

## BOARD OF SUPERVISORS

March 12, 2024

Public Hearing to consider adoption of an ordinance 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 Title:** REF220044 – Regulations to Mitigate for Development on Farmland

**Proposed Location:** Inland unincorporated area

**Proposed California Environmental Quality Act (CEQA) action:** Categorically Exempt pursuant to CEQA Guidelines Section 15308 and consistent with the scope of the previously certified Final Environmental Impact Report (FEIR) pursuant to CEQA Guidelines Section 15162.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find adoption of the ordinance categorically exempt pursuant to CEQA Guidelines Section 15308 and consider and find adoption of the ordinance is consistent with the scope of the certified FEIR for the 2010 General Plan pursuant to CEQA Guidelines Section 15162; and
- b. Adopt an ordinance (**Attachment 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.

### SUMMARY:

Staff presented the proposed ordinance to the Board of Supervisors (Board) on February 27, 2024, at a duly noticed public hearing. Staff conducted a presentation and received public and Board comments and input. The Board continued the item to March 12, 2024, and asked staff to return with additional options for Board consideration. Staff has included options to the proposed ordinance in **Attachment G** to respond to concerns about possible impacts on housing and affordable housing development.

**Attachment G** includes the following options for consideration:

- Section 21.92.060.D.1-2 – This option would decrease the base mitigation by an additional .125 for both Prime Farmland and Statewide, Unique, and Local Farmland for projects occurring in a Community Area, Rural Center, or Affordable Housing Overlay (CARCAHO). This is a decrease of an additional .125 from the proposed ordinance presented to the Board on February 27<sup>th</sup>. This would mean that Prime Farmland within a CARCAHO would have a base mitigation ratio of 1.375:1, and Statewide, Unique, and Local Farmland would have a base mitigation ratio of 1.125:1.
- Section 21.92.060.E – This option was created to allow applicants to reduce the base mitigation ratio for two types of priority projects.
  - Section 21.92.060.E.1 – This option would allow applicants to reduce their base mitigation ratio for projects that achieve a gross density of 15 dwelling units/acre

gross or greater. This reduction would allow applicants to reduce their base mitigation ratio by up to a maximum of .125 if the project achieves a gross density greater than 15 dwelling units/acre gross.

- Section 21.92.060.E.2 – This option would allow applicants to reduce their base mitigation ratio for projects that are a site as identified for residential development (also referred to as Opportunity Site) in the Housing Element. This reduction would allow applicants to reduce their base mitigation ratio by up to a maximum of .125 if the project is a site as identified in the Housing Element.
- Section 21.92.060.G.5 – This option would reduce the base mitigation ratio by .250 if the Mitigation Land is located along the exterior boundary of permanent growth boundaries or permanent agricultural edges, as identified in Board approved agreements between the County and cities. This is an additional reduction of .125 from the original base mitigation ratio reduction in the ordinance presented to the Board on February 27<sup>th</sup>.
- Section 21.92.060.H – If the Board accepts any of the above options, staff would recommend adding language to ensure that the mitigation ratio never falls below 1:1 (on an acre-for-acre basis). If the mitigation ratio falls below a ratio of 1:1, applicants may be required to complete additional mitigation pursuant to the California Environmental Quality Act (CEQA).

#### DISCUSSION:

For more detailed discussion and background related to the policy, please refer to the Detailed Discussion included as **Attachment B**.

#### OTHER AGENCY INVOLVEMENT

For more detailed discussion and background related to other agency involvement, please refer to the Detailed Discussion included as **Attachment B**.

#### FINANCING:

HCD staff time was partially funded by a State of California Department of Conservation Sustainable Lands Conservation Program (SALC) grant that reimbursed County staff time from July 1, 2021, through June 14, 2023. Staff time was submitted for reimbursement by HCD, County Counsel, and the Office of the Agricultural Commissioner. Total staff time reimbursed by the grant was \$70,492.87 and serves as the required grant match, with a total of \$111,873.13 remaining on the grant at the time of expiration. The adoption of Chapter 21.92 (also known as Regulations to Mitigate for Development on Farmland) is not expected to impact the general fund, and this policy is not expected to add significant new work to Housing and Community Development staff time. There would be no change in the fee structure and no additional revenues to the County. Further, staff would expect that the adoption of this ordinance would provide guidelines that can be utilized by staff when reviewing projects that need to comply with the ordinance requirements.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Adoption of Chapter 21.92 (also known as Regulations to Mitigate for Development on Farmland) supports the Board of Supervisor's Strategic Initiatives for Economic Development in that it strengthens the agricultural industry of Monterey County by protecting valuable, productive, and potentially productive agricultural land in Monterey County. Adoption of Chapter 21.92 supports the Board of Supervisor's Strategic Initiatives for Administration by promoting efficient and standardized processes for mitigating the conversion of agricultural land to development. Adoption of Chapter 21.92 supports the Board of Supervisor's Strategic Initiatives for Infrastructure as it encourages development in developed and already developing areas of the County, which encourages the utilization of already existing infrastructure and more sustainable dense communities.

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer service, accountability and transparency.

Health and Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and health environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

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Approved by: Melanie Beretti, AICP, Acting Chief of Planning, 831-755-5285

Approved by: Craig Spencer, Acting HCD Director

The following attachments are on file with the Clerk of the Board:

Attachment A – Proposed Ordinance

Attachment B – Detailed Discussion

Attachment C – Planning Commission Resolution – November 8, 2023

Attachment D – Correspondence

Attachment E – Policy AG-1.12

Attachment F – Agricultural Advisory Committee Action Minutes – September 28, 2023

Attachment G – Proposed Ordinance with Redline Options

Attachment H – Staff Report February 27, 2024

cc: Front Counter Copy; County Counsel; Agricultural Commissioner; CAO's office; Agricultural Conservation Mitigation Interested Parties List; Planning File REF220044

# Attachment A

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).

D. The 2010 County of Monterey General Plan Agricultural Element Goal AG-1 is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land.

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E. This ordinance is being adopted pursuant to the 2010 County of Monterey General Plan, Chapter 6 Agricultural Element Policy AG-1.12, which directs the County of Monterey to adopt an agricultural conservation mitigation program.

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

G. Regulation concerning the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of Monterey County. The success of agriculture is due to the favorable climate, fertile soils, and water availability that comprise the foundation for the largest industry and the indirect source of more than a quarter of all employment in Monterey County.

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

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

J. The purpose of this ordinance is to protect Monterey County's most productive and valuable farmland from conversion to non-agriculture use. Monterey County's agricultural land is a finite and irreplaceable resource, and once agricultural land is lost to development, it is permanently lost. Monterey County must balance the need to protect its farmland and agricultural industry's long-term sustainability and commercial viability with other critical public goals. Monterey County recognizes that permanently protecting all of its farmland is not feasible. In some cases, the conversion of farmland to other uses, such as housing, may be in the best interests of the people of Monterey County. In some circumstances, it may be appropriate to allow the conversion of farmland but also to require that such conversion be accompanied by mitigation that provides increased protection for other comparable agricultural lands. Thus, this ordinance creates a program for the mitigation of farmland lost permanently to development.

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

## **Attachment A**

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 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**

##### **Sections:**

- 21.92.010 Purpose.**
- 21.92.020 Definitions.**
- 21.92.030 Applicability.**
- 21.92.040 Farmland Mitigation Plan.**
- 21.92.050 Mitigation Lands.**

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### **21.92.060 Mitigation Requirements.**

### **21.92.070 Methods of Mitigation.**

### **21.92.080 Timing of Mitigation.**

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

### **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 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.

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. "Appropriate Authority" means that person, official, or body designated to hear, grant, deny, modify, condition, revoke or otherwise act on permits required by Title 21 of the Monterey County Code.

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.

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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 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” or “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 21.92.040.

L. “Farmland of Local Importance” means land as so designated by the County of Monterey 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 provided documentation to establish it has: 1) has made a thorough effort to locate quality Mitigation Land that provides long-term protection and conservation of substantially equivalent farmland to the land being lost to development or conversion; 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, if the applicant does not already own the proposed Mitigation Land.

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.



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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 requirements pursuant to Section 21.92.060.

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 an entity eligible to hold a Farmland Conservation Easement, hold a Farmland Deed Restriction, or collect In-lieu Fees. The Appropriate Authority shall consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

1. Whether the entity is a non-profit 501(c)(3) corporation that is 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;

2. If the entity 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;

3. Whether one of the entity's primary purposes is administering conservation easements or deed restrictions for the purpose of conserving and protecting land in agriculture;

4. 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;

5. Demonstrate that they have an annual monitoring and reporting program; and

6. That the Qualifying Conservation Entity can comply 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 requirements of the Agricultural Order and Monitoring and Reporting Program.

W. “Third-Party Group or Programs” means a Central Coast Regional Water Quality Control Board approved third-party program that can assist growers in achieving compliance with the Agricultural Order.

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

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

### **21.92.030 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);

2. Projects that require a Use Permit or Administrative Permit where Farmland in an Agricultural Zone is converted to non-agricultural; and

3. Projects where Farmland in an Agricultural Zone is converted to non-agricultural use that require 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;

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

4. Acreage used 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;

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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 Quality 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.

### **21.92.040 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.

B. Before consideration by the Appropriate Authority, the applicant shall submit an updated Farmland Mitigation Plan for the change in land use designation, Use Permit, Administrative Permit, or variance where the maximum building site coverage is exceeded. The Farmland Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this Section:

1. The Qualifying Conservation Entity that will hold the Mitigation Land or administer the In-lieu Fees, 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.

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### **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 continued 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.*

### **21.92.060 Mitigation Requirements.**

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

B. The Base Mitigation Ratio shall be determined by the Important Farmland classification 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. This means for every acre of Prime Farmland converted or developed two acres shall be protected.
2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.75:1. This means for every acre of Statewide, Unique, and Local Farmland converted or developed, one and three-fourths acres shall be protected.

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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. This means for every acre of Prime Farmland converted or developed, one and a half acres shall be protected.

2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.25:1. This means for every acre of Statewide, Unique, and Local Farmland converted or developed, one and a quarter acres shall be protected.

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.

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 Quality Board, the Base Mitigation Ratio shall be reduced by up to a maximum of .125.

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; and

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.

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### 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. 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.
2. 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.
3. The proposed Mitigation Land for Farmland Conservation Easement or Farmland Deed Restriction shall not move from a subbasin with no exceedances of its minimum thresholds in the applicable groundwater sustainability plan, to a different subbasin with exceedances of its minimum thresholds in its applicable groundwater sustainability plan as identified by the recognized groundwater sustainability agency.
4. 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 Subsections A.2 and A.3 of this Section, then the applicant shall be required to locate a Farmland Conservation Easement or Farmland Deed Restriction elsewhere in Monterey County.
5. The Farmland Conservation Easement or Farmland Deed Restriction shall include, at a minimum, the following terms:
  - a. It 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. It shall protect and retain the Water Supply on the Mitigation Land;
  - c. It shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land;
  - d. It shall prohibit the sale, lease, or conveyance of any interest in the Mitigation Land except for fully compatible agricultural uses; and

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

6. 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.

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

B. In-lieu Fees. The payment of an In-lieu Fee shall be subject to the following provisions:

1. Applicants shall make two Good Faith Efforts before applicants are allowed to pay In-lieu Fees to the Qualifying Conservation Entity.

2. The payment of an In-lieu Fee shall be subject to all the following provisions:

a. 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.

b. The appraisal of the fair market value of acquiring a conservation easement on the land being converted shall be completed within 90 days from consideration by the Appropriate Authority. 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.

c. 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 or Farmland Deed Restriction, including the cost to administer, monitor, and enforce a Farmland Conservation Easement or Farmland Deed Restriction, and the payment of the estimated transaction costs associated with acquiring a Farmland Conservation Easement or Farmland Deed Restriction.

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

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

3. The applicant shall provide documentation to the Appropriate Authority that the In-lieu Fee is consistent with this Chapter, and that the terms are acceptable to the Qualifying Conservation Entity.

C. Alternative and Complementary Mitigation. The applicant may propose Alternative and Complementary Mitigation at any stage of the mitigation process.

1. 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. Projects for water quality improvement 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 Quality 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. 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.

2. The total dollar value of the Alternative and Complementary Mitigation project must be equal to or valued more than the appraised fair market value of acquiring a conservation easement on the land being converted. The applicant shall provide documentation substantiating the total dollar value of the Alternative and Complementary Mitigation project. The fair market 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.



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3. The appraisal of the fair market value of acquiring a conservation easement on the land being converted shall be completed within 90 days from consideration by the Appropriate Authority. 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.

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.

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 of Monterey that the mitigation has been completed. If the applicant does not submit evidence that the mitigation has been completed within 24 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 where the maximum building site coverage is exceeded shall provide the Farmland Conservation Easement, Farmland Deed Restriction, payment of In-lieu Fees, or Alternative and

## Attachment A

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 of this Section, 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 shall determine whether an entity qualifies as a Qualifying Conservation Entity.

B. The Appropriate Authority shall require that a Qualifying Conservation Entity that receives a Farmland Conservation Easement, Farmland Deed Restriction, or In-lieu Fees for mitigation purposes under this Chapter conform to all of 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.

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

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

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

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:


AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Chair, Glenn Church  
Monterey County Board of Supervisors

A T T E S T :

VALERIE RALPH  
Clerk of the Board

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

APPROVED AS TO FORM:  
  
Kelly L. Donlon  
Assistant County Counsel

## Attachment 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. Agricultural Element Policy 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.

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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 proposed 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 proposed 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

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consistent standards. These discussions are occurring parallel to the County's proposed 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 proposed 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 proposed 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 proposed ordinance.

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

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

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

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

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

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

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

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

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

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

August 14, 2023 – Subcommittee – Staff presented the proposed ordinance to the Subcommittee, and the Subcommittee unanimously recommended that Staff bring forward a revised proposed ordinance to the AAC for consideration.

September 28, 2023 – AAC – Staff presented the proposed ordinance to the AAC, and the AAC unanimously recommended that Staff bring forward a revised proposed ordinance to the Commission for consideration. Staff returned to the AAC to provide an informational update on the suggested revisions made by the AAC on November 16, 2023.

November 8, 2023 – Commission – Staff presented the ordinance to the Commission, and the Commission recommended that Staff bring forward an ordinance, after a review of two sections, to the Board for adoption.

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### POLICY DISCUSSION

The proposed ordinance establishes the mitigation requirements for converting agricultural land (Farmland, Permanent Grazing, and Rural Grazing) to non-agricultural use for three 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 3) projects where agricultural land is converted to non-agricultural use that require a variance where the maximum building site coverage is exceeded. Throughout the outreach process, staff heard that there are situations 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 proposed 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 proposed ordinance establishes a Farmland Mitigation Plan, which states the minimum requirements that applicants must provide to the County upon application submission and before the application is considered by the Appropriate Authority. This Farmland Mitigation Plan (Section 21.92.040) 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 proposed ordinance are satisfied.

The proposed 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 proposed 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.

The Subcommittee had significant discussions around the mitigation ratios, and on August 14th, the Subcommittee voted 4-2 to accept the base mitigation ratios as presented in the proposed ordinance (see Table 1). The AAC unanimously supported the proposed 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 on an acre for acre basis.



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Table 1

<b>Location:</b>	<b>Farmland Category:</b>	<b>Base Mitigation Ratio:</b>
Outside of Community Areas, Rural Centers, and Affordable Housing Overlays (CARCAHOs)	Prime	2:1
	Statewide, Unique, Local	1.75:1
Inside of Community Areas, Rural Centers, and Affordable Housing Overlays (CARCAHOs)	Prime	1.5:1
	Statewide, Unique, Local	1.25:1

The proposed 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 21.92.020.Y of the proposed ordinance) and that it be of adequate size, configuration, and location to be viable for continued agricultural production.

The proposed 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 proposed 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 permanent growth boundaries and permanent 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 proposed ordinance requires that applicants make two good faith efforts to protect land with one of these options. The proposed 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 proposed ordinance requires the AAC to review and recommend the proposed mitigation to ensure that all in-lieu fees and alternative mitigation are evaluated.

The proposed ordinance includes minimum requirements for all three categories of mitigation that are allowable: easement or deed restriction, in-lieu fees, and alternative and complementary

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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 proposed 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 proposed 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 did not include this as an option in the proposed ordinance for those reasons.

The proposed 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 from the date the application is considered by the Appropriate Authority, 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 proposed ordinance 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 proposed 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 and Appropriate Authority 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.

The proposed 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 where maximum building site coverage is exceeded, the mitigation must occur prior to or concurrent with the recordation of a parcel or

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final 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 where maximum building site coverage is exceeded, the applicant must comply with the mitigation requirement that occurs first.

In addition to developing the proposed ordinance 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. 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 proposed 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 proposed 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 RESPONSE TO THE PLANNING COMMISSION RECOMMENDATION**

The below details staff's research and response to the Planning Commission's recommendation that staff review the mitigation process and definition of "Good Faith Effort" and that staff review and consider additional language to strengthen the protection of the mitigation land's Water Supply and ensure that poorer quality mitigation land cannot be used to satisfy an applicant's mitigation requirements.

#### *Good Faith Effort*

The Planning Commission wanted to ensure that the mitigation process was clearly laid out and that "Good Faith Effort" was clearly defined. The Commissioners requested staff ensure that the definition of Good Faith Effort supported the mechanics of the mitigation process. Further, some Commissioners expressed concern that the definition of Good Faith Effort was muddled and did not clearly state the requirements for the applicant, the recipient landowner, and the Qualifying Conservation Entity.

Staff conducted an internal review of the language in the proposed ordinance and agreed that additional clarity could be added to the mitigation process to clarify the requirements applicants must go through to satisfy the requirements of a Good Faith Effort. Staff revised the proposed ordinance to clearly detail how applicants can meet the requirements of a Good Faith Effort. The Good Faith Effort definition has been revised to provide additional clarity to applicants, HCD

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staff, and the Appropriate Authority as to what constitutes a Good Faith Effort. This additional clarity gives the Appropriate Authority clear requirements to consