

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



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

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MEMORANDUM

Scheduled Date: August 14, 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]** – Consider making a motion to recommend that staff bring a revised draft ordinance to the Agricultural Advisory Committee.

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

ACTION:

Consider the draft ordinance adding Chapter 21.92 to Monterey County Code related to mitigation requirements for development on farmland. Consider the proposed policy options regarding: 1) categorization of farmland types; and 2) mitigation ratios. Consider making a motion to recommend that staff bring the revised draft ordinance to the Agricultural Advisory Committee (AAC) inclusive of the Subcommittee’s recommendation on the proposed policy options and provide input to staff.

SUMMARY:

Summary of May 8th Subcommittee Meeting

At the May 8, 2023 meeting, the Subcommittee considered a revised draft ordinance and received a presentation from staff for 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 recommended that priority areas for development be consistent with the 2010 General Plan Chapter 1 Land Use Element Policy (LU-1.19), where the top priority areas for development include Community Areas and Rural Centers. Staff also recommended that priority areas for mitigation only be identified along the exterior boundary of Community Areas, Rural Centers, city growth boundaries, and permanent agriculture edges as identified in Board approved City and County MOAs and MOUs.

During the meeting, the Subcommittee voted on two separate motions related to the proposed mitigation ratios and moving the draft ordinance forward to the AAC. The first motion was an alternative to the ratios proposed in the draft (Outside community areas/rural centers: Prime and Important Farmland = 2:1 & Inside community areas/rural centers: Prime and Important Farmland = 1.5:1). The second motion was the ratios proposed in the draft ordinance (Outside

community areas/rural centers: Prime Farmland = 2:1 and Important Farmland = 1.5:1 & Inside community areas/rural centers: Prime Farmland = 1.5:1 and Important Farmland = 1.25:1). Both motions failed as the Subcommittee vote was split 2 ayes and 2 nos for each motion.

Summary of June 12th Subcommittee Meeting

At its June 12, 2023 meeting, the Subcommittee received a presentation from staff where staff asked the Subcommittee to consider the two failed motions from the May 8, 2023 Subcommittee meeting. The Subcommittee voted on two separate motions related to the proposed mitigation ratios; one motion was an alternative to the ratios proposed in the draft, and the second motion was the ratios proposed in the draft; both motions failed 2:2. Two additional motions were made to consider moving the draft ordinance forward to the AAC with both mitigation ratio options, the Subcommittee discussed these motions and member concerns with each, and both motions failed 2:2. The Subcommittee directed staff to return with revised options for the mitigation ratios for the Subcommittee to consider that reflect the specific concerns causing the split in the Subcommittee vote.

Summary for August 14th Subcommittee Meeting

Based on feedback from the May 8th and June 12th Subcommittee meetings, staff returns with an updated draft ordinance, proposed policy options regarding farmland type and grouping, and proposed policy options regarding mitigation ratios for the Subcommittee to consider.

Revisions to Draft Ordinance

Minor revisions have been made to the draft ordinance since the May 8th Subcommittee meeting, which was the last time the ordinance was revised. Revisions are shown in tracked changes in Attachment A and reflect updates based on Subcommittee feedback that was presented at the May 8th and June 12th Subcommittee meetings. Revisions also reflect language refinement regarding water quality and quantity protection based on feedback received during staff meetings with representatives from the Salinas Valley Basin Groundwater Sustainability Agency, Central Coast Water Quality Preservation, Inc., Greater Monterey Regional Water Management Group, and Central Coast Wetlands. Staff conducted an internal review of Section 21.92.050.G-I (Mitigation Requirements) and revised the draft regulation language based on that review. Further, staff is conducting additional research related to Section 21.92.070 (Timing of Mitigation) to help provide the policymakers with additional information.

Farmland Classification Categories

The State of California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) classification system is created by rating agricultural land according to soil quality and irrigation status. The FMMP classification system has five categories of agricultural land, of which four are non-grazing land. The four FMMP categories are Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. In the staff recommendation presented at the May 8th and June 12th meetings, staff had two farmland categories, Prime Farmland and Important Farmland (which includes Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance).

