

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



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**MEMORANDUM**

**Scheduled Date:** September 28, 2023

**To:** Agricultural Advisory Committee (AAC)

**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 Planning Commission

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

**ACTION:**

Consider the draft ordinance adding Chapter 21.92 to the Monterey County Code related to mitigation requirements for development on farmland. Consider making a motion to recommend that staff bring the revised draft ordinance to the Planning Commission (Commission), including the Agricultural Advisory Committee’s (AAC) recommendation on the proposed Chapter 21.92, and provide input to staff.

**SUMMARY:**

The Agricultural Advisory Committee Ad Hoc Subcommittee (Subcommittee), at their August 14, 2023, meeting, recommended that staff bring forward the revised draft of the Farmland Mitigation Ordinance (Ordinance) to the AAC. The attached draft Ordinance is consistent with the version supported by the Subcommittee and includes minor edits for clarification and legality that arose during internal County review by HCD, County Counsel, and the Agricultural Commissioner.

***August 14, 2023 Subcommittee***

Staff will briefly review the two policy option votes that the Subcommittee made. For the first vote, a minority of Subcommittee members preferred that Farmland of Statewide Importance be in the same farmland classification category as Prime Farmland. In the second vote, a minority of the Subcommittee voted for higher mitigation ratios that did not differ by farmland classification category.

***Agricultural and Winery Corridor Plan***

During the internal County review, it was identified that the Agricultural and Winery Corridor Plan (AWCP) (County of Monterey 2010 General Plan Chapter 9.J) allows the development of facilities that would not necessarily fit into existing exemption categories, such as

restaurants, delicatessens, inns, visitor centers, and a business center.

*Staff would like to ask the AAC if, for consistency, an exemption should be added for allowed uses and permitted uses as allowed by the AWCP?*

To read the complete discussion and background for the draft Ordinance, please refer to the Detailed Discussion in Attachment A.

*Staff recommends that the AAC make a motion that staff bring the revised draft Ordinance to the Planning Commission, inclusive of the AAC's recommended revisions.*

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

Staff recommends the AAC make a motion to recommend that staff bring the revised draft ordinance to the Planning Commission. Staff asks the AAC 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](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 AAC direction, staff anticipates bringing forward the draft ordinance to the Planning Commission for its consideration. Staff would then bring the draft ordinance to the Board of Supervisors in the winter of 2024.

**ATTACHMENTS:**

Attachment A – Detailed Discussion

Attachment B – Draft Chapter 21.92 Mitigation Requirements for Development on Farmland

# Attachment A – Detailed Discussion

## MONTEREY COUNTY POLICY BACKGROUND

The County of Monterey (County) elected to include an Agriculture Element as part of the 2010 General Plan, which governs the inland unincorporated County because agriculture is the largest industry in the County, contributing significantly to the County’s economy. Goal AG-1 of the 2010 General Plan Agricultural Element is to preserve, protect, and enhance farmland to maintain the productivity and viability of the County’s agricultural industry. Loss of farmland to development is irreparable and can negatively impact the region’s economy. Population growth in Monterey County is predicted to continue, and Monterey County has a severe housing shortage, especially affordable housing units. While additional housing and commercial developments will be required to support the increased population, there is time to facilitate both growth and the continued success of the agricultural industry, which will likely continue to provide income for a significant part of the County’s population.

Agricultural Element Policy AG-1.12 specifically requires that the County prepare, adopt, and implement a policy that requires that projects involving a change of land use designation resulting in the loss of Important Farmland<sup>1</sup> mitigate the loss of acreage. AG-1.12 will be implemented as part of an Agricultural Conservation Mitigation Program (Program) being developed by the County. AG-1.12 further states:

*“The program may include ratios, payment of fees, or some other mechanisms. Mitigation mechanisms established through this program shall be based upon a graduated value of the Important Farmland, with mitigation for loss of prime land having the highest agricultural value. The County shall support private, non-profit land trusts and conservation organizations to promote the policies of this General Plan, facilitate the implementation of the program, and to receive, by voluntary donation or purchase, development rights on any lands to be preserved as part of this program’s implementation strategy.”*

*“The acreage within a project...that is to be utilized for inclusionary housing shall not be subject to this mitigation policy.”*

## MAPPING TOOL AND SALC GRANT

As a part of Program development, staff created a mapping tool that details existing agricultural conservation easements and Williamson Act parcels in the County. The completed mapping tool also shows State of CA Department of Conservation farmland categories and jurisdiction boundaries in the County. The completed mapping tool allows staff and the public to see where agricultural land may be threatened by development and ensures that staff and the public are aware of parcels that may be eligible for future agricultural conservation easements. The mapping application will help inform future policy development discussions and give the public and staff a sense of where future development pressures may occur and where effective mitigation opportunities may be available. The mapping tool will also be used in the implementation phase to identify priority areas for mitigation receiving sites and in the

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<sup>1</sup> Important Farmland as mapped by the California Department of Conservation Farmland Mapping and Monitoring Program. Important Farmland categories include Prime Farmland; Farmland of Statewide Importance; Unique Farmland; and Farmland of Local Importance.

# Attachment A – Detailed Discussion

identification of sites that are potential candidates for groundwater quantity and water quality improvement projects that may be eligible for reduced mitigation ratios. The mapping tool can be found online using this link:

<https://maps.co.monterey.ca.us/portal/apps/webappviewer/index.html?id=2210e74f59684b7db87cf19293707956>.

This mapping tool was developed with the financial and technical assistance provided by the State Lands Conservation Program (SALC). The County was awarded a State of California Department of Conservation (SALC) Program grant to fund the development of the Program. This grant provided the County with funding for staff time when the grant agreement was approved in 2020. The grant also provided the County with access to the Department of Conservation's technical assistance and knowledge of agriculture and the agricultural industry in the State of California. The grant expired in June 2023, but the Department of Conservation has continued providing technical support as the Program progresses.

## **OUTREACH**

Staff began the public outreach process in May 2022 by conducting a series of public and targeted-stakeholder outreach meetings and summarizes outreach efforts below. Staff considered all feedback received throughout the public/stakeholder outreach process.

### Public Meetings

Staff conducted three public meetings in July 2022 focused on engaging agricultural landowners, leaseholders, and the public. Staff conducted one meeting in North County, one meeting in South County, and one hybrid meeting in Salinas. Staff conducted these meetings to inform the public and agricultural interests in the County of the development of the Program and to receive feedback from agricultural interests and the public. Two of the meetings (South County and Salinas) offered Spanish translation to ensure broad participation.

### Jurisdiction and Agency

Staff conducted and continues to meet with local jurisdictions within Monterey County and public agencies. Staff has held multiple meetings with the Cities of Greenfield, Gonzales, King City, Salinas, and Soledad to discuss the status of the County's draft agricultural mitigation regulations and coordination for a potential Salinas Valley-wide agricultural mitigation program.

Staff met individually with the Local Agency Formation Commission (LAFCO) to understand the annexation process and LAFCO policies and practices regarding agricultural mitigation for annexations. LAFCO also participated in the meetings with the Salinas Valley cities.

Staff and the Salinas Valley cities continue to meet regularly, with LAFCO's participation, to continue the dialogue around the development of agricultural mitigation regulations and best practices that could be applied across each jurisdiction in the Salinas Valley to provide clear and consistent standards.

Staff met with representatives of the United States Department of Agriculture (USDA) and the Natural Resources Conservation Service (NRCS), California Department of Conservation, California Department of Food and Agriculture, and the Resource Conservation District of

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Monterey County for their subject matter expertise to inform the development of the draft ordinance.

## Organizations

Staff held multiple meetings with agriculture industry associations, including the Grower-Shipper Association and the Monterey County Farm Bureau. Staff held outreach meetings with the four conservation land trusts known to be operating in Monterey County: Ag Land Trust, Big Sur Land Trust, Elkhorn Slough Foundation, and the Land Trust of Santa Cruz County. Local conservation land trusts assisted the County by providing their existing agricultural conservation easements for inclusion in the mapping tool and for their subject matter expertise to inform the development of the draft ordinance. The Ag Land Trust additionally participated as a member of the Subcommittee.

Staff met with the Building Industry Association of the Bay Area and local builders in Monterey County to understand how the agricultural mitigation regulations could protect farmland from development while also ensuring housing and affordable housing construction in and near already developed areas of the unincorporated County.

Staff met with the Monterey County Center for Community Advocacy and Communities Organized for Relational Power in Action to inform them of the development of the agricultural mitigation policy and understand if their organizations would be interested in following the policy's development. Neither organization identified a strong nexus between their organization's goals and mission to the agricultural mitigation policy being developed.

Staff met with the various water quality/quantity organizations in Monterey County, including Salinas Valley Basin Groundwater Sustainability Agency, Central Coast Water Quality Preservation, Inc., Greater Monterey Regional Water Management Group, and Central Coast Wetlands Group to better understand local groundwater concerns and water quality and quantity improvement projects. Staff specifically met with the Central Coast Regional Water Quality Control Board to understand the Irrigated Lands Program and its relationship to water quality improvement projects.

## Committees and Commissions

Staff presented to the Agricultural Advisory Committee (AAC), Ad Hoc Subcommittee of the Agricultural Advisory Committee (Subcommittee), and the Planning Commission (Commission).

May 25, 2022 – AAC – Staff conducted a workshop and presented draft regulations.

July 28, 2022 – AAC – Staff conducted a workshop and presented draft regulations.

August 25, 2022 – AAC – Staff conducted a workshop and presented draft regulations.

October 26, 2022 – Commission – Staff conducted a workshop and presented draft regulations.

January 26, 2023 – AAC – Staff presented the Commission's recommendations and presented draft regulations.

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February 13, 2023 – Subcommittee – Staff conducted a workshop and presented draft regulations to the Subcommittee.

March 27, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

April 10, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

April 24, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

May 8, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

June 12, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

August 14, 2023 – Subcommittee – Staff presented draft regulations to the Subcommittee.

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**ORDINANCE NO. \_\_\_\_\_**

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

**County Counsel Summary**

*This ordinance adds Chapter 21.92 to the Monterey County Code to require mitigation for the conversion of agricultural land to non-agricultural use to protect the County's productive and potentially productive farmland from development. The mitigation required through this ordinance protects natural resources and the public health, safety, and welfare of the citizens of Monterey County. This ordinance ensures consistent mitigation requirements exist if farmland is being converted. The ordinance includes the mitigation quantities required applicants must locate, and methods applicants can utilize to reduce the required mitigation ratio. This ordinance details the mitigation process applicants can use to comply with the mitigation requirements, such as protecting land via a legal instrument, payment of in-lieu fees, or alternative mitigation methods. This ordinance also contains the requirements of the non-profit organization applicants must work with during the mitigation process.*

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(a) 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. On October 26, 2010, pursuant to California Government Code section 65350 *et seq.*, the Board of Supervisors of the County of Monterey adopted a comprehensive update to the County General Plan, referred to as the 2010 Monterey County General Plan, for the unincorporated non-coastal area of the County ("General Plan") (Board of Supervisors Resolution No. 10-291).

D. 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.

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E. 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.

F. Monterey County is a significant agricultural contributor to California and the nation. Monterey County is the fourth highest agricultural-producing County in California. Monterey County produces a diverse group of agricultural products, such as strawberries, leaf lettuce, head lettuce, broccoli, and cauliflower. The production of diverse agricultural products allows Monterey County to provide a relative abundance of nutrition for export and Monterey County residents.

G. Regulation concerning the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of Monterey County. 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 indirect source of more than a quarter of all employment in Monterey County.

H. Regulation to preserve farmland is also necessary, considering the positive climate and environmental benefits that farmland provides to Monterey County. Preserving farmland from development provides significant benefits, such as soil-based carbon sequestration as a naturally occurring source of negative carbon emissions and increased groundwater recharge and water quality improvement compared to impervious development.

I. To ensure that the highest quality farmland is protected and temporary changes in irrigation or farming practices do not result in productive or potentially productive land being erroneously developed, it is necessary to utilize older Department of Conservation Farmland Mapping and Monitoring Program maps to ensure temporary changes do not result in decreased mitigation of the highest-quality farmland in Monterey County.

J. The purpose of this ordinance is to protect Monterey County's most productive and valuable farmland from conversion to non-agriculture use. Monterey County's agricultural land is a finite and irreplaceable resource, and once agricultural land is lost to development, it is permanently lost. Monterey County must balance the need to 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 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. Thus, this ordinance creates a program for the mitigation of farmland lost permanently to development.

K. The intent of this ordinance is to establish standards for the protection of the highest-quality farmland (Prime Farmland) and other Statewide, Unique, and Local Farmland (inclusive of Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance) in the unincorporated inland areas of Monterey County. This ordinance also



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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, infrastructure, and developed areas of Monterey County. 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.

L. 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 unincorporated inland areas of Monterey County. The proposed farmland conservation mitigation program aims to avoid or reduce significant environmental impacts to farmland in the County and establish a program to minimize future impacts to the Monterey County's economy. Further, the proposed farmland 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.

M. On October 26, 2010, the Board of Supervisors of Monterey County certified an Environmental Impact Report (EIR) prepared for the General Plan (Resolution No. 10-290). The EIR evaluated environmental impacts associated with implementation of the General Plan, including changes in land use designations. This ordinance implements the General Plan by establishing regulations for development of a Farmland Conservation Mitigation Program. Pursuant to Section 15162 of the California Environmental Quality Act Guidelines, no subsequent environmental review is required for this ordinance because the effects of establishing the Farmland Conservation Mitigation Program were analyzed in the General Plan EIR and no substantial changes in project description, substantial changes in circumstances, or new information of substantial importance leading to new significant effects or a substantial increase in the severity of previously identified effects has been identified. Further, CEQA already requires mitigation of impacts on agricultural land and provides the County of Monterey with the authority to mitigate. This program establishes a mitigation program and does not authorize any specific project.

**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**

**Sections:**

- 21.92.010 Purpose.**
- 21.92.020 Applicability.**
- 21.92.030 Definitions.**

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- 21.92.040 Mitigation Requirements.**
- 21.92.050 Mitigation Lands.**
- 21.92.060 Mitigation Process.**
- 21.92.070 Methods of Mitigation.**
- 21.92.080 Timing of Mitigation.**
- 21.92.090 Required Conditions on the Applicable Mitigation Entitlement.**
- 21.92.100 Farmland Mitigation Plan.**

**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 Monterey County'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 Applicability.**

- A. The provisions in Chapter 21.92 are applicable to projects in the unincorporated inland areas of the County of Monterey.
- B. Activities subject to this Chapter:
  - 1. Redesignation of land from an agricultural designation, pursuant to the 2010 County of Monterey General Plan (e.g., Farmland, Permanent Grazing, and Rural Grazing) to any designation other than an agricultural designation (e.g., Commercial, Industrial, Residential, or Public/Quasi-Public); and
  - 2. Projects that require a use permit or administrative permit where Farmland in an Agricultural Zone is converted to non-agricultural use.
- 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;

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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 or sub-watershed benefits that help irrigated agriculture growers comply with the discharge requirements of the Agricultural Order and supported by an approved Third-Party Group or Programs as recognized by the State of California Central Coast Regional Water Board.

**21.92.030 Definitions.**

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

- A. “Agricultural Advisory Committee” means the Committee established to review and make recommendations relative to General Plan amendments or zone changes that may affect agricultural lands and County Development Projects on agricultural lands or projects that may support, enhance, or otherwise affect the agricultural industry. The Committee was established through Board of Supervisors Resolution No. 65-208 and subsequent amendments to the establishing Resolution.
- B. “Agricultural Order” means the Central Coast Regional Water Quality Control Board Order that applies to owners and operators of irrigated land used for commercial crop production. This regulates discharges from irrigated agricultural lands to protect surface water and groundwater.
- C. “Agricultural Zone” means any land that has a zoning district designation of Farmland, Rural Grazing, Permanent Grazing pursuant to Chapter 21 of the Monterey County Code.
- D. “Alternative and Complementary Mitigation” means any mitigation method that is not an acquisition of a conservation easement, deed restriction, or in-lieu fees.
- E. The Appropriate Authority has the same meaning as in Section 21.06.090 of this Title. When used in this Chapter it refers to the person, official, or body designated to

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hear, grant, deny, modify, condition, revoke, or otherwise act on the underlying entitlement and/or permits that are applicable to this Chapter.

F. “Base Mitigation Ratio” is the mitigation ratio that would be required for a project, which may be reduced because of allowable reductions in this Chapter.

G. “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.

H. “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.

I. “Farmland Deed Restriction” means the creation of a deed restriction or covenant for the purposes of restricting its use to agricultural operations, accessory uses, and other uses allowed consistent with the underlying zoning.

J. “Farmland Mapping and Monitoring Program (FMMP)” means the California Department of Conservation’s non-regulatory program.

K. “Farmland Mitigation Plan” means the documentation required to be submitted for review and approval by the Appropriate Authority pursuant to Section 21.92.100.

L. “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.

M. “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.

N. “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 encumbrance by a Farmland Conservation Easement or Farmland Deed Restriction in satisfaction of the applicant’s mitigation requirement under this Chapter; and 2) has made a minimum of one bona fide offer for the Farmland Conservation Easement or Farmland Deed Restriction 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 may be confirmed by the Qualifying Conservation Entity.

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O. “Important Farmland” means lands as identified and mapped by the FMMP of the California Department of Conservation, classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance.

P. “In-lieu Fees” means fees that the applicant pays to a Qualifying Conservation Entity.

Q. “Mitigation Land” means land encumbered by a Farmland Conservation Easement or Farmland Deed Restriction for the purpose of mitigating development impacts and permanently protecting farmland from development.

R. “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 21.92.070.

D. “Prime Farmland” means land as identified and mapped by the FMMP of the California Department of Conservation classified as Prime Farmland.

T. “Qualifying Conservation Entity” means a nonprofit 501(c)(3) corporation eligible to hold a conservation easement, hold a deed restriction, 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 Qualifying Conservation Entity must be in compliance with Section 21.92.090.

U. “Statewide, Unique, and Local Farmland” means land 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.

V. “Surface Water Follow-Up Work Plan” means the regional surface water trend monitoring and reporting work plan.

W. “Third-Party Group or Programs” means the third-party that can assist growers in achieving compliance with the Agricultural Order.

X. “Unique Farmland” means land as identified and mapped by the FMMP of the California Department of Conservation classified as Unique Farmland.

Y. “Water Supply” means evidence of a properly permitted onsite well, an easement to such a well, evidence of water from a source not located directly onsite, or surface water rights.

**21.92.040 Mitigation Requirements.**

A. Mitigation shall be required for all activities subject to this Chapter pursuant to Section 21.92.020.

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B. The Base Mitigation Ratio shall be determined by the Important Farmland classification as mapped by the FMMP of the California Department of Conservation not earlier than five years from the date of application submittal.

C. Base Mitigation Ratio for activities outside of Community Areas, Rural Centers, and Affordable Housing Overlays:

1. Prime Farmland shall be mitigated for at a replacement ratio of 2:1.
2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.75:1.

D. Base Mitigation Ratio for activities inside of Community Areas, Rural Centers, and Affordable Housing Overlays:

1. Prime Farmland shall be mitigated for at a replacement ratio of 1.5:1.
2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.25:1.

E. The applicant cannot utilize Mitigation Land or the portion of Mitigation Land that was previously dedicated from a separate project or separate actions by a third party to satisfy their mitigation requirements.

F. The appraisal of the applicable project, 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.

G. Priority Areas for Mitigation. Mitigation Lands within a priority area shall have the following adjustment factors applied, where relevant, to modify the Base Mitigation Ratio:

1. 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;
2. 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;
3. If the Mitigation Land is determined to include a water quality improvement project that addresses agricultural pollutants and provides multi-property or sub-watershed benefits that help meet the discharge requirements intended to comply with the Irrigated Lands Regulatory Program and supported by an approved Third-Party Group or

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Programs as recognized by the State of California Central Coast Regional Water Board, the Base Mitigation Ratio shall be reduced by up to a maximum of .125; and

4. If the Mitigation Land is located in Priority Areas for Mitigation or as identified by the Board of Supervisors, the Base Mitigation Ratio shall be reduced by up to a maximum of .125. Such Priority Areas for Mitigation include both of the following:

a. Areas along the exterior boundary of Community Areas and Rural Centers as identified in the 2010 County of Monterey General Plan or as amended.

b. Areas along the exterior boundary of permanent growth boundaries or permanent agricultural edges, as identified in Board of Supervisor, approved agreements between the County and cities.

**21.92.050 Mitigation Lands.**

A. Mitigation Lands protected by a Farmland Conservation Easement, Farmland Deed Restriction, or by a Qualifying Conservation Entity purchased using In-Lieu Fees shall meet all of the following criteria.

1. Be designated as Farmland and in an Agricultural Zone;
2. Be 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;
6. Be located within the County of Monterey; and
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.*

**21.92.060 Mitigation Process.**

A. All activities subject to mitigation requirements shall follow the mitigation process as set forth in Section.

B. The priority for mitigation shall always be Mitigation Land protected by a Farmland Conservation Easement or Farmland Deed Restriction.

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C. The proposed Mitigation Land for Farmland Conservation Easement or Farmland Deed Restriction shall be within the same General Plan Planning Area as the proposed project.

D. The proposed Mitigation Land shall not 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.

E. If, after at least one Good Faith Effort, the applicant cannot locate a Farmland Conservation Easement or Farmland Deed Restriction pursuant to the criteria in Subsection C or D of this Section, then the applicant shall be required to locate a Farmland Conservation Easement or Farmland Deed Restriction elsewhere in the County as long as the Mitigation Land complies with the provisions set forth under Section 21.92.050.

F. If, after one additional Good Faith Effort, the applicant cannot locate a Farmland Conservation Easement or Farmland Deed Restriction pursuant to the criteria in Subsection E of this Section, then the applicant shall be required to pay In-lieu Fees to a Qualifying Conservation Entity as long as the In-lieu Fees comply with the provisions set forth under Section 21.92.070.B. The applicant may also propose Alternative and Complementary Mitigation as long as the proposed mitigation complies with the provisions set forth under Section 21.92.070.C.

**21.92.070 Methods of Mitigation.**

A. Farmland Conservation Easements or Farmland Deed Restrictions: The following minimum requirements shall be incorporated into all Farmland Conservation Easements or Farmland Deed Restrictions to satisfy the requirements of this Chapter. This shall include the conveyance of land within an agricultural land mitigation bank that the Qualifying Conservation Entity manages.

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

2. It shall be the applicant's sole responsibility to obtain the required Farmland Conservation Easement or Farmland Deed Restriction, and to ensure they are held by a Qualifying Conservation Entity, pursuant to Section 21.92.090.

3. The Farmland Conservation Easement or Farmland Deed Restriction shall include, at a minimum, the following terms:

a. The Farmland Conservation Easement or Farmland Deed Restriction on Mitigation Land shall run with the land, be in perpetuity, and be recorded; unless the County, Qualifying Conservation Entity, and landowner collectively agree to move or transfer the Farmland Conservation Easement or Farmland Deed Restriction;



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b. The Farmland Conservation Easement or Farmland Deed Restriction shall protect the Water Supply on the Mitigation Land;

c. The Farmland Conservation Easement or Farmland Deed Restriction shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land;

d. The Farmland Conservation Easement or Farmland Deed Restriction shall prohibit the sale, lease, or conveyance of any interest in the Mitigation Land except for fully compatible agricultural uses;

e. The Farmland Conservation Easement or Farmland Deed Restriction shall name and authorize the Qualifying Conservation Entity to enforce all terms of the Farmland Conservation Easement or Farmland Deed Restriction; and

f. The applicant, if applicable, shall pay the one-time price to purchase the Farmland Conservation Easement or Farmland Deed Restriction 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 or Farmland Deed Restriction.

4. The Qualifying Conservation Entity or the applicant shall provide documentation to the Appropriate Authority that the Farmland Conservation Easement or Farmland Deed Restriction is consistent with this Chapter, and that the terms are acceptable to the Qualifying Conservation Entity.

B. 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 value of the conservation easement 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 a Farmland Conservation Easement, including the cost to administer, monitor, and enforce a Farmland Conservation Easement and the payment of the estimated transaction costs associated with acquiring a Farmland Conservation Easement.

3. The In-lieu Fees shall be paid to the Qualifying Conservation Entity, and the applicant or Qualifying Conservation Entity shall provide evidence of the payment of the In-lieu Fees to the Appropriate Authority.

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4. 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.

