thanks,

<image002.png>

KATHRYN AVILA

Real Estate Entitlement, Investment, and Special Projects

Email: kathryn@avilaconst.com

Direct Dial: 831-382-3524 | **Cell:** 831-540-7858 | **Main Office:** 831-372-5580

Fax: 831-372-5584

12 Thomas Owens Way, Ste 200, Monterey, CA 93940

<SRaac_20230327_REF220044_A _ KA markup.pdf>

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 21.92 TO THE MONTEREY COUNTY CODE RELATING TO
MITIGATION REQUIREMENTS FOR DEVELOPMENT ON AGRICULTURAL
LANDS**

County Counsel Summary

This ordinance adds Chapter 21.92 to Title 21 of the Monterey County Code to establish regulations for conservation to mitigate for the loss of agricultural land in the County of Monterey.

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

SECTION 1. Findings and Declarations.

- 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. In section 51220 of Government Code, the State Legislature has found that “the preservation of a maximum amount of the limited...agricultural land is necessary...to the maintenance for the agricultural economy of the state” and that “discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest.”
- C. The 2010 County of Monterey General Plan Agricultural Element Goal AG-1 is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land.
- D. This ordinance is being adopted pursuant to the 2010 County of Monterey General Plan Chapter 6 Agricultural Element Policy AG-1.12, which directs the County of Monterey to adopt an agricultural conservation mitigation program.
- E. Monterey County is a significant agricultural contributor to the State and the larger nation. The County of Monterey is the fourth highest agricultural-producing County in the State of California.
- F. Regulation of the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of the County of Monterey. The success of agriculture is due to the favorable climate, fertile soils, and water availability that comprise the foundation for the largest industry and the source of more than a quarter of all employment in the County of Monterey.
- G. The purpose of this ordinance is to permanently protect Monterey County’s most productive and valuable agricultural land from conversion to non-agriculture use. Monterey

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County must balance the need to permanently protect its agricultural land and agricultural industry's long-term sustainability and commercial viability with other critical public goals. Monterey County recognizes that permanently protecting all of its agricultural lands is not feasible. In some cases, the conversion of agricultural land to other uses, such as housing, may be in the best interests of the people of Monterey County. In some circumstances, it may be appropriate to allow the conversion of agricultural land but also to require that such conversion be accompanied by mitigation that provides increased protection for other comparable agricultural lands.

H. The intent of this ordinance is to establish standards for the protection of the highest-quality farmland (Prime Farmland) and other Important Farmland (inclusive of Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance) in Monterey County. This ordinance also intends to promote the long-term conservation and commercial viability of agriculture in Monterey County. The regulation of agricultural land conversion will encourage infill development on vacant or underutilized sites within and near existing jurisdictions and infrastructure. When agricultural land must be converted to fulfill other public goals, this ordinance will minimize the impact on agricultural land and require the protection of comparable agricultural land.

I. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15308, which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment. This ordinance establishes a program for protecting agricultural land in the County of Monterey. The proposed agricultural conservation mitigation program aims to prevent significant environmental impacts to agricultural land in the County of Monterey and establish a program to minimize future impacts to the County of Monterey. Further, the proposed agricultural conservation mitigation program will ensure that future impacts to agricultural land in the County of Monterey are minimized and mitigated through a consistent and standardized regulatory program. This ordinance minimizes future alterations in land use and will not result in disturbances to agricultural or environmental resources.

SECTION 2. Chapter 21.92 is added to the Monterey County Code to read as follows:

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21.92.010 Purpose.

The purpose of this Chapter is to provide clear and consistent policies to mitigate the loss of agricultural land due to development or conversion to non-agricultural uses in the unincorporated inland areas of the County of Monterey. The goal of these regulations is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land. Further, the mitigation requirements are intended to ensure the commercial viability of the County of Monterey’s agricultural industry and support growth management policies that encourage growth in or near developed or developing areas and away from valuable agricultural land.

