

**Planning Commission**  
**November 8, 2023**

**REF220044 – Regulations to Mitigate for Development on Farmland**

Public Hearing to consider a recommendation to the Board of Supervisors adopt an ordinance amending Title 21 (Non-coastal Zoning Ordinance) to establish a new Chapter 21.92 for Mitigation Requirements for Development on Farmland in the inland areas of unincorporated Monterey County.

**Project Location:** Countywide (Non-Coastal (Inland) Areas)

**Proposed CEQA action:** Find adoption of the ordinance Categorical Exempt from CEQA pursuant to CEQA Guidelines Section 15308. Consider and find that the ordinance is consistent within the scope of the previously certified Final Environmental Impact Report (FEIR) for the 2010 General Plan, pursuant to CEQA Guidelines Section 15162.

RECOMMENDATION:

It is recommended that the Planning Commission adopt a resolution recommending that the Board of Supervisors:

- a. Find adoption of the ordinance Categorical Exempt pursuant to CEQA Guidelines Section 15308 and consider and find adoption of the ordinance is consistent with the scope of the previously certified FEIR pursuant to CEQA Guidelines Section 15162; and
- b. Adopt an ordinance (Attachment 1 to Exhibit A) amending Title 21 (non-coastal zoning ordinance) of the Monterey County Code to add a new Chapter 21.92 for Mitigation Requirements for Development on Farmland in the inland areas of unincorporated Monterey County

PROJECT INFORMATION:

Planning File Number: REF220044

Project Location: Countywide (Non-Coastal (Inland) Areas)

Plan Area: Cachagua Area Plan, Carmel Valley Master Plan, Central Salinas Valley Area Plan, Greater Monterey Peninsula Area Plan, Greater Salinas Area Plan, North County Area Plan, South County Area Plan, and Toro Area Plan.

SUMMARY:

Implementation of the 2010 General Plan includes developing an Agricultural Conservation Mitigation Program (Program) to implement Agricultural Element Policy AG-1.12) to mitigate the loss of agricultural land to non-agricultural use (see Exhibit E). Development of these regulations to mitigate for development on farmland is a critical component of implementing the Program. After numerous meetings/workshops with the public and targeted stakeholders, Planning Commission (Commission), Ad Hoc Subcommittee of the Agricultural Advisory Committee (Subcommittee), and the Agricultural Advisory Committee (AAC), the draft ordinance has been refined and is being presented for final consideration and recommendation by the Commission.

Staff seeks the Commission's recommendation of the final draft ordinance to the Board of Supervisors. The ordinance establishes regulations to mitigate for development on farmland by

adding a chapter to the County's inland zoning ordinance. Staff has prepared a draft resolution (Exhibit A) to memorialize the Commission's recommendation to the Board of Supervisors. The draft ordinance is attached to the draft Commission resolution (Attachment 1 to Exhibit A).

#### DISCUSSION:

To read the full discussion and background for the policy, please refer to the Detailed Discussion included as Exhibit B.

Development of the draft ordinance began in earnest in May 2022, with a workshop with the AAC. Staff held a workshop with the Commission in October 2022, where the Commission directed staff to work with the AAC via its Subcommittee to develop the draft ordinance that is being presented to the Commission today. Staff held three public meetings in July 2022, two of which offered translation services to solicit broad public input. Staff also met with local land trusts, agricultural industry associations, the building industry association, community groups, water quality/quantity organizations in Monterey County, and state and federal agricultural and natural resource agencies.

In addition to developing these proposed regulations to mitigate the loss of agricultural land due to development in the unincorporated inland area of the County, another important component of the Program envisioned by AG-1.12 is for the County to work in consultation with the cities to mitigate the loss of Important Farmland resulting from annexation. AG-1.12 further notes that until such time as the program [related to annexations] has been established, the County shall consult and cooperate with the cities so that projects shall mitigate the loss of Important Farmland on an individual basis as much as is feasible as determined by the Board of Supervisors. To this end, the County has agreements with four of the five Salinas Valley cities for working cooperatively on issues of planning, growth, and development (including agricultural mitigation): City of Salinas (2010; Addendum 2019); City of Greenfield (2013); City of Gonzales (2014); City of Soledad (2016). Staff held multiple meetings with the Salinas Valley Cities and Local Agency Formation Commission (LAFCO) as it developed its draft ordinance. Staff continues to meet with the Salinas Valley Cities and LAFCO to discuss coordination for a potential Salinas Valley-wide agricultural mitigation program. This discussion is occurring on a parallel track to the County's draft ordinance as, ultimately, annexations and sphere of influence changes are governed through the LAFCO process and regulated by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Staff recommends that the Planning Commission make a recommendation that the Board of Supervisors adopt the ordinance.

#### OTHER AGENCY INVOLVEMENT

Housing and Community Development Department staff are working in collaboration with the Agricultural Commissioner's Office to develop the ordinance and with the Office of County Counsel to review as to form. The Agricultural Advisory Committee considered and recommended the draft ordinance at its September 28, 2023, meeting. The Agricultural Advisory Committee will receive an informational update from staff at its November 16, 2023, meeting (Exhibit C).

Prepared by: Taylor Price, Associate Planner, 831-784-5730  
Reviewed by: Nadia Garcia, Agricultural Resource and Policy Manager  
Approved by: Melanie Beretti, AICP, Acting Chief of Planning, 831-755-5285  
Approved by: Craig Spencer, Acting HCD Director

#### EXHIBITS

- Exhibit A Draft Resolution, including:  
Attachment 1 - Regulations to Mitigate for Development on Farmland Ordinance
- Exhibit B Detailed Discussion
- Exhibit C Informational Memorandum to the Agricultural Advisory Committee for the meeting on November 16, 2023
- Exhibit D Public Comment Received after September 28, 2023, Agricultural Advisory Committee
- Exhibit E Policy AG-1.12

cc: Front Counter Copy; Planning Commission; REF220044 Public Distribution List; Nadia Garcia, Agricultural Resource and Policy Manager, Office of Agricultural Commissioner; Juan Hidalgo, Agricultural Commissioner, Office of Agricultural Commissioner; Darren McBain, Principal Analyst, Local Agency Formation Commission of Monterey County; Kate McKenna, AICP, Executive Officer, Local Agency Formation Commission of Monterey County; Lisa Brinton, Community Development Director, City of Salinas; Megan Hunter, City Manager, City of Soledad; Taven M. Kinison Brown, Community Development Director, City of Gonzales; Paul Mugan, Community Development Director, City of Greenfield; Doreen Liberto, Community Development Director, City of King.

