

# MONTEREY COUNTY

## HOUSING AND COMMUNITY DEVELOPMENT

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### MEMORANDUM

**Scheduled Date:** May 8, 2023

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

**From:** Taylor Price, Associate Planner

**Subject:** **Agricultural Land Conservation Mitigation Program – Farmland Mitigation Ordinance [REF220044]** – Receive a presentation and consider draft ordinance, provide input to staff, and consider recommending staff return with revised ordinance to the Agricultural Advisory Committee.

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

#### ACTION:

Receive a presentation on proposed options and consider the Draft Ordinance Adding Chapter 21.92 to Monterey County Code Related to Mitigation Requirements for Development on Farmland; provide input to staff; and recommend staff bring the revised draft ordinance to the Agricultural Advisory Committee (AAC) for consideration.

#### SUMMARY:

At its April 24, 2023 meeting, the Subcommittee considered a revised draft ordinance and received a presentation from staff regarding options for development and mitigation land near or within Community Areas and Rural Centers. Staff solicited feedback from the Subcommittee regarding how the draft ordinance should consider identifying priority areas for mitigation and creating a mechanism that enables housing production in already developed areas of the County, such as Community Areas and Rural Centers. The Subcommittee directed staff to return at the next meeting to refine further options for identifying priority areas for development and mitigation. Memo and attachments are available at the [link](#).

Some Subcommittee members supported moving forward with identifying priority areas for mitigation along the boundary of Community Areas, Rural Centers, and recognized city growth boundaries and permanent agricultural edges as identified in Board approved Memoranda of Agreement/Understanding (MOAs/MOUs) between the County and the Cities. The Subcommittee supported staff returning with additional refinements to proposed options for reducing the base mitigation ratio for development occurring within an identified priority area for development and mitigation occurring within a priority area for mitigation.

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 Farmland. Staff clarified language to Section 21.92.060.D (Alternative and Complementary Mitigation) that addresses concerns that the draft language did not include how the Alternative and Complementary Mitigation amount was calculated. Further, in Section 21.92.060.D.2.a.iv.1-3 (Alternative and Complementary Mitigation), staff further defined eligible projects. Staff clarified language to Section 21.92.070 (Timing of Mitigation) to give precise timing for the mitigation requirements. In addition, staff clarified draft language to Section 21.92.040.B.2.a & 21.92.040.B.2.b (Farmland Mitigation Plan) for when the applicant would be required to work with a Qualified Entity.

Today staff will review with the Subcommittee proposed tiers for reducing the base mitigation ratio if a project is in a priority area for development and if mitigation land is in a priority area for mitigation. Staff proposes that the mitigation ratio should never fall below 1:1 regardless of where development and mitigation occurs. Further, staff recommends that priority areas for mitigation, based on Subcommittee feedback, only be identified along Community Areas, Rural Centers, city growth boundaries, and permanent agricultural edges as identified in Board approved City and County MOAs and MOUs.

**AAC SUBCOMMITTEE INPUT AND/OR COMMENTS:**

Staff would like to obtain the Subcommittee’s recommendation and feedback regarding the topics presented in this report and the Subcommittee’s comments on the draft ordinance. Staff requests that the Subcommittee recommend that staff bring forward a revised ordinance to the AAC for consideration.

**CONTACT INFORMATION:**

If you have any questions, please contact Taylor Price, Associate Planner, at (831) 784-5730 or [pricet1@co.monterey.ca.us](mailto:pricet1@co.monterey.ca.us) or Melanie Beretti, Principal Planner, at (831) 755-5285 or [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us).

**NEXT STEPS:**

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

**ATTACHMENTS:**

Attachment A – Draft Chapter 21.92 Mitigation Requirements for Development on Farmland Lands

Attachment B – Public Comments Received During or after the Subcommittee on April 24, 2023

**Attachment A**  
**PRELIMINARY DRAFT DOCUMENT SUBJECT TO CHANGE**  
**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**  
*[forthcoming]*

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 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

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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**

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

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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, evidence of water from a source not located directly on-site, or surface water rights.
- 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.
- 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 so designated by the County 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, [the applicant's representative](#), or a Qualifying Conservation Entity and held in fee title by a Qualifying Conservation Entity.

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- 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 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 documentation as may be required by the Appropriate Authority and must be confirmed by the Qualified Conservation Entity.
- 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.
- 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.

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C. Activities not subject to this Chapter:

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.
8. Groundwater recharge projects supported by a recognized Groundwater Sustainability Agency ~~and~~
9. Water quality improvement projects that provide multi-property/sub-watershed water quality improvement projects benefits supported by a to-be-identified recognized agency or process.

#### **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-Farmland Conservation Easement, or in-lieu fees;
  - a. If the applicant is not working with a Qualifying Conservation Entity to identify, assist in the negotiation for and accept the Mitigation Land in fee title or Farmland Conservation Easement, the applicant must utilize the most recent California Department of

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Conservation Model Easement, and the applicant's mitigation methods must be either Mitigation Land held in fee title (with a deed restriction [or Farmland Conservation Easement](#)) or an [Agricultural-Farmland](#) Conservation Easement;

b. The applicant must work with the Qualifying Conservation Entity to have the Qualifying Conservation Entity hold the Mitigation Land in fee title or Farmland 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;

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. 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 [or separate actions by a third party](#).

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.



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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 **OPTION TIERS**.

2. Important Farmland shall be mitigated for at a replacement ratio of **OPTION TIERS**.

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 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. Priority Development Areas. The following adjustment factors shall be applied, where relevant, to modify the base mitigation ratio. Mitigation occurring within a priority development area shall have the following adjustment factors applied, where relevant, to modify the base mitigation ratio.

1. If the applicant's proposed project is within a Community Area or Rural Center, the base mitigation ratio shall be reduced by **OPTION TIERS**.

#### **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.

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3. Farmland Conservation Easements on Mitigation Land shall be in perpetuity; unless the County, Qualified Conservation Entity, if applicable, and the landowner collectively 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.

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 or Farmland Conservation Easement that restricts the future transfer or sale for agricultural purposes. The permanent deed restriction or Farmland Conservation Easement may be canceled if the landowner, County, and Qualified Conservation Entity collectively 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 other eligible entity or applicant~~ has acquired the Fee Title funded directly by the applicant and that the Farmland Conservation Easement or deed restriction 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 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 C~~ Easements-easements for the California Department of Conservation Sustainable Agricultural Lands Conservation Program (SALC) or a similar program.

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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. The applicant may propose Alternative and Complementary Mitigation.

2. The ~~amount~~ mitigation costs of the Alternative and Complementary Mitigation shall be 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 C~~ conservation e ~~E~~ asements for the California Department of Conservation Sustainable Agricultural Lands Conservation Program (SALC) or a similar program.

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

i. The proposed alternative and complementary mitigation shall be up to 5% of the total acreage or total value of the required mitigation; the remaining 95% must be completed by Direct Acquisition of a Farmland Conservation Easement, Hold Farmland in Fee Title, or In-lieu Fees. A greater percentage of the proposed Alternative and Complementary Mitigation may be allowed at the discretion of the Appropriate Authority and the Agricultural Advisory Committee.

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

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

iii. The applicant shall bear all the costs of the County or a third party reviewing, approving, managing, and enforcing the mitigation; and

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

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1. Projects that meet Sustainable Groundwater Management Act (SGMA) goals or projects that prevent further seawater intrusion. Projects that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.
2. Projects that help the agricultural industry in the County of Monterey comply with the Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0). Projects that support the next generation of farmers and farmer training programs for the benefit of agriculture in the County of Monterey.
3. Projects that are part of a recognized regional plan (such as an Integrated Regional Water Management Plan or a Stormwater Plan) that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

Authority.

v. 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, at 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 or prior to issuance of the 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 eFarmland Conservation easement~~Easement~~, fee holding Mitigation Land in Fee ~~†~~ Title, or by a Qualifying Conservation Entity purchased using in-lieu-Lieu fees ~~Fees~~ shall meet all of the following criteria.