21.92.020 Definitions.

For the purpose of this Chapter, certain terms used in this Chapter shall be as defined below. The definitions in Chapter 21.06 shall otherwise apply.

what about zoning?
What happens if zoning and land use are in conflict?

- A. “Agricultural Land” as defined in Section 16.40.010.A, which includes all land that is designated as agricultural land by the 2010 County of Monterey General Plan, which includes Farmland (F), Permanent Grazing (PG), and Rural Grazing (RG) and land that is classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance as determined by the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation.
- B. “Agricultural Conservation Easement” means an easement encumbering Agricultural Land for the purposes of restricting its use to agricultural operations and accessory uses.
- C. “Agricultural Mitigation Land” means land encumbered by an Agricultural Conservation Easement or other permanent protection measures for the purposes of mitigating development impacts.
- D. “Agricultural Mitigation Plan” means the documentation required to be submitted for review and approval by the Appropriate Authority pursuant to Section 21.92.040.
- E. “Alternative and Complementary Mitigation” means any other alternative mitigation method that is not direct acquisition of a conservation easement, holding agricultural land in fee title, or in-lieu fees.
- F. “Farmland of Local Importance” means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Local Importance.

does someone need to solicit an appraisal? I vote no. Define a cost in the ordinance that is acceptable for each land category (prime, etc).

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- G. “Farmland of Statewide Importance” means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Farmland of Statewide Importance.
- H. “Farmland Mapping and Monitoring Program (FMMP) means the State of California Department of Conservation Important Farmland Finder mapping tool.
- I. “Fee Title” means when land is acquired by either the applicant or a land trust and held in fee title by a land trust.
- J. “Good Faith Effort” means making not less than two attempts to purchase an Agricultural Conservation Easement at the appraised market value of the conservation easement being declined by the seller(s). The applicant shall provide documentation that they worked with a Qualified Conservation Entity to locate an Agricultural Conservation Easement, and those results were unsuccessful. Further, the offers to purchase an Agricultural Conservation Easement must be shown to meet the criteria of this policy and that the offers have been made with the intention of purchasing the easement.
- K. “In-lieu Fees” means fees that the applicant pays to a Qualifying Conservation Entity.
- L. “Important Farmland” means collectively farmlands defined as Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance.
- M. “Prime Farmland” means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Prime Farmland. Farmland shall also be considered prime farmland for purposes of this section if it meets the definition of "prime agricultural land" in Government Code Section 51201.
- N. “Qualifying Conservation Entity” means an entity qualified and approved to hold Agricultural Land in fee title or Agricultural Conservation Easement or in-lieu fees in compliance with Section 21.92.090 and 21.92.100.
- O. “Unique Farmland” means farmland as identified and mapped by the FMMP of the California Department of Conservation classified as Unique Farmland.

alter language to be a bit more forgiving. If two properties can't be identified to purchase, what happens?

21.92.030 Applicability.

- A. The provisions in Chapter 21.92 are applicable to projects in the unincorporated inland areas of the County of Monterey. This Chapter applies to all projects that directly result in the conversion of agricultural land to non-agricultural land. This Chapter also applies to discretionary projects on the following inland zoning: Farmland (F), Rural Grazing (RG), and Permanent Grazing (PG).
- B. Activities subject to this Chapter:
 - 1. Redesignation of land subject to an agricultural designation to any designation other than an agricultural designation (e.g., Commercial, Industrial, Residential, or Public/Quasi-Public);

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2. Rezoning of land in an agricultural zone to any zone other than an agricultural zone;

3. Projects that require an administrative or use permit where agricultural land is converted to non-agricultural use.

4. UNDER DEVELOPMENT [Annexations]

C. Activities not subject to this Chapter:

1. Subdivision of Agricultural Land (F, RG, or PG) consistent with the minimum parcel size imposed by the agricultural zone;

2. Use allowed consistent with the underlying zoning;

3. Acreage used for inclusionary housing as defined in Chapter 18.40 of the Monterey County Code;

4. Acreage use for affordable housing as defined in Section 21.06.005 of the Monterey County Code;

5. A Community Area or Rural Center with a Plan that includes an agricultural mitigation program;

6. Agricultural employee housing as defined in Section 21.06.014 of the Monterey County Code;

7. Agricultural processing plant and agricultural support service as defined in Sections 21.06.020 and 21.06.030 of the Monterey County Code.

21.92.040 Agricultural Mitigation Plan.

A. The applicant shall submit an Agricultural Mitigation Plan to Monterey County Housing and Community Development (HCD) for projects subject to this Chapter at the time an application is submitted to the County or at the time an annexation proposal is submitted to the Local Agency Formation Commission of Monterey County (LAFCO).

B. The Agricultural Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this section:

1. An agreement between an applicant and a Qualified Conservation Entity approved by the Appropriate Authority to hold land, easements, or in-lieu fees or documentation that the Qualified Conservation Entity the applicant is working with complies with Section 21.92.090 and 21.92.100;

2. Map and calculate the acreage of the following: Prime Farmland; and Important Farmland;

this might take care of my comment on the first page of the ordinance asking what happens if zoning and land use are in conflict (at least in some cases)

does "consistent with" mean "permitted" uses or would uses allowed by "use permit" also be not subject to the chapter?

add item 8:
- ag land not in service for X number of years (5? 10?)

add item 9:
small parcels? Less than 40 acres? less than 10?

add "regardless of whether or not there is an adopted community plan for that area"

In theory it would be nice to wait until plans are implemented, but some identified community areas have been without a plan for a decade or more, with no completion in sight.

I continue to be uncomfortable placing the easement with a third party, regardless of their non-profit status.

Preferred method would be a deed restriction, which would eliminate the need for the developer to find a third party. Perhaps the developer could pay a small fee to the County to hold for future enforcement, if that should ever need to take place. It is my understanding that non-compliance is fairly unusual

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3. The type of mitigation that will be provided in order to mitigate for conversion of Agricultural Lands (i.e., purchase of fee title or easement or payment of in-lieu fees);

4. The acreage that would be preserved through mitigation and/or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at the time of payment);

5. The location of the Agricultural Mitigation Land, when possible; and

6. Information on the specific measures adopted by the applicant to mitigate for impacts to adjacent agricultural lands

C. The Agricultural Mitigation Plan shall adhere to the mitigation requirements pursuant to Section 21.92.050 and include the proposed methods of mitigation pursuant to Section 21.92.060.

21.92.050 Mitigation Requirements.

A. Agricultural mitigation shall be required for all activities subject to this Chapter pursuant to Section 21.92.030.

B. The farmland classification of what is to be mitigated for is determined by the Important Farmland classification mapped by the FMMP of the California Department of Conservation at the time the application is deemed complete.

C. UNDER DEVELOPMENT [Refer to Flowchart]

21.92.060 Methods of Mitigation.

A. Direct Acquisition of an Agricultural Conservation Easement:

1. The location and characteristics of the Agricultural Conservation Easement shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.

2. It shall be the applicant's sole responsibility to obtain the required Agricultural Conservation Easement.

3. Agricultural Conservation Easements on Agricultural Mitigation Land shall be in perpetuity.

4. The applicant shall provide evidence to the Appropriate Authority that the direct acquisition of an Agricultural Conservation Easement is recorded in the deed of the Agricultural Mitigation Land.

5. In addition to the cost of acquiring a conservation easement, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the easement, including the cost to administer, monitor, and enforce the Agricultural

consider revising to a limited timeframe. Many growers/ land owner's ive spoken to say they refuse to participate in programs that are "forever" as it deprives the next generations the opportunity to use the land for the best and highest use.

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Conservation Easement and the payment of the estimated transaction costs associated with acquiring the easement

clarify that this is a lump sum payment, when it is due, and include a fee schedule

B. Hold Agricultural Land in Fee Title:

1. The location and characteristics of the Agricultural Mitigation Land shall comply with the provisions set forth under Section 21.92.050, Section 21.92.070, and Section 21.92.080.