**EXHIBIT A  
DRAFT RESOLUTION**

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

In the matter of the application of:

**REGULATIONS TO MITIGATE FOR DEVELOPMENT ON FARMLAND (REF220044)  
RESOLUTION NO.**

Resolution by the Monterey County Planning Commission recommending that the Monterey County Board of Supervisors:

- a) Find adoption of the ordinance categorically exempt from CEQA pursuant to CEQA Guidelines Section 15308 and consider and find adoption of the ordinance consistent within the scope of the previously certified Final Environmental Impact Report (FEIR) for the 2010 General Plan (SCH #2007121001); and
- b) Adopt an ordinance amending Title 21 of Monterey County Code (Inland) to add Chapter 21.92 – *Regulations to Mitigate for Development on Farmland (Attachment 1)*.

**The proposed ordinance adding regulations to the Monterey County Code establishing regulations to Mitigate for Development on Farmland came before the Planning Commission at a duly noticed public hearing on November 8, 2023. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony and other evidence presented, the Planning Commission forwards the following recommendation to the Board of Supervisors with reference to the following facts:**

**I. RECITALS**

1. 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.

2. The 2010 General Plan Agricultural Element, policy AG-1.12, directs the County to prepare, adopt, and implement a policy that requires projects involving a change of land use

designation resulting in the loss of Important Farmland to mitigate the loss of acreage. This ordinance implements the direction of policy AG-1.12 of the 2010 General Plan by providing for the establishment of regulations to require mitigation for the loss of Important Farmland to development.

3. 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 policy AG-1.12. This ordinance implements the General Plan by establishing regulations to Mitigate for Development on Farmland. Pursuant to Section 15162 of the Guidelines for Implementation of the California Environmental Quality Act, no subsequent environmental review is required for this ordinance because the effects of establishing regulations to Mitigate for Development on Farmland 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.

4. This ordinance is Categorically Exempt from the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15308, as this implements a 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 implements protections for farmland and requires mitigation when there are environmental impacts to farmland in the County and establishes a program to minimize future impacts to the environment, which minimizes future alterations in land use and disturbances to agricultural resources.

5. On October 26, 2022, the Planning Commission (Commission) held a workshop to review policy options and review public feedback to date. The Commission received the presentation, provided input to staff, and recommended that staff return to the Agricultural Advisory Committee (AAC) to refine the policy options further and return to the Commission with a draft ordinance for consideration.

6. On January 26, 2023, the AAC reestablished its existing Agricultural Advisory Committee Ad Hoc Subcommittee (Subcommittee) with additional members and directed staff to work with the Subcommittee to work with staff to refine the draft ordinance.

5. On August 14, 2023, the Subcommittee recommended that staff bring the revised draft ordinance forward to the AAC.

6. On September 28, 2023, the AAC recommended that staff bring forward the revised draft ordinance to the Commission.

7. State law requires the Commission to hold a noticed public hearing on proposed amendments to zoning ordinances and to make a written recommendation to the Board of Supervisors.

8. On November 8, 2023, the Commission held a duly noticed public hearing to consider making a recommendation to the Board of Supervisors on the proposed ordinance (**Attachment 1**). At least 10 days before the hearing date, notices of the hearing before the Commission were published in the Monterey County Weekly.

## II. DECISION

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission hereby recommends that the Board of Supervisors:

- a) Find adoption of the ordinance categorically exempt from CEQA pursuant to CEQA Guidelines Section 15308 and consider and find adoption of the ordinance consistent within the scope of the previously certified Final Environmental Impact Report (FEIR) for the 2010 General Plan (SCH #2007121001); and
- b) Adopt an ordinance amending Title 21 of Monterey County Code (Inland) to add Chapter 21.92 – *Regulations to Mitigate for Development on Farmland* (**Attachment 1**).

PASSED AND ADOPTED on this 8<sup>th</sup> day of November 2023, by the following vote:

AYES:

NOES:

ABSENT:

By: \_\_\_\_\_  
Craig Spencer, Secretary

## Exhibit A - Attachment 1

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

### AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADDING CHAPTER 21.92 TO THE MONTEREY COUNTY CODE RELATING TO REGULATIONS TO MITIGATE 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 required mitigation quantities 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).

## **Exhibit A - Attachment 1**

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.

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.



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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 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**

#### **REGULATIONS TO MITIGATE FOR DEVELOPMENT ON FARMLAND**

## **Exhibit A - Attachment 1**

### **Sections:**

- 21.92.010 Purpose.**
- 21.92.020 Applicability.**
- 21.92.030 Definitions.**
- 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 regulations 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 or if there is a variance where the maximum building site coverage is exceeded.

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 requiring an Administrative Permit or Use Permit consistent with the underlying zoning;

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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;
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; and
10. Uses identified in the 2010 County of Monterey General Plan Chapter 9.J Agricultural and Winery Corridor Plan as a use allowed or permitted, such as a restaurant, delicatessen, or inn.

### **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’s Waste Discharge Requirements for discharges from Irrigated Lands, as may be amended. The Agricultural Order applies to landowners and operators of commercial irrigated land used for commercial crop production.

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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 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 for classifying farmland quality.

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 have the Qualifying Conservation Entity hold the Farmland Conservation Easement or Farmland Deed

## **Exhibit A - Attachment 1**

Restriction on the Mitigation Land 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.

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.

S. "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 Follow-Up Surface Receiving Water Implementation monitoring and reporting work plan that meets the requirement of the Agricultural Order and Monitoring and Reporting Program.

W. "Third-Party Group or Programs" means a Water Board approved third-party program 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.

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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.

B. The Base Mitigation Ratio shall be determined by the Important Farmland classification as mapped by the FMMP of the California Department of Conservation at least five years before 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. 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 under a 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;

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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 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 substantially equivalent FMMP Important Farmland 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 under a Williamson Act contract, per Government Code section 51200 et seq.

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### **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.
- C. 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.
- D. 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.
- E. 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.
- F. 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 D or E 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.
- G. 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 F 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.

### **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.



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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;

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:

## **Exhibit A - Attachment 1**

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. The appraisal of the In-lieu Fees shall be completed within 90 days from the date of the payment of the In-lieu Fees to the Qualifying Conservation Entity. The appraisal shall be considered by the Agricultural Advisory Committee, and the Agricultural Advisory Committee may recommend that the applicant obtain a second appraisal and return to the Agricultural Advisory Committee for consideration of the second appraisal.

3. 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.

4. 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.

5. 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.

6. 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. The appraisal of the Alternative and Complementary Mitigation shall be completed within 90 days from the proposed start date of the Alternative and Complementary Mitigation. The appraisal shall be considered by the Agricultural

## **Exhibit A - Attachment 1**

Advisory Committee, and the Agricultural Advisory Committee may recommend that the applicant obtain a second appraisal and return to the Agricultural Advisory Committee for consideration of the second appraisal.

3. All of the following projects contain the means for achieving Alternative and Complementary Mitigation measures:
  - 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.
4. 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.
  - 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.