1. Be designated as Farmland and zoned for agricultural use;
2. Acquired from willing sellers only;

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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. Unless the land is located on an active Williamson Act contract, per Government Code section 51200 et seq.;
8. Priority Areas for Mitigation. Mitigation occurring within a priority area shall have the following adjustment factors applied, where relevant, to modify the base mitigation ratio.
  - a. If the Mitigation Land is located on an active Williamson Act contract, per Government Code section 51200 et seq., the base mitigation ratio shall be increased by 25% up to a maximum of .50.
  - b. If the Mitigation Land is identified as a groundwater recharge project supported by a recognized Groundwater Sustainability Agency or a multi-property/sub-watershed water quality improvement project supported by a to-be-identified recognized agency or process, the base mitigation ratio shall be reduced by up to a maximum of **OPTION TIERS**.
  - c. If the Mitigation Land is located in an area listed below or as identified by the Board of Supervisors, the base mitigation ratio shall be reduced by up to a maximum of **OPTION TIERS**.
    - i. Along the exterior boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan or future General Plans.
    - ii. Along the exterior boundary of permanent growth boundaries or permanent agricultural edges as identified in Board of Supervisors approved agreements between the County and Cities.

#### **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 Appropriate Authority may consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

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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;
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.

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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.

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

**Attachment A**

**PRELIMINARY DRAFT DOCUMENT SUBJECT TO CHANGE  
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**  
*[forthcoming]*

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 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



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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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### *PRELIMINARY DRAFT DOCUMENT SUBJECT TO CHANGE*

#### **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, evidence of water from a source not located directly on-site, or surface water rights.
- 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.
- 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 so designated by the County 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.

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- 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 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 documentation as may be required by the Appropriate Authority and must be confirmed by the Qualified Conservation Entity.
- 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.
- 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.
8. Groundwater recharge projects supported by a recognized Groundwater Sustainability Agency and multi-property/sub-watershed water quality improvement projects supported by a to-be-identified recognized agency or process.

#### **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;

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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;
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. 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 *or action by a third party.*

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

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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 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 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:

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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.
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. *collectively*
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. The applicant may propose Alternative and Complementary Mitigation.

*→ Mitigation costs shall be quantified*

*based upon an independent real property appraisal*

*No*

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

i. The proposed mitigation shall be up to 5% of the total acreage or total value of the required mitigation or at a greater percentage at the discretion of the Appropriate Authority. *95% must be by the other 3 methods.* *Undefined* ?

ii. 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 *the County or a third party* *How?*

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

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

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 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.



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#### **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;
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. Priority Areas for Mitigation. Mitigation occurring within a priority area shall have the following adjustment factors applied, where relevant, to modify the base mitigation ratio.
  - a. If the Mitigation Land is identified as a groundwater recharge project supported by a recognized Groundwater Sustainability Agency or a multi-property/sub-watershed water quality improvement project supported by a to-be-identified recognized agency or process, the base mitigation ratio shall be reduced by 10%.
  - b. If the Mitigation Land is located on an active Williamson Act contract, per Government Code section 51200 et seq., the base mitigation ratio shall be increased by 25%.
  - c. If the Mitigation Land is located in an area listed below or as identified by the Board of Supervisors, the base mitigation ratio shall be reduced by 10%.
    - i. OPTION – Along the boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan.
    - ii. OPTION – Along the boundary or within .25 miles of Community Areas and Rural Centers boundaries as identified in the 2010 County of Monterey General Plan.
    - iii. OPTION – Along the boundary of permanent growth boundaries or permanent agricultural edges as identified in Board of Supervisors approved agreements between the County and Cities.

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iv. OPTION – Along the boundary or within .25 miles of permanent growth boundaries or permanent agricultural edges as identified in Board of Supervisors approved agreements between the County and Cities.

#### **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;
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.

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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.

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

# Attachment B

**From:** [Beretti, Melanie](#)  
**To:** [Robert Roach](#)  
**Cc:** [Price, Taylor](#)  
**Subject:** RE: Farmland Mitigation Policy  
**Date:** Tuesday, April 25, 2023 11:09:14 AM  
**Attachments:** [image001.png](#)

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Thanks for sending these thoughts, Bob, and staff will review them ahead of our next update and Subcommittee meeting. I've cc'd Taylor as well for his reference.

Kindly,  
Melanie

**Melanie Beretti, AICP | Principal Planner – Advanced Planning**

Phone | 831-755-5285 Email | [BerettiM@co.monterey.ca.us](mailto:BerettiM@co.monterey.ca.us)



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**From:** Robert Roach <roachb@comcast.net>  
**Sent:** Tuesday, April 25, 2023 8:12 AM  
**To:** Beretti, Melanie <BerettiM@co.monterey.ca.us>  
**Subject:** Farmland Mitigation Policy

[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. ]

Melanie,

Based on the discussion yesterday this is what I would propose.

Priority Development Areas exist within the established boundaries of Community Areas, Rural Centers and the Spheres of Influence of the cities. Priority Mitigation Areas exist along the outsides of those lines.

The base mitigation ratio for all Prime and Important Farmlands outside of priority development areas is 2:1. Prime vs. other Important farmland categories is a distinction without sufficient difference to justify different ratios and it complicates things more than is necessary. Keep it simple. The base mitigation ratio for lands within priority development areas is 1:1.

Mitigation sites within priority mitigation areas will have their mitigation ratios reduced by 50%. This would mean that if both the development and mitigation were in priority areas the mitigation ratio would be 0.5:1. I think that is an unlikely scenario and if it has the desired effect that it should receive the same reduction as a mitigation for land developed outside of a priority development area. There could be a floor set at 1:1 if that is the consensus, but it eliminates the incentive to make strategic acquisitions of easements.

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Bob

# Attachment B

County of Monterey  
Community Development Department  
Attn: Taylor Price and Melanie Beretti

5-3-23

Subj: Feedback on Draft Agricultural Mitigation ordinance dated 4-24-23

Melanie and Taylor,

Thank you for your continued efforts on the Agricultural Mitigation Ordinance. I reviewed the ordinance provided for the 4-24-23 Ad Hoc Subcommittee meeting. I am attaching my markups to this cover let.

Additionally, I have some broader comments to provide, which are listed below:

- I greatly appreciate the ordinance exemptions for inclusionary, affordable housing, and agricultural worker housing. **These are vitally important exemptions**, and are in alignment with past policy direction from the Board of Supervisors and ongoing efforts with the Housing Element revision.
- **The best way to conserve farmland is to not use it up for development in the first place. For that to happen, there needs to be such appealing policy in defined growth areas that development on farmland is an afterthought.** Current policy makes it incredibly easy for project objectors/neighbors to derail a project, and puts an incredible amount of cost and risk on the Developer. Developers are naturally incentivized to move projects away from potential objectors (and toward farmland, which often has few to no neighbors). The Ag Mitigation Ordinance as written deals with the consequence of this paradigm by discouraging growth onto farmland, but does very little to address the root cause: restrictive policy in areas where we claim to want development. I suggest staff and future decision makers, such as the Ag Advisory Committee, Planning Commission, and Board of Supervisors, tackle this topic head- on.
- The ordinance as written introduces some incentives to increase the odds developers will place projects inside areas already designated for growth, such as Community Plan areas or Rural Centers. The incentives suggested are relatively small and won't have much influence on developer behavior. **These incentives should be dramatically increased so that they are sufficiently influential. Better yet, developments within areas designated for growth should be exempt from the policy all- together.**
- I continue to grapple with the added complexity and cost of the conservation easement concept. A deed restriction would be much more straight forward, as it does not require a third party facilitator/ monitor, and does not require any fees related to appraisals,

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ongoing monitoring or enforcement efforts. **I suggest that staff seriously consider a deed- restriction only option (no third party monitored conservation easement).**

- I have spoken to multiple growers about this proposed ordinance. Most of them express great discomfort with the perpetual conservation easement; many expressed that they would never enter into a perpetual conservation easement. **I suggest staff consider a deed restriction/ easement timeline shorter than forever.** This would allow prospective participants to conserve land in the short to mid- term, while allowing for future generators to put the land to highest and best use in the future.