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

C. Alternative and Complementary Mitigation: The applicant may propose Alternative and Complementary Mitigation.

1. The mitigation value of the Alternative and Complementary Mitigation shall be determined by using the appraised fair market value of acquiring a conservation easement on the land being converted. The value of the conservation easement 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. Means for achieving Alternative and Complementary Mitigation measures are:

a. Projects that implement a Groundwater Sustainability Plan to comply with the Sustainable Groundwater Management Act;

b. Water quality improvement projects that help implement an approved Surface Water Follow-Up Work Plan intended to help irrigated agriculture growers in the County of Monterey comply with the discharge requirements of the Agricultural Order and supported by an approved Third-Party Group or Programs as recognized by the State of California Central Coast Regional Water Board;

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

d. Other projects that fulfill the purpose of this Chapter, as specified in Section 21.92.010, and demonstrate they will protect, preserve, or benefit Farmland and the agricultural industry in the County.

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

a. 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. Any Alternative and Complementary Mitigation exceeding 5% of the total acreage or total value of the required mitigation shall provide documentation to the Agricultural Advisory Committee and Appropriate Authority detailing how the proposed Alternative and Complementary Mitigation is as protective as a Farmland Conservation Easement of a similar acreage or value.

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b. The proposed Alternative and Complimentary Mitigation shall promote the long-term protection, conservation, and enhancement of productive or potentially productive Farmland in the County.

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

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

**21.92.080 Timing of Mitigation.**

A. The timing of mitigation for all applicable projects shall meet the requirements of this Section.

B. Projects that change the land use designation of agriculturally designated land to non-agriculturally designated land shall provide the Farmland Conservation Easement, Farmland Deed Restriction, payment of In-lieu Fees, or Alternative and Complementary Mitigation within twenty-four months of the approval of the entitlement from the Appropriate Authority or prior to the issuance of the occupancy certificate, whichever occurs first.

C. Projects that require a discretionary permit shall provide the Farmland Conservation Easement, Farmland Deed Restriction, 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.

**21.92.090 Required Conditions on the Applicable Mitigation Entitlement.**

A. 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 deed restrictions for the purposes of conserving and maintaining lands in agricultural production;

2. If the entity currently holds agricultural land for conservation purposes in the County of Monterey and the duration the entity has held agricultural land for conservation purposes; and

3. Demonstrate that they have an annual monitoring and reporting program.

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B. The Appropriate Authority shall ensure that if a Qualifying Conservation Entity receives a Farmland Conservation Easement, Farmland Deed Restriction, or In-lieu Fees for mitigation purposes under this Chapter, the Qualifying Conservation Entity shall conform to the following requirements.

1. 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, Farmland Deed Restriction, and administering, monitoring, and enforcing their long-term use for agricultural mitigation purposes.

2. Enforcement and Monitoring. The Qualifying Conservation Entity shall monitor all Farmland Conservation Easements, Farmland Deed Restrictions, or In-lieu Fees 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 Deed Restriction.

3. 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 Deed Restrictions maintained by the Qualifying Conservation Entity in the County of Monterey.

4. Termination. If a Qualifying Conservation Entity intends or reasonably expects to cease operations, it shall assign any Farmland Conservation Easements, Farmland Deed Restrictions, or In-lieu Fees resulting from this Chapter to another Qualifying Conservation Entity as acceptable and approved by the County of Monterey.

**21.92.100 Farmland Mitigation Plan.**

A. The applicant shall submit a Farmland Mitigation Plan to the Appropriate Authority for projects subject to this Chapter prior to the County deeming the application complete.

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

1. Evidence of an agreement between the Qualifying Conservation Entity and the applicant as required pursuant to Sections 21.92.090, if applicable;

2. Map and calculate the applicable project and proposed mitigation acreage of the following: Prime Farmland and Statewide, Unique, and Local Farmland;

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3. The type of mitigation that will be provided in order to mitigate for conversion of Farmland;
4. The acreage that would be preserved through mitigation and/or the amount of in-lieu fees that would be paid;
5. The location of the Mitigation Land, if applicable;
6. The proposed Farmland Conservation Easement or Farmland Deed Restriction, if applicable; and
7. That the proposed Mitigation Land adheres to the mitigation requirements pursuant to Section 21.92.050, if applicable.

**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 this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Chair, Luis A. Alejo  
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

Kelly L. Donlon  
Assistant County Counsel

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