## **Exhibit A - Attachment 1**

5. 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 be conditioned to provide the mitigation within 24 months of the approval of the zone change or prior to commencement of use, whichever occurs first. The change in land use designation shall not become operative unless the applicant submits evidence to the County that the mitigation has been completed. If the applicant does not submit evidence that the mitigation has been completed within twenty-four months of the approval of the zoning change, the change in land use designation will revert to the prior land use designation.

C. Projects that require a Use Permit or Administrative Permit or a variance 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.

D. If a project is required to mitigate pursuant to the criteria in Subsection B and C, the applicant will be required to comply with whichever timing requirements occur 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.

## **Exhibit A - Attachment 1**

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 when the applicant submits an application to the County. The Farmland Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this Section:

1. Map and calculate the applicable project acreage of the following: Prime Farmland and Statewide, Unique, and Local Farmland; and
2. The proposed type of mitigation that will be provided in order to mitigate for conversion of Farmland;

## Exhibit A - Attachment 1

B. The applicant shall submit an updated Farmland Mitigation Plan before the change in land use designation, Use Permit, Administrative Permit, or variance is considered by the Appropriate Authority. 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. The acreage that would be preserved through mitigation, the amount of in-lieu fees that would be paid, or the proposed alternative and complementary mitigation;
3. The location of the Mitigation Land, if applicable; and
4. The proposed Farmland Conservation Easement or Farmland Deed Restriction, 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 :

**Exhibit A - Attachment 1**

VALERIE RALPH  
Clerk of the Board

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

APPROVED AS TO FORM:

Kelly L. Donlon  
Assistant County Counsel

## **Exhibit B**

### **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. The agricultural industry of Monterey County is a significant contributor of diverse agricultural products, which allows Monterey County to provide a relative abundance of nutrition for export and Monterey County residents. Agricultural land provides important climate and environmental benefits and facilitates groundwater recharge and water quality improvement projects.

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 Monterey 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 Important 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.

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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.



## **Exhibit B**

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 identify 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 the Sustainable Agricultural Lands Conservation Program (SALC) provided. 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 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. However, not all feedback received to date has risen to a level for inclusion in the draft ordinance.

#### 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 ordinance 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

## **Exhibit B**

consistent standards. These discussions are occurring parallel to the County's draft ordinance as the annexation and sphere of influence amendment process are separate legal processes regulated by the Cortese–Knox–Hertzberg Local Government Reorganization Act of 2000.

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 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 ordinance could protect farmland from development while limiting the impact on 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 and 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 the draft ordinance.

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

## **Exhibit B**

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

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

January 26, 2023 – AAC – Staff presented the Commission’s recommendations and presented the draft ordinance.

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

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

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

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

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

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

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

September 28, 2023 – AAC – Staff presented the draft ordinance to the AAC, and the AAC recommended that Staff bring forward a revised draft ordinance to the Commission for consideration.

November 16, 2023 – AAC – Staff will return to the AAC to provide an informational update on the suggested revisions made by the AAC on September 28, 2023.

### **POLICY DISCUSSION**

The draft ordinances establish the mitigation requirements for converting agricultural land (Farmland, Permanent Grazing, and Rural Grazing) to non-agricultural use for two types of activities: 1) the redesignation of land from an agricultural designation to any other designation; and 2) projects requiring use or administrative permits where agricultural land is converted to non-agricultural use, and projects that require a variance where the maximum building site coverage is exceeded. Throughout the outreach process, staff heard that there are situations

## Exhibit B

where exemptions for specific types of development may be appropriate. The 2010 General Plan required that staff exempt Inclusionary (Chapter 18.40) and Affordable Housing (Section 21.06.005) from the mitigation requirements in the draft ordinance. Other exemptions added during the outreach and Subcommittee process were exemptions for Agricultural Employee Housing (Section 21.06.014), Agricultural Processing Plant (Section 21.06.020), Agricultural Support Service (Section 21.06.030), and groundwater quantity and water quality improvement projects.

The draft ordinance establishes mitigation ratios that are tiered based on the type of farmland being converted. The type of farmland categories are based on the State of California Department of Conservation Farmland Mapping and Monitoring Program Important Farmland categories. Other models were considered, and it was determined that the comprehensiveness and consistency of this model afforded staff the ability to utilize a state-maintained system widely utilized throughout the State for agricultural mitigation ordinances. The State's Farmland Mapping and Monitoring Program has four categories of farmland: Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance (Monterey County currently does not have any Farmland of Local Importance). The draft ordinance combined these four categories into two categories: Prime Farmland, which encompasses Prime Farmland, and Statewide, Unique, and Local Farmland, which encompasses Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. Some concerns were expressed during the outreach process and by some members of the Subcommittee that Farmland of Statewide Importance was similar enough to Prime Farmland that it should be in the same category as Prime Farmland. The Subcommittee, at its August 14<sup>th</sup> meeting, voted 5-1 to recommend that Farmland of Statewide Importance not be in the same category as Prime Farmland. The AAC unanimously supported the draft ordinance with Farmland of Statewide Importance in a different category from Prime Farmland.

The draft ordinance's mitigation ratios discussion and concern at the subcommittee regarding the mitigation ratios as they were presented in the draft ordinance, with two Subcommittee members advocating for higher base mitigation ratios. The Subcommittee had significant discussions around the mitigation ratios, and on August 14<sup>th</sup>, the Subcommittee voted 4-2 to accept the mitigation ratios as presented in the draft ordinance (see above). The AAC unanimously supported the draft ordinance with the proposed base mitigation ratios.

Table 1 illustrates the base mitigation ratio depending on the location and the farmland classification category of the farmland being converted.

Table 1

<b>Location:</b>	<b>Farmland Category:</b>	<b>Base Mitigation Ratio:</b>
Outside of Community Areas, Rural Centers, and Affordable Housing Overlays	Prime	2:1
	Statewide, Unique, Local	1.75:1

## Exhibit B

Inside of Community Areas, Rural Centers, and Affordable Housing Overlays	Prime	1.5:1
	Statewide, Unique, Local	1.25:1

The draft ordinance establishes minimum requirements for land being protected as mitigation for development (mitigation land), including that it be located within the County, be designated as substantially equivalent farmland classification category or better, and be in an agricultural zone. Additional requirements are that the land must have a water supply (Section 21.92.030.Y of the draft ordinance) and that it be of adequate size, configuration, and location to be viable for continued agricultural production. Staff heard throughout the outreach process that ensuring that the parcel has a water supply for the agricultural operation is critical for all conservation easements and deed restrictions. Staff heard from some individuals during the outreach process that the mitigation land have a sustainable water supply to support the agricultural operation in perpetuity. Staff explored this concept and does not recommend inclusion of language requiring evidence of sustainable (or long-term) water supply for proposed mitigation lands at this time. Instead, staff included a definition of water supply in the draft regulations to ensure language is included in the conservation easement or deed restriction that protects the existing water supply on the property. This requirement similar to other jurisdictions with agricultural conservation mitigation regulations.

The draft ordinance prioritizes mitigation land that is protected in strategic locations to prevent hopscotch development and sprawl as well as on high-value multi-benefit sites in which development could be particularly detrimental to groundwater recharge and water quality. The draft ordinance allows applicants to reduce their required base mitigation ratio if they obtain a conservation easement or deed restriction on mitigation land in an area identified as a priority area for mitigation. There were four specific priority areas identified: high potential groundwater recharge areas, water quality improvement projects, along the exterior boundary of CARCAHOs, and the exterior boundary of permeant growth boundaries and permeant agricultural edges as identified in Board of Supervisors approved City and County Memorandum of Agreements and Memorandum of Understandings. The maximum reduction to applicants' mitigation ratio for each category is up to a maximum of 0.125 off of their base mitigation ratio.

Protecting farmland with a conservation easement or deed restriction is recognized as a best practice, so the draft ordinance requires that applicants make two good faith efforts to protect land with one of these options. The draft ordinance recognizes that, in some cases, it may not be feasible to protect farmland with a conservation easement or deed restriction. To ensure flexibility, after two good faith efforts, applicants can pay in-lieu fees based on the full appraised fair market value to satisfy their mitigation requirements. In addition, applicants are allowed to use alternative mitigation to satisfy some of their mitigation requirements. The draft ordinance requires the AAC to review and recommend the proposed mitigation to ensure that all in-lieu fees and alternative mitigation are evaluated.

## **Exhibit B**

The draft ordinance includes minimum requirements for all three categories of mitigation that are allowable: easement or deed restriction, in-lieu fees, and alternative and complementary mitigation. Easements or deed restrictions have requirements for minimum terms that must be in the easement or deed restriction, minimum requirements for the land being protected with the easement or deed restriction, and a requirement that the Qualifying Conservation Entity hold the easement or deed restriction.

The draft ordinance requires that the Qualifying Conservation Entity be a non-profit that is operating locally, their primary purpose is conserving and maintaining agricultural land in production, and that they have an annual monitoring and reporting program. The draft ordinance also requires that applicants pay in-lieu fees to the Qualifying Conservation Entity, which enables the Qualifying Conservation Entity to locate and protect agricultural land with a conservation easement or deed restriction.

Staff heard concerns during public outreach and from members of the AAC that if any Qualifying Conservation Entity is unwilling to hold a conservation easement or deed restriction, the County of Monterey should be willing to hold the conservation easement or deed restriction as a last resort. Staff discussed this option internally and when meeting with other jurisdictions. For a jurisdiction to successfully hold the conservation easement and deed restriction, there needs to be a plan in place for the jurisdiction to monitor and ensure compliance with the conservation easements or deed restriction requirements. Other jurisdictions that hold agricultural conservation easements/deed restrictions found this very challenging. In Monterey County there are multiple land trusts working actively to protect agricultural lands and open space that are well qualified to hold conservation easements or deed restrictions. Staff does not recommend the County hold agricultural conservation easements or deed restrictions as County staff do not have the requisite knowledge, time and resources to establish a successful monitoring and compliance program of this nature.

The draft ordinance requires that for applicants paying in-lieu fees, the development rights of the land being converted must be appraised at fair market value within 90 days of the payment of the fees, that the fee is paid to the Qualifying Conservation Entity, and that the AAC must review and recommend all in-lieu fees. There was significant discussion about the importance of ensuring the appraisal was appropriate and accurate. Therefore, staff added language to the draft regulations to ensure that the AAC reviews all appraisals that are a part of proposed in-lieu fees or alternative and complementary mitigation and can recommend that the applicant obtain another appraisal if the original appraisal seems inappropriate. The draft ordinance allows alternative and complementary mitigation up to 5% of the applicant's required mitigation amount; if higher than 5%, the applicant must provide additional proof to the AAC that the alternative and complementary mitigation is equally as protective as a conservation easements or deed restriction. The AAC must review and recommend all alternative and complementary mitigation.

## **Exhibit B**

The draft ordinance requires that for projects that change land use designation, the mitigation must occur within twenty-four months of approval of the zoning change or before the commencement of use, whichever occurs first. For projects that are required to mitigate because of an administrative permit, use permit, and/or variance, the mitigation must occur prior to or concurrent with the recordation of a parcel map or prior to the issuance of the first construction permit, whichever occurs first. If a project requires both a land use designation change and must obtain an administrative permit, use permit, and/or variance, the applicant must comply with the mitigation requirement that occurs first.

The draft ordinance establishes a Farmland Mitigation Plan, which states the minimum requirements that applicants must provide to the County upon application submittal and before the application is entitled. This Farmland Mitigation Plan (Section 21.92.100) was developed to ensure that applicants know what is required of them to meet their mitigation requirements and that County staff have sufficient information from the applicant to ensure that all requirements of the draft ordinance are satisfied.

### **REVISIONS TO THE DRAFT ORDINANCE REFLECTING AAC'S RECOMMENDATIONS AND SUBSEQUENT INTERNAL/LEGAL REVIEW**

This section details changes made to the draft ordinance considered at the Agricultural Advisory Committee meeting on September 28, 2023, reflecting changes recommended by the AAC and additional minor modifications deemed necessary upon staff and County Counsel subsequent review.

- Section 21.92.020.B.2 – This section was clarified based on an internal review to clearly state that activities requiring variances for maximum building site coverage are also subject to mitigation requirements.
- Section 21.92.020.C.2 – This section was clarified based on an internal review to state the specific types of permits exempt from mitigation requirements in the draft ordinance.
- Section 21.92.020.C.10 – This section was added after an internal review and upon recommendation from the Agricultural Advisory Committee for consistency with Chapter 9.J (Agricultural and Winery Corridor) of the 2010 General Plan.
- Section 21.92.030.J – This section was clarified based on an internal review to clearly state the California Department of Conservation's non-regulatory program's name.
- Section 21.92.030.N – This section was revised based on an internal review to clearly state that applicants are not required to work with a Qualifying Conservation Entity to find the mitigation land, pursuant to the Mitigation Process section of the draft ordinance (Section 21.92.060), applicants are only required to have the Qualifying Conservation Entity hold the mitigation land.
- Section 21.92.040.B – This section was revised after an internal review to clarify when the Important Farmland classification is used to determine the applicant's mitigation tier.
- Section 21.92.050.A.4 – This section was revised after an internal review to give applicants slightly more flexibility with the Important Farmland category of their mitigation land.

## **Exhibit B**

- Section 21.92.050.A.7 – This section was revised after an internal review to describe lands under Williamson Act contracts more accurately.
- Section 21.92.060.C – This was moved to clarify that applicants can propose Alternative and Complementary mitigation at any stage of the mitigation process.
- Section 21.92.070.B.2 – This section was revised after feedback from the Agricultural Advisory Committee to clearly state the requirements for appraisals and require that the AAC review appraisals.
- Section 21.92.070.C.2 - This section was revised after feedback from the Agricultural Advisory Committee to clearly state the requirements for appraisals and require that the AAC review appraisals.
- Section 21.92.080 – This section had minor revisions to the language after an internal review to clarify the specific mitigation timing requirements and ensure the requirements mirror current County processes and practices.
- Section 21.92.100 – This section had minor revisions to the language after an internal review to clarify what materials are required of applicants at what stage of the application and entitlement process.



# Exhibit C

## COUNTY OF MONTEREY HOUSING AND COMMUNITY DEVELOPMENT Craig Spencer, Acting Director



HOUSING, PLANNING, BUILDING, ENGINEERING, ENVIRONMENTAL SERVICES

1441 Schilling Place, South 2nd Floor  
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### MEMORANDUM

**Scheduled Date:** October 26, 2023

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

**From:** Taylor Price, Associate Planner

**Subject:** **Agricultural Land Conservation Mitigation Program – Farmland Mitigation Ordinance [REF220044]** – Receive an informational update on the draft regulations

**cc:** Melanie Beretti, AICP, Acting Chief of Planning; REF220044 Public Distribution List

#### ACTION:

Receive an informational update on the revised draft regulations based on feedback received during the AAC on September 28<sup>th</sup>.

#### SUMMARY:

On September 28, 2023, the AAC recommended that staff update the draft ordinance to add language regarding timing and AAC review of appraisals for in-lieu fees and consider including a provision that the County may also hold a conservation easement or deed restriction. The AAC further requested that staff provide clarity in the ordinance regarding agricultural operation-serving solar (an Accessory Structure (Non-habitable) being exempt from this regulation if needed). The ACC further recommended that staff bring the revised draft regulations to the Planning Commission for its consideration. The AAC also requested that staff return to the AAC at their October 26<sup>th</sup> meeting to provide an informational update on the items requested by the AAC at their September 28<sup>th</sup> meeting.

#### *Appraisals*

Once the in-lieu fee is paid to the Qualifying Conservation Entity (QCE), it continues to lose value until the QCE purchases farmland with the fee and protects it with a conservation easement or deed restriction. Therefore, staff added language to Section 21.92.070.B and 21.92.070.C that would require the appraisal to be completed within 90 days of the payment of the fees to the QCE or within 90 days of the proposed start date of the Alternative and Complementary Mitigation. Staff also added language that upon AAC review of the appraisal, the AAC may recommend that staff require the applicant to obtain a second appraisal. Then, the AAC would consider the new appraisal and make a recommendation to staff.

#### *County of Monterey Holding Conservation Easements or Deed Restrictions*

In certain circumstances, there may be no QCE willing to hold the conservation easement or deed restriction. When this occurs, the AAC recommended that staff consider adding language

# Exhibit C

that would allow the County to hold the conservation easement or deed restriction in these cases. Staff discussed this internally and reviewed notes from prior meetings with jurisdictions with agricultural conservation mitigation regulations. To successfully have the County hold mitigation land in a conservation easement or deed restriction, the County would need to be the entity that monitors and ensures compliance with the conservation easement or deed restriction language. Other jurisdictions found this compliance monitoring difficult, and there are concerns that Housing and Community Development staff did not have the requisite knowledge to successfully monitor and ensure compliance with the conservation easement or deed restriction. Staff did not revise the draft ordinance to allow the County to be an easement or deed holder; however, staff will raise the AAC's recommendation as a matter for policy consideration by the Planning Commission.

## ***Solar Panels and Solar Energy***

Staff heard concerns expressed at the AAC that the draft regulations could prohibit applicants from installing solar panels to power an agricultural operation. If applicants stay within the 5% maximum building site coverage on their Farmland, Rural Grazing, or Permeant Grazing Zoning District, meet the Accessory Structures (Non-habitable) requirements in their specific Zoning District in Title 21, and the primary purpose of the solar panels is to support the agricultural operations at the site, then the solar project would be exempt from the draft regulations (mitigation per the draft regulations would not be required). Applicants could feed power back into the grid if the primary purpose of the solar panels is supporting the onsite agricultural operations. If an applicant wanted to provide power to neighboring parcels that the applicant also owns, that would be allowable if the applicant's solar project also meets the above-mentioned requirements.

Finally, if an applicant wanted to provide power to neighboring parcels but did not own the neighboring parcels, this would not be allowable under existing Title 21 regulations for Farmland, Rural Grazing, or Permeant Grazing, as the primary purpose of the solar panels should be the support of the onsite agricultural operation. In this circumstance, the portion of the project that exceeds the power needs of the applicant's onsite operation would be subject to the draft regulations and required to mitigate the loss of agricultural land.

Further, current Williamson Act restrictions would allow applicants to place solar panels on their property if the solar panel's primary purpose was in support of the agricultural operation onsite and the solar panels are sited in an area least impactful to the agricultural operations. Staff has attached Board of Supervisors Resolution Number 01-486, which details the requirements for an accessory use to be considered compatible with the Williamson Act contract.

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

Receive an information update on the draft regulations.

## **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, Acting Chief of Planning, at (831) 755-5285 or [berettim@co.monterey.ca.us](mailto:berettim@co.monterey.ca.us).

## **NEXT STEPS:**

Staff anticipates presenting the draft regulations to the Planning Commission at their November 8<sup>th</sup> meeting. Based on Planning Commission recommendation, staff anticipates bringing the regulations forward to the Board of Supervisors in winter 2024.

# Exhibit C

**ATTACHMENTS:**

Attachment A – Board of Supervisors Resolution Number 01-486

# Exhibit C - Attachment A

## *Before the Board of Supervisors in and for the County of Monterey, State of California*

Resolution No. 01-486 -- )  
Amending Procedure for the Creation of )  
Farmland Security Zones and Contracts. )

WHEREAS, the Land Conservation Act of 1965, as amended, (Government Code, title 5, Division 1, Part 1, Chapter 7), authorizes counties to establish agricultural preserves; and

WHEREAS, urgency legislation (SB 1182, Statutes of 1998, Chapter 353, Chaptered 8/24/98) amended the Land Conservation Act of 1965, commonly known as the Williamson Act, to authorize the creation of Farmland Security Zones;

WHEREAS the purpose of this Act is to maintain the agricultural economy of California by providing an incentive to continue the agricultural use of land; and

WHEREAS, the legislature of the State of California finds and declares that it is desirable to expand options available to landowners for the preservation of agricultural land, and has enacted urgency legislation for the establishment of farmland security zones (Government Code Section 51296);

WHEREAS, the Board of Supervisors of Monterey County finds that it can assist in maintaining the agricultural economy of California by creating farmland security zones and entering into farmland security zone contracts as authorized by said Act.

WHEREAS, the Board of Supervisors has considered the Environmental Review through the Initial Study process and determined that the amendment of the procedures would have no potential for significant impact upon the environment.

NOW, THEREFORE, BE IT RESOLVED that the following procedures shall be used in the County of Monterey for initiating, filing and processing requests to create farmland security zones:

1. Applications, an original and four copies, to create farmland security zones for existing agricultural preserves, shall be filed with the Clerk of the Board of Supervisors on forms provided by said Clerk. For new Farmland Security Zones, said Applications shall be accompanied by Applications, an original and four copies, to establish agricultural preserves, which shall also be filed with the Clerk of the Board of Supervisors on forms provided by said Clerk. Said application or applications and copies shall be filed on or before **September 15th** of each year. The application(s) shall set forth the identity of each and every owner of the

## Exhibit C - Attachment A

property located within the proposed preserve and/or farmland security zone, a legal description of the property together with Assessor's parcel number or numbers, the size or acreage of the property. The application(s) shall have attached thereto a Title Company Lot Book Report which said report shall contain a plat or map of the property accurately showing the exterior boundaries thereof. The application(s) shall also show that the property is being used for commercial agricultural purposes and uses compatible therewith and shall show the rental history or income and expense history for the past three years. The application(s) shall further state that the applicant and each of the owner(s) expressly request(s) that appropriate steps be taken to reclassify said property into an appropriate agricultural zoning district and that a Farmland Security Zone be created, that the applicant and the owners desire to rescind an existing Land Conservation Contract or enter into a Land Conservation Contract and rescind said Land Conservation Contract, in order to simultaneously rescind the Land Conservation Contract, create a Farmland Security Zone and enter into a Farmland Security Zone Contract which qualifies for property tax valuation pursuant to Section 423.4 of the Revenue and Taxation Code and Government Code Section 51296.2, as may be amended from time to time.

2. The application shall be accompanied by non-refundable fee of \$200.00 provided, however, where the application or applications are to place more than one parcel of property under separate ownerships into one preserve the fee shall be \$200.00 plus \$50.00 for each additional parcel over one under separate ownership.
3. When filed, within ten days of filing, the Clerk shall forward a copy of the application(s), together with a transmittal memo indicating the date filed, and whether the application(s) are timely filed, to the Assessor, to the Director of Planning, to the County Counsel, and to the Agricultural Commissioner and/or their designees for their recommendations. The Director of Planning shall submit a report as required by Section 51234 of the Government Code.
4. The Clerk of the Board of Supervisors shall place the matter upon the agenda of the Board of Supervisors. If the Board determines that said application(s) should be granted, the Clerk shall give notice in accordance with the provisions of California Government Code Sections 51230 and 51233.
5. The Board will establish agricultural preserves, and/or Farmland Security Zones, by resolution. Said resolution shall contain a finding of authorized uses which are compatible with the agricultural uses within the preserve or Farmland Security Zone and shall also contain any uniform rules to be adopted for the administering of the preserve and/or Farmland Security Zone.
6. Upon filing the application, the owners of land within the proposed agricultural preserve and/or Farmland Security Zone, shall file a request with the Clerk of the Board of Supervisors to enter into a land conservation contract and/or Farmland Security Zone Contract, as applicable, with the County.

## Exhibit C - Attachment A

7. The Board by resolution shall authorize and direct the Chair of the Board of Supervisors to sign land conservation contracts and/or Farmland Security Zone contracts with the owners of any land within the agricultural preserve and/or Farmland Security Zone, as applicable.
8. It shall be the policy of the County to establish preserves and/or Farmland Security Zones, where qualifications have been met and there is reasonable certainty that contracts will be concluded within a reasonable length of time.
9. It shall also be the policy of this Board to enter into Land Conservation, and/or Farmland Security Zone contracts, as applicable, (a) which provide for a minimum effective period of 20 years; (b) which restrict the use of land to commercial agricultural uses and to uses compatible therewith stated in the agreement; (c) which provide that such contract may not be canceled prior to the date of expiration by their own terms except as provided in said Land Conservation Act and/or Farmland Security Zone, and (d) which also provide for the payment of deferred taxes to the County, unless waived by the Board of Supervisors with the approval of the Secretary of the Resources Agency after the Board's determination that continuation of the contract conditions would seriously jeopardize public health or safety, and upon such cancellation the payment of the same amount and in the same manner as provided by Section 51283 of the Government Code.
10. It is further the policy of this Board to provide in such contracts that they shall be effective on the last day of December, prior to the lien date of January first, of the succeeding year, that each shall provide for automatic annual renewal for a period of one year unless notice of non-renewal is given as provided by Section 51245 of the Government Code. All land conservation and/or Farmland Security Zone contracts and notices of non-renewal thereof shall be recorded by the County. Such contracts shall be binding upon all subsequent transferees of any interest in the real property subject thereto.
11. It is further the policy of this Board to approve only agricultural preserves and land conservation contract and/or Farmland Security Zone applications and contracts meeting the following conditions:
  - a. If located within one mile of a city, said city neither protests the establishing of the preserve nor the execution of the contract. If located within a sphere of influence of a city, the creation of the Farmland Security Zone within the sphere of influence has been expressly approved by resolution by the city with jurisdiction within the sphere.
  - b. Land Use. To be considered for inclusion in an agricultural preserve and or Farmland Security Zone, land must have a recent history of use primarily for the production of food and fibre products for commercial purposes. Use for

## Exhibit C - Attachment A

the production of such products for three out of the last five years shall be required, unless a bona fide commitment to such use is clearly evidenced by shorter use after a material change of circumstances, such as in the case of substantial capital investment to improve previously unimproved property for agricultural purposes or recent availability of agricultural water. "Commercial purposes" shall be interpreted to require that most products produced thereon are sold in normal marketing channels.

- c. Minimum size and gross income. Applications for establishment of an agricultural preserve, and/or Farmland Security Zone as applicable, will not be considered unless the parcel or group of contiguous parcels to be included in the preserve contains 100 or more acres and shall have had an annual gross income during three of the last five years from the production of animals and/or unprocessed agricultural plant products of not less than \$8,000.00, or in the case of recently improved lands, have a potential during the next succeeding year of producing a gross income of \$8,000.00 from the production of animals and/or unprocessed agricultural plant products, provided, however, the Board of Supervisors will consider establishing agricultural preserves and/or creating Farmland Security Zones as applicable, of less than 100 acres, but of 40 or more acres if it finds that smaller preserves and/or Farmland Security Zones as applicable, are necessary due to the unique characteristics of the agricultural enterprises in the area and that the establishment of preserves and/or Farmland Security Zones of less than 100 acres is consistent with the general plan of the County.
- d. Compatible Uses. Compatible uses permitted on lands within an established "agricultural preserve" and/or "Farmland Security Zone":
  1. Shall not be in conflict or inconsistent with or in violation of the basic underlying zoning applicable to the property;
  2. Shall be particularly specified and included in the resolution establishing any preserve and/or Farmland Security Zone;
  3. Shall be reviewed by the Agricultural Preserve Committee for each proposed contract and said Committee shall recommend appropriate adjustments.
  4. Shall not be based on the compatible use provisions contained in Government Code Section 51238.1(c). (Government Code Section 51296.7).
- e. Prime Agricultural Land. Applications for Farmland Security Zones shall not be considered unless the property is predominantly prime agricultural land as defined in Government Code Section 51201(c), or designated on the Important Farmland Series Maps, prepared pursuant to Government Code Section 65570 as predominantly one or more of the following: (1) prime

## Exhibit C - Attachment A

farmland; (2) farmland of statewide significance; (3) unique farmland; (4) farmland of local importance.

- f. The property is not enforceably restricted pursuant to the Open-Space Easement Act of 1974 (commencing with Government Code Section 51070).

PASSED AND ADOPTED this 11<sup>th</sup> day of December, 2001, upon motion of Supervisor Calcagno, seconded by Supervisor Potter, and carried by the following vote, to-wit:

**AYES:** Supervisors Armenta, Calcagno, Johnson and Potter.

**NOES:** None.

**ABSENT:** None.

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 70, on December 4, 2001.

DATED: December 4, 2001

SALLY R. REED, Clerk of the Board  
of Supervisors, County of Monterey, State of  
California

By: 

Deputy



# Exhibit C - Attachment A

## ATTACHMENT A

### SUMMARY OF AGRICULTURAL PRESERVE CONTRACT AND FARMLAND SECURITY ZONE CONTRACT REQUIREMENTS

(Excerpts from Government Code Sections 51230, 51233, 51234, 51243 (a,b), 51243.5, 51244, 51244.5, 51296 et. Seq., Resolution No. 80-529 and Resolution No. 99-455)

The Land Conservation Act of 1965, as amended, (Government Code, title 5, Division 1, Part 1, Chapter 7), authorizes counties to establish agricultural preserves; and

The purpose of this Act is to maintain the agricultural economy of California by providing an incentive to continue the agricultural use of land; and

The Board of Supervisors of Monterey County finds that it can assist in maintaining the agricultural economy of California by establishing agricultural preserves and/or creating Farmland Security Zones, and entering into land conservation and/or Farmland Security Zone contracts as applicable, as authorized by said Act.

The Agricultural Preservation Review Committee consisting of representatives from the Assessor's Office, County Counsel Office, Agricultural Commissioner, Planning & Building Inspection Department shall be responsible for reviewing the following in order to consider the establishment of an Agricultural Preserve Contract and/or creation of a Farmland Security Zone.

#### Establishment of Agricultural Preserve and/or Farmland Security Zone Contract

- I. Application
  - A. Original and three copies of application
  - B. Filed on or before September 15th
  - C. Name and address of property owner(s)
  - D. Legal description of the property
  - E. Size (area) of property
  - F. Assessor Parcel Numbers
  - G. Title report containing plot or map
  - H. Indicate current commercial agricultural use and all other uses

# Exhibit C - Attachment A

- I. Reclassification request, if required
- J. History of Income & Expense
- II. Qualifications
  - A. Areas of 100 acres or more, or group of contiguous parcels (Gov't. Code Sec. 51230) and
  - B. Annual gross income during three of the last five years from production of animals and/or unprocessed agricultural plant products of not less than \$8,000.00 (Res. 80-529, Para 11 (c)).
  - C. Areas of less than 100 acres, but of 40 or more acres if necessary to preserve the unique characteristics of the agricultural enterprise, (Gov't Code Sec. 51230, Res. 80-529. Para 11 (c) and
  - D. Is consistent with the County General Plan. (Gov't Code Section 51234.)
  - E. Land has been used for production of food and fibre products for three of last five years. (Res. 80-529, Para 11 (c).)
  - F. Recently improved lands shall have the potential of a gross \$8,000.00 income the next succeeding year. (Res. 80-529, Para 11 (c).)
  - G. If within one mile of a city, that city has not or will not protest the preserve or contract. (Gov't Code Sections 51233, 51243.5.). If located within a sphere of influence of a city, the creation of the Farmland Security Zone within the sphere of influence has been expressly approved by resolution by the city with jurisdiction within the sphere.
  - H. The property is zoned an appropriate agricultural designation, or that the proper reclassification be requested at the time the contract is applied for. (Res. 80-529, para 1)
  - I. Compatible Uses. Compatible uses permitted on lands within an established "agricultural preserve" and/or "Farmland Security Zone": (1) Shall not be in conflict or inconsistent with or in violation of the basic underlying zoning applicable to the property; (2) Shall be particularly specified and included in the resolution establishing any preserve and/or Farmland Security Zone; (3) Shall be reviewed by the Agricultural Preserve Committee for each proposed contract

## Exhibit C - Attachment A

and said Committee shall recommend appropriate adjustments. (4) Shall not be based on the compatible use provisions contained in Government Code Section 51238.1(c). (Government Code Section 51296.7).

- J. Prime Agricultural Land. Applications for Farmland Security Zones shall not be considered unless the property is predominantly prime agricultural land as defined in Government Code Section 51201(c), or designated on the Important Farmland Series Maps, prepared pursuant to Government Code Section 65570 as predominantly one or more of the following: (1) prime farmland; (2) farmland of statewide significance; (3) unique farmland; (4) farmland of local importance.
- K. The property is not enforceably restricted pursuant to the Open-Space Easement Act of 1974(commencing with Government Code Section 51070).

### Procedure to make New Contracts

The owner of land applies to the Board of Supervisors on or before September 15th of each year. The application identifies each of the owners of the property and, in addition to a legal description, sets forth the size or acreage of the property. A map accurately showing the exterior boundaries of the property also accompanies the application.

The application should show the rental history or income and expense history of the land for commercial agricultural purposes for the last three (3) years. The owners must also expressly request that the property be rezoned into an appropriate district and that a Farmland Security Zone be created.

The application is submitted together with a nonrefundable \$200.00 fee plus \$50.00 for each additional parcel over one under separate ownership. The Board Clerk forwards the application (together with a transmittal memo indicating the date the application(s) is/are received, and whether the application(s) is/are timely filed), to the Agricultural Preservation Review Committee, consisting of representatives from the Assessor's Office, County Counsel Office, Agricultural Commissioner, and Planning and Building Inspection Department within ten (10) days. The Committee reports on whether the agricultural preserve is consistent with the general plan. (Government Code Section 51234, Resolution No. 80-529, para 3.)