2. It shall be the applicant's sole responsibility to obtain the required Agricultural Mitigation Land.

3. The Agricultural Mitigation Land shall have a restriction placed in the deed that restricts the future transfer or sale to agricultural purposes and to a County approved Qualifying Conservation Entity.

4. The applicant shall provide evidence to Appropriate Authority that the acquisition of the land has occurred and that the deed restriction requiring the land be held in perpetuity for agricultural purposes has been recorded in the deed of the Agricultural Mitigation Land.

5. In addition to the cost of holding the land in fee title, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the easement, including costs to administer, monitor, and enforce the deed restriction and the payment of the estimated transaction costs associated with recording the deed restriction.

C. In-Lieu Fees: The payment of an in-lieu fee shall be subject to the following provisions:

1. The amount of the in-lieu fee shall be determined based on the appraised fair market value of acquiring a conversation easement on the land being converted.

2. In addition to the in-lieu fee for mitigation, the applicant shall pay to the Qualifying Conservation Entity an amount sufficient to cover the costs of managing the easement, including the cost to administer, monitor, and enforce the Agricultural Conservation Easement and the payment of the estimated transaction costs associated with acquiring the easement.

3. Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding the proposed in-lieu fees.

D. Alternative and Complementary Mitigation:

1. The applicant may propose alternative and complementary mitigation, up to 5% of the required total mitigation.

a. To qualify as an alternative and complementary mitigation, the proposed alternative shall satisfy all the following criteria:

i. The proposed mitigation shall promote the long-term protection, conservation, and enhancement of:

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1. Productive or potentially productive Agricultural Land in the County of Monterey; and

ii. The applicant shall bear all the costs of reviewing, approving, managing, and enforcing the mitigation; and

iii. The proposed mitigation must be in all respects at least as protective of Agricultural Land as the mitigation required by Sections 21.92.060.A and 21.92.060.B; and

iv. Means for achieving alternative and complementary mitigation measures are:

1. Projects that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

2. Projects that support the next generation of farmers and farmer training programs for the benefit of agriculture in the County of Monterey.

3. Or other projects as deemed acceptable by the Appropriate Authority.

v. Agricultural Advisory Committee shall consider and make a recommendation to the Appropriate Authority regarding the proposed alternative and complementary mitigation measure.

again, sort out what happens when zoning and land use are in conflict. For instance, Ag land zoned high density residential.

21.92.070 Timing of Mitigation.

A. The timing of mitigation for all applicable projects shall meet the following criteria.

1. Projects that change the zoning or land use designation of Agricultural Land shall have the acquisition of the Agricultural Conservation Easement, Agricultural Land held in fee title, payment of In-lieu Fees or Alternative and Complementary Mitigation occur prior to or concurrent with recordation of an approved vesting tentative map.

define the fee

2. Projects that require an administrative or use permit shall have the acquisition of the Agricultural Conservation Easement, Agricultural Land held in fee title, payment of In-lieu Fees, or Alternative and Complementary Mitigation occur prior to or concurrent with project entitlement or final approval of the map, whichever occurs first.

3. UNDER DEVELOPMENT [Annexations]

21.92.080 Agricultural Mitigation Lands.

A. Agricultural Mitigation Lands acquired through a direct conservation easement, fee title, or by a Qualifying Conservation Entity purchased using in-lieu fees shall meet all of the following criteria.

clarify - Building permit entitlement

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1. Be designated as Agricultural Land in the 2010 Monterey County General Plan and zoned for agricultural use;

2. Acquired from willing sellers only;

3. Be of adequate size, configuration, and location to be viable for continued agricultural operations and use;

4. Be of the same FMMP category or better;

5. Have an adequate water supply to maintain the continued agricultural operations and use. The Agricultural Conservation Easement shall protect the water rights on the Agricultural Mitigation Land;

6. Located within the County of Monterey;

7. Not be on land that has an existing easement or deed restriction that prevents converting the property to nonagricultural use;

8. The Agricultural Mitigation Land shall not be on land in an active Williamson Act contract, per Government Code section 51200 et seq.;

9. Located within the same 2010 County of Monterey General Plan Planning Area as the project being mitigated;

10. UNDER DEVELOPMENT [Priority and Other Ag Mitigation Land **Criteria**]; and

11. UNDER DEVELOPMENT [Policy options that may reduce mitigation ratio amount to incentivize mitigation that achieves the highest desired value and outcomes].

21.92.090 Qualifying Conservation Entity.

A. The **Qualifying** Conservation Entity must be a nonprofit 501(c)(3) corporation or other non-profit entity eligible to hold a conservation easement, hold agricultural land in fee title, or in-lieu fees, operating in Monterey, Santa Cruz, San Benito, or San Luis Obispo County one of their primary purposes is conserving and protecting land in agriculture. The County of Monterey may consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

1. Whether the entity is a non-profit organization that has an office in the State of California and has direct knowledge and experience working in Monterey, Santa Cruz, San Benito, or San Luis Obispo County whose purpose is holding and administering conservation easements or holding land in fee title for the purposes of conserving and maintaining lands in agricultural production;

2. Whether the entity has the legal and technical ability to hold and administer conservation easements, in-lieu fees, or hold agricultural land in fee titles for the purposes of

consider revising. Williamson act land has an expiration. It may be useful in certain instances (perhaps ag land with high production or water value) to be allowed to be placed under permanent easement

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conserving and maintaining lands in agricultural production and preferably have an established record for doing so;

3. The extent and duration of the entity’s involvement in agricultural land conservation within the County of Monterey; and
4. Demonstrate that they have an annual monitoring and reporting program;

21.92.100 Required Conditions on the Applicable Entitlement.

A. The Appropriate Authority shall ensure that if a Qualifying Conservation Entity receives a conservation easement, in-lieu fees, or agricultural land in fee title for mitigation purposes under this Chapter that the Qualifying Conservation Entity shall conform to the following requirements.

1. Enforcement and Monitoring – The Qualifying Conservation Entity shall monitor all conservation easements, in-lieu fees, or agricultural land in fee title for mitigation purposes 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. It shall enforce compliance with the terms of the Agricultural Conservation Easement and Agricultural Land held in fee title.

2. Reporting – The Qualifying Conservation Entity shall, on or before January 31, one year after the adoption of this chapter, make available upon request of the Appropriate Authority an annual report describing the activities undertaken by the entity within the past year under Chapter 21.92. The report(s) shall provide the Appropriate Authority an accounting of the use of in-lieu fees remitted to it and the status of all new and existing Agricultural Conservation Easements or Agricultural Lands held in fee title maintained by the Qualifying Conservation Entity in the County of Monterey.

3. Termination – If a Qualified Conservation Entity intends or reasonably expects to cease operations, it shall assign any Agricultural Conservation Easements, in-lieu fees, or Agricultural Land held in fee title resulting from this regulation to another Qualified Conservation Entity as acceptable and approved by the County of Monterey.

4. Use of in-lieu fees – The Qualifying Conservation Entity shall administer in-lieu fees. These responsibilities cover, without exception, ensuring that in-lieu fees are held in a separate account adequate to cover the cost of acquiring the Agricultural Conservation Easement or Agricultural Land held in fee title and administering, monitoring, and enforcing their long-term use for agricultural mitigation purposes. The Qualified Conservation Entity shall expend in-lieu fees solely to acquire and manage Agricultural Conservation Easements in agricultural mitigation land that meets the criteria outlined in Section 21.92.080.

SECTION 3. 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,

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irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: _____

Luis Alejo, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
KELLY DONLON Chief Deputy County Counsel

21.92.050.C - Mitigation Requirement Flowchart