Thank you for your work and consideration,

Kathryn Avila

# Attachment B

# MONTEREY COUNTY HOUSING AND COMMUNITY DEVELOPMENT Erik V. Lundquist, AICP, Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

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## MEMORANDUM

**Scheduled Date:** April 24, 2023

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

**From:** Taylor Price, Associate Planner

**Subject:** **Agricultural Land Conservation Mitigation Program – Farmland Mitigation Ordinance [REF220044]** – Receive a presentation and consider draft ordinance, provide input to staff, and consider recommending staff return with revised ordinance to the Agricultural Advisory Committee.

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

### ACTION:

Receive a presentation on proposed options and consider the Draft Ordinance Adding Chapter 21.92 to Monterey County Code Related to Mitigation Requirements for Development on Farmland; provide input to staff; and recommend staff bring the revised draft ordinance to the Agricultural Advisory Committee (AAC) for consideration.

### SUMMARY:

At its April 10, 2023 meeting, the Subcommittee considered a revised draft ordinance and received a presentation from staff regarding options for development and mitigation land near or within Community Areas and Rural Centers. Staff further solicited feedback from the Subcommittee regarding how the draft ordinance should handle annexations. Memo and attachments are available at the [link](#), and Presentation is available at the [link](#).

The Subcommittee supported exempting the following multi-benefit projects that provide broad benefit to the long-term viability of agriculture from these regulations and identify these sites on agricultural lands as priority sites to receive mitigation: groundwater recharge projects supported by a recognized Groundwater Sustainability Agency and multi-property/sub-watershed water quality improvement projects supported by a to-be-identified recognized agency or process. Staff heard support from the Subcommittee to add other water projects that the Monterey County Department of Water Resources may support as a mitigation option. To ensure the appropriate level of review, staff added language to Section 21.92.060.D (Alternative and Complementary Mitigation) that requires this type of project proposed for mitigation to be approved by the Agricultural Advisory Committee and Appropriate Authority to ensure the projects are appropriately supportive of agriculture and agricultural operations in Monterey County. The Subcommittee recommended not incorporating County review procedures with respect to Local Agency Formation Commission of Monterey County (LAFCO) applications for



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annexations to the ordinance. The Subcommittee supported adding a second meeting on April 24, 2023, so staff could provide specific options and examples of how reduced mitigation ratios would apply for projects and mitigation land in or near Community Areas, Rural Centers, and incorporated cities.

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 Farmland. Staff added language to exempt water projects from these regulations and clarified the definition of water supply and prime farmland based on the Subcommittee’s recommendation. Staff researched potentially exempting acreage in wildlife corridors from these regulations. The County has included in year four of the current Long-Range Planning Work Program to identify and map wildlife corridors and other biological resources to implement the 2010 Monterey County General Plan Goal OS-5. Staff recommends at that time researching wildlife corridors and considering a possible future amendment to these regulations exempting wildlife corridors, if feasible and appropriate.

Today staff will review with the Subcommittee example development and mitigation receiving sites and receive the Subcommittee’s feedback. Staff will review three example farmland conversion projects with the Subcommittee: 1) development in a Community Area; 2) development in a Rural Center; 3) and development in the broader unincorporated County.

### **AAC SUBCOMMITTEE INPUT AND/OR COMMENTS:**

Staff would like to obtain the Subcommittee’s recommendation and feedback regarding the topics presented in this report and the Subcommittee’s comments on the draft ordinance. Staff requests that the Subcommittee recommend that staff bring forward a revised ordinance to the AAC for consideration.

### **CONTACT INFORMATION:**

If you have any questions, please contact Taylor Price, Associate Planner, at (831) 784-5730 or [pricet1@co.monterey.ca.us](mailto:pricet1@co.monterey.ca.us) or Melanie Beretti, Principal Planner, at (831) 755-5285 or [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us).

### **NEXT STEPS:**

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

### **ATTACHMENTS:**

Attachment A – Draft Chapter 21.92 Mitigation Requirements for Development on Farmland Lands

Attachment B – Public Comments Received During or after the Subcommittee on April 10, 2023

# Attachment B

## Attachment A

### ***PRELIMINARY DRAFT DOCUMENT SUBJECT TO CHANGE*** **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** *[forthcoming]*

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 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

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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**

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

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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, evidence of water from a source not located directly on-site, or surface water rights.
- 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.
- 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. define
- F. "Farmland Mitigation Plan" means the ~~documentation~~ define 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 so designated by the County 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.

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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 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 documentation as may be required by the Appropriate Authority and must be confirmed by the Qualified Conservation Entity.

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.

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.

is work done by the County, such as rezoning resulting from a General Plan update, a "project" - ie- will the County need to purchase conservation easements when it rezones?

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.
8. Groundwater recharge projects supported by a recognized Groundwater Sustainability Agency and multi-property/sub-watershed water quality improvement projects supported by a to-be-identified recognized agency or process.

Add: "projects within"

#### **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. *clarify - at building permit or planning permit app?*
- 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;

*is working with a qualifying conservation entity optional? Clarify in what cases this applies*

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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;

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. 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

i think you mean "easement" not "project" (which could be the easement + land + structure

extend - 180 days? 360 days?

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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 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 the applicant’s proposed project is within a Community Area or Rural Center, the base mitigation ratio shall be reduced by 10%.

add "Lafco SOI"

increase dramatically

#### **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.

reduce

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.

put some kind of parameters on this cost - % of easement value? This policy as written creates a "blank check" for the third party monitor to require whatever they want

B. Hold Farmland in Fee Title:



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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.

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.

insert "or 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.

21.92.040 A2a states that the land held in fee title is subject to a deed restriction OR easement, not both.

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. The applicant may propose Alternative and Complementary Mitigation.

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

i. The proposed mitigation shall be up to 5% of the total acreage or total value of the required mitigation or at a greater percentage at the discretion of the Appropriate Authority.

ii. 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

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

the timeline between recordation of a parcel map/ final map and construction project could easily be years or sometimes decades.

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#### 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; *OR are currently being farmed and are designated as prime, important...etc farmlands*
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; *clarify that the water source doesn't need to be on site?*
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; *this is inconsistent with 8 b below, which seems to allow, but discourage, mitigation on land already under conservation*
8. Priority Areas for Mitigation. Mitigation occurring within a priority area shall have the following adjustment factors applied, where relevant, to modify the base mitigation ratio.
  - a. If the Mitigation Land is identified as a groundwater recharge project supported by a recognized Groundwater Sustainability Agency or a multi-property/sub-watershed water quality improvement project supported by a to-be-identified recognized agency or process, the base mitigation ratio shall be reduced by 10%. *increase percentage significantly*
  - b. If the Mitigation Land is located on an active Williamson Act contract, per Government Code section 51200 et seq., the base mitigation ratio shall be increased by 25%.
  - c. If the Mitigation Land is located in an area listed below or as identified by the Board of Supervisors, the base mitigation ratio shall be reduced by 10%.
    - i. OPTION – Along the boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan. *change to "most current adopted version of the General Plan"*
    - ii. OPTION – Along the boundary or within .25 miles of Community Areas and Rural Centers boundaries as identified in the 2010 County of Monterey General Plan.
    - iii. OPTION – Along the boundary of permanent growth boundaries or permanent agricultural edges as identified in Board of Supervisors approved agreements between the County and Cities. *along the interior boundary*

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iv. OPTION – Along the boundary or within .25 miles of permanent growth boundaries or permanent agricultural edges as identified in Board of Supervisors approved agreements between the County and Cities.

is there any reason the conservation entity needs to be a non-profit? broaden language

#### **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:

clarify - who at the County of Monterey? Project assigned planner?

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;

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.

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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.

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