The application(s) is/are to restrict land by contract within an agricultural preserve and/or Farmland Security Zone as applicable. The agricultural preserve may include several ownerships. To be considered for inclusion in an agricultural preserve and/or Farmland Security Zone as applicable, land must have recent history of use primarily for

# Exhibit C - Attachment A

the production of food and fiber for commercial purposes. An application for the establishment of an agricultural preserve, and/or creation of a Farmland Security Zone as applicable, will not be considered unless the parcel or group of contiguous parcels to be included in the preserve contains one hundred (100) or more acres (Government Code Section 51230) and shall have had an annual gross income during three (3) of the last five (5) years of not less than eight thousand dollars (\$8,000). (Resolution No. 80-529, paragraph 11 (c).)

The Board of Supervisors will consider establishing agricultural preserves and/or creating Farmland Security Zones as applicable, of less than one hundred (100) but more than forty (40) acres if it finds that smaller preserves, and/or Farmland Security Zones as applicable, are necessary due to the unique characteristics of the agricultural enterprise. (Resolution No. 80-529, paragraph 11 (c).) For example, specialty crops.

The owner of the land files an application for the creation of a Farmland Security Zone and at the same time files an application to enter into a Farmland Security Zone contract. This may be in a new Farmland Security Zone or in the enlargement of an existing preserve and/or Farmland Security Zone as applicable.

The Board, by resolution, establishes Farmland Security Zones and authorizes the Chair of the Board to sign the contracts within the Farmland Security Zones as applicable. The Board also establishes compatible uses permitted on lands within the "Farmland Security Zones" and the applicable list is appended to each contract.

## What compatible uses are permitted for a Farmland Security Zone Contract

"Compatible use" is defined in the statute, Section 51201 (e) as follows:

"(e) 'Compatible use' is any use determined by the County or City administering the preserve pursuant to Section 51231 or Section 51238 or Section 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. 'Compatible use' includes agricultural use, recreational use or open-space use unless the Board or Council finds after notice and hearing that such use is not compatible with the agricultural, recreational or open space use to which the land is restricted by contract pursuant to this chapter."

## The list of compatible uses approved by the Board within Farmland Security Zones follow:

1. The drying, packing or other processing of an agricultural commodity usually performed on the premises where it is produced.
2. Structures necessary and incidental to the agricultural use of the land.
3. Single family dwellings incidental to the agricultural use of the land for the residence of the owner, and the family of the owner. Single family dwellings

## Exhibit C - Attachment A

incidental to the agricultural use of the land for the residence of the lessee of the land and the family of the lessee.

4. Dwellings for persons employed by owner or lessee and the family of employee or lessee incidental to the agricultural use of the land.
5. An aircraft landing strip incidental to the agricultural use of the land.
6. The erection, construction, alteration or maintenance of gas, electric, water or communication utility facilities.
7. The erection, construction, alteration or maintenance of radio, television or microwave antennas, transmitters and related facilities.
8. Public or private hunting of wildlife or fishing.
9. Public or private hunting clubs and accessory structures.
10. Public or private rifle and pistol practice range, trap or skeet field, archery range or other similar use.
11. Public or private riding or hiking trails.
12. Removal of natural materials.
13. Disposal site for oil field wastes, provided that any such use shall be made only in accordance with the use permit and other permits issued by the County of Monterey and the California Regional Water Quality Board and such other governmental authority as may have jurisdiction over this use.  
  
“Wastes received (discharged) at the site have been, and will continue to be, limited to petroleum and oil field wastes, such as muds, oily water, tank bottom wastes, and brine waters.”
14. Shall not be based on the compatible use provisions contained in Government Code Section 51238.1(c). (Government Code Section 51296.7).

# Exhibit D

**From:** [Beretti, Melanie](#)  
**To:** [Robert Roach](#)  
**Cc:** [Price, Taylor](#)  
**Subject:** RE: Draft Ag Mitigation Policy  
**Date:** Wednesday, October 4, 2023 12:57:46 PM

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Thanks, Bob – This is received and staff will take under consideration and incorporate with the public comment on this matter.

Kindly,  
Melanie

**Melanie Beretti, AICP** | Acting Chief of Planning

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



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**From:** Robert Roach <roachb@comcast.net>  
**Sent:** Wednesday, October 4, 2023 11:50 AM  
**To:** Beretti, Melanie <BerettiM@co.monterey.ca.us>  
**Cc:** Price, Taylor <PriceT1@co.monterey.ca.us>  
**Subject:** Draft Ag Mitigation Policy

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

Melanie,

I could not attend the AAC meeting but I gave Mike the following comments to relay. I understand that they passed it on to the PC without changes so I would like to submit these to you for consideration. Two are somewhat technical and the water supply question will surely be discussed at the Planning Commission.

#### **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 Important Farmland Category category or better;
5. Have a long-term 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 contact, per Government Code section 51200 et seq.

Comments:

4. This is too prescriptive, it should say “substantially equivalent” or something that provides a minimal amount of discretion. Example: Developed parcel is 100% Prime. Mitigation Parcel is same acreage and 90% prime and 10% Important Farmland. That could be the best deal when all things are considered. Or what about a slightly lower category overall but more acres? Also, please say “FMMP Important Farmland Category,” that is what they are called.

5. Since easements are in perpetuity, the water supply should at least be long-term. This is the controversy with one Miramonte mitigation parcel under discussion. The lawyer asserts there is adequate water because when you turn on the pump water is delivered. But the Eastside Sub-basin has an annual overdraft of 10,000 AF/year. Will the wells keep pumping? Needs further study, but if not, then how is that adequate mitigation? At the last LAFCO meeting they were actually suggesting that it could still be dry farmed!

# Exhibit D

7. This should read, "Unless the land is ~~located on an active~~ under a an active Williamson Act ~~contract contract~~ per...." What is meant by "active"? This should not be confused with a contract that is in a state of non-renewal, even though that would be an extremely unlikely occurrence. It is simply under a contract or not.

Thank you for your consideration of these comments.

Bob

# Exhibit E

## AG-1.12

The County shall prepare, adopt, and implement a program that requires projects involving a change of land use designation resulting in the loss of Important Farmland (as mapped by the California Department of Conservation Farmland Mapping and Monitoring Program) to mitigate the loss of that acreage. For such land to be annexed to incorporated areas, the County shall work in consultation with the cities to mitigate the loss of Important Farmland resulting from annexation. 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 or annexation that is to be utilized for inclusionary housing shall not be subject to this mitigation policy. A Community Plan or Rural Center Plan that includes a mitigation program shall not be subject to this policy. Annexations or sphere of influence amendments covered by the Greater Salinas Area Memorandum of Understanding (GSA MOU) shall be consistent with and governed by the terms of the GSA MOU and with the City's General Plan.

Until such time as the program has been established, the County shall consult and cooperate with the cities so that projects shall mitigate the loss of Important Farmland on an individual basis as much as is feasible as determined by the Board of Supervisors.