Staff heard concerns from the Subcommittee that the Important Farmland category in the draft regulations (encompassing Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance) might incorrectly include Farmland of Statewide Importance, which is “similar to Prime Farmland with minor shortcomings,” according to the FMMP classification system. Staff recommends that Farmland of Statewide Importance be considered the same as Prime Farmland by the draft regulations to recognize that with improved irrigation and grading technologies, Farmland of Statewide Importance is similar enough to Prime

Farmland that it should be treated similar to Prime Farmland in the ordinance. Staff requests the Subcommittee consider if it wishes to make no changes to the farmland category definitions in the draft ordinance (Option 1-A below) or if it wishes to revise the farmland category definitions to treat Farmland of Statewide Importance similar to Prime Farmland in the draft ordinance (Option 1-B below).

Option 1-A: No Change to Farmland Category Definitions

- i. Prime Farmland (Includes FMMP category for Prime Farmland)
- ii. Important Farmland (Includes FMMP categories for Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance)

Option 1-B: Revise Farmland Category Definitions

- i. Prime and Statewide Farmland (Includes FMMP categories for Prime Farmland and Farmland of Statewide Importance)
- ii. Unique and Local Farmland (Includes FMMP categories for Unique Farmland and Farmland of Local Importance)

Mitigation Ratios

The draft ordinance proposes to make development within (or inside) Community Areas and Rural Center boundaries subject to lower mitigation requirements than development taking place on farmland outside of Community Areas and Rural Center boundaries (referred to as CARCs). This distinction in the draft policy was developed to balance the need to protect Monterey County’s uniquely productive agricultural land while not impeding the construction of housing in and around already developed areas of the County (in support of the 2010 General Plan Chapter 1 Land Use Element Policy LU-1.19).

Staff requests the Subcommittee consider if it wishes all farmland be required to mitigate at the same ratios outside CARCs and mitigate at equal but lower ratios inside CARCS (Option 2-A below) or if it wishes Prime Farmland (and Farmland of Statewide Importance, if Option 1-B selected above) be required to mitigate a higher ratio than Unique and Local Farmland both outside CARCs and inside CARCS (Option 2-B below). If the Subcommittee does not support either of these options, then staff requests the subcommittee offer alternative suggestions.

Option 2-A: Mitigation Ratios All FMMP Categories Equal

[Selection of Option 1-A Above]

Outside CARCs

Prime Farmland: 2:1
 Important Farmland: 2:1

Inside CARCs

Prime Farmland: 1.5:1
 Important Farmland: 1.5:1

[Selection of Option 1-B Above]

Outside CARCs

Prime and Statewide Farmland: 2:1
 Unique and Local Farmland: 2:1

Inside CARCs

Prime and Statewide Farmland: 1.5:1
 Unique and Local Farmland: 1.5:1

Option 2-B: Mitigation Ratios Differ By FMMP Category

[Selection of Option 1-A Above]

Outside CARCs

Prime Farmland: 2:1
 Important Farmland: 1.75:1

Inside CARCs

Prime Farmland: 1.5:1
 Important Farmland: 1.25:1

[Selection of Option 1-B Above]

Outside CARCs

Prime and Statewide Farmland: 2:1
 Unique and Local Farmland: 1.75:1

Inside CARCs

Prime and Statewide Farmland: 1.5:1
 Unique and Local Farmland: 1.25:1

Staff again proposes that the mitigation ratio should never fall below 1:1 regardless of where development and mitigation occur.

Staff recommends that the Subcommittee make a motion that staff bring the revised draft ordinance to the Agricultural Advisory Committee, inclusive of the Subcommittee's recommendation regarding options presented regarding Farmland Classification Category Definitions and Mitigation Ratios.

AAC SUBCOMMITTEE INPUT AND/OR COMMENTS:

Staff recommends the Subcommittee make a motion to recommend that staff bring the revised draft ordinance to the AAC with one selection from each of the two proposals as recommended by the Subcommittee. Staff asks the Subcommittee to consider the draft ordinance adding Chapter 21.92 to Monterey County Code related to mitigation requirements for development on farmland and provide input to staff.

CONTACT INFORMATION:

If you have any questions, please contact Taylor Price, Associate Planner, at (831) 784-5730 or pricet1@co.monterey.ca.us or Melanie Beretti, Principal Planner, at (831) 755-5285 or 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 summer or fall of 2023.

ATTACHMENTS:

Attachment A – Draft Chapter 21.92 Mitigation Requirements for Development on Farmland with Track Changes

Attachment B – Draft Chapter 21.92 Mitigation Requirements for Development on Farmland with Track Changes Accepted

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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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 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.
- Q. “Mitigation Ratios” means the replacement ratio on an acre-for-acre basis and is used to determine the required acreage to be protected using one of the mitigation methods pursuant to Section 21.92.060.

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 or benefit projects supported by a recognized Groundwater Sustainability Agency; and
9. Water quality improvement projects that address agricultural pollutants and provide multi-property/sub-watershed water quality improvement projects benefits supported by an approved Third-Party Group as recognized by the State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0, No. R3-2021-0040) to be identified recognized agency or process.

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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

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Conservation Easement, 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 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 ~~m~~Mitigation ratio-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 ~~Mitigation ratios-Ratios~~ (on an acre-for-acre basis):

1. Prime Farmland shall be mitigated for at a replacement ratio of **OPTIONS**.
2. Important Farmland shall be mitigated for at a replacement ratio of **OPTIONS**.

G. All activities subject to mitigation requirements shall follow the mitigation process as set forth in Section 21.92.050.G.1 through Section 21.92.050.G.4~~be required to locate a Farmland Conservation Easement or Fee Title. The priority for mitigation shall always be Mitigation Land protected by 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 subbasin with no exceedances of their minimum thresholds in their Groundwater Sustainability Plan~~sustainable subbasin to an a different subbasin with exceedances of their minimum thresholds in their Groundwater Sustainability Plan~~~~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.

~~H2.~~ 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.

~~3f.~~ 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.~~HG.2~~, then the applicant shall be required to pay in-lieu fees to a Qualifying Conservation Entity.

4. The applicant may also propose Alternative and Complementary Mitigation as long as the proposed mitigation complies with the provisions set forth under Section 21.92.060.D.

~~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:

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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 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:

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1. The amount of the In-lieu Fee shall be ~~determined by using~~ the appraised fair market value of acquiring a conservation 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.

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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 value~~ of the Alternative and Complementary Mitigation shall be ~~calculated using and equivalent to~~ determined by using 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.

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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 alternative and complementary mitigation ~~shall may~~ be up to but shall not exceed 5% of the total acreage or total value of the required mitigation, as applicable. An Alternative and Complementary Mitigation exceeding 5% of the total acreage or total value of the required mitigation shall be submitted to the Agricultural Advisory Committee for consideration. The Agricultural Advisory Committee shall make a recommendation to the Appropriate Authority regarding any proposed Alternative and Complementary Mitigation measure.

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~~

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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:

1. Projects that implement a Groundwater Sustainability Plan to comply with the Sustainable Groundwater Management Act (SGMA). 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 State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0). (No. R3-2021-0040). 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 Storm Water Resource Plans) that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

4. Or other projects that fulfill the purpose of this chapter, as specified in Section 21.092.010, and demonstrate they will protect, preserve, or benefit Farmland and the agricultural industry of Monterey County.

~~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, 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.

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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;
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~~ RRatio.

a. If the Mitigation Land is located on an active Williamson Act contract, per Government Code section 51200 et seq., the base ~~†Mitigation~~ Rratio shall be increased by 25% up to a maximum of .50.

b. If the Mitigation Land is determined to be in a high potential groundwater recharge area identified by 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~~ RRatio shall be reduced by up to a maximum of .125.

c. If the Mitigation Land is determined to include a water quality improvement project that addresses agricultural pollutants and provides multi-property/sub-watershed benefits supported by an approved Third-Party Group as recognized by the State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0, No. R3-2021-0040), the base Mitigation Ratio shall be reduced by up to a maximum of .125.

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ed. If the Mitigation Land is located in ~~an area listed below~~ Priority Areas for Mitigation, as specified in Section 21.92.080.8.d.i and Section 21.92.080.8.d.ii or as identified by the Board of Supervisors, the base Mitigation Ratio shall be reduced by up to a maximum of 125.

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- i. Along the exterior boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan as periodically amended.
- 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:

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 title 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

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compliance with the terms of the Farmland Conservation Easement and Farmland held in fee title.

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

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

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

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

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

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

AYES:

NOES:

ABSENT:

ABSTAIN: _____

Luis Alejo, Chair
Monterey County Board of Supervisors

ATTEST

VALERIE RALPH
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

KELLY DONLON
Chief Deputy County Counsel

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By: _____
Deputy

DRAFT

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ORDINANCE NO. _____

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

County Counsel Summary
[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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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 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.
- Q. “Mitigation Ratios” means the replacement ratio on an acre-for-acre basis and is used to determine the required acreage to be protected using one of the mitigation methods pursuant to Section 21.92.060.

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 or benefit projects supported by a recognized Groundwater Sustainability Agency; and
9. Water quality improvement projects that address agricultural pollutants and provide multi-property/sub-watershed benefits supported by an approved Third-Party Group as recognized by the State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0, No. R3-2021-0040).

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, a 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 Conservation Model Easement, and the applicant's mitigation methods must be either Mitigation

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Land held in fee title (with a deed restriction or Farmland Conservation Easement) or a 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 Mitigation Ratios (on an acre-for-acre basis):

1. Prime Farmland shall be mitigated for at a replacement ratio of **OPTIONS**.
2. Important Farmland shall be mitigated for at a replacement ratio of **OPTIONS**.

G. All activities subject to mitigation requirements shall follow the mitigation process as set forth in Section 21.92.050.G.1 through Section 21.92.050.G.4. The priority for mitigation shall always be Mitigation Land protected by 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 subbasin with no exceedances of their minimum thresholds in their Groundwater Sustainability Plan to a different subbasin with exceedances of their minimum thresholds in their Groundwater Sustainability Plan as identified by the recognized Groundwater Sustainability Agency. The Mitigation Land shall also comply with the provisions set forth under Section 21.92.080.

2. 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.

3. 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.G.2, then the applicant shall be required to pay in-lieu fees to a Qualifying Conservation Entity.

4. The applicant may also propose Alternative and Complementary Mitigation as long as the proposed mitigation complies with the provisions set forth under Section 21.92.060.D.

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 collectively agree to move or transfer the easement.

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4. The applicant shall provide written evidence to the Appropriate Authority that the Qualifying Conservation Entity 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 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 determined by using the appraised fair market value of acquiring a conservation easement on the land being converted. The values of conservation easements shall be determined by an independent real property appraiser with experience valuing 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

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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 mitigation value of the Alternative and Complementary Mitigation shall be determined by using 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 conservation easements 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 may be up to but shall not exceed 5% of the total acreage or total value of the required mitigation, as applicable. An Alternative and Complementary Mitigation exceeding 5% of the total acreage or total value of the required mitigation shall be submitted to the Agricultural Advisory Committee for consideration. The Agricultural Advisory Committee shall make a recommendation to the Appropriate Authority regarding any proposed Alternative and Complementary Mitigation measure.

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.

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

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

1. Projects that implement a Groundwater Sustainability Plan to comply with the Sustainable Groundwater Management Act (SGMA).

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2. Projects that help the agricultural industry in the County of Monterey comply with the State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0). (No. R3-2021-0040).

3. Projects that are part of a recognized regional plan (such as an Integrated Regional Water Management Plan or a Storm Water Resource Plans) that conserve or improve water quantity and/or quality for the benefit of agriculture in the County of Monterey.

4. Or other projects that fulfill the purpose of this chapter, as specified in Section 21.092.010, and demonstrate they will protect, preserve, or benefit Farmland and the agricultural industry of Monterey County.

3. 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, 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, whichever occurs first.

21.92.080 Mitigation Lands.

A. Mitigation Lands acquired through a Farmland Conservation Easement, holding Mitigation Land in 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;

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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 up to a maximum of .50.
 - b. If the Mitigation Land is determined to be in a high potential groundwater recharge area identified by a recognized Groundwater Sustainability Agency, the base Mitigation Ratio shall be reduced by up to a maximum of .125.
 - c. If the Mitigation Land is determined to include a water quality improvement project that addresses agricultural pollutants and provides multi-property/sub-watershed benefits supported by an approved Third-Party Group as recognized by the State of California Central Coast Regional Water Board General Waste Discharge Requirements for Discharges from Irrigated Lands (Ag Order 4.0, No. R3-2021-0040), the base Mitigation Ratio shall be reduced by up to a maximum of .125.
 - d. If the Mitigation Land is located in Priority Areas for Mitigation, as specified in Section 21.92.080.8.d.i and Section 21.92.080.8.d.ii or as identified by the Board of Supervisors, the base Mitigation Ratio shall be reduced by up to a maximum of .125.
 - i. Along the exterior boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan as periodically amended.
 - 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

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protecting land in agriculture. The Appropriate Authority 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 title 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 title resulting from this regulation to another Qualified Conservation Entity as acceptable and approved by the County of Monterey.
4. **Use of in-lieu fees** – The Qualifying Conservation Entity shall administer in-lieu fees. These responsibilities cover, without exception, ensuring that in-lieu fees are held in a separate account adequate to cover the cost of acquiring a Farmland Conservation Easement or

Attachment B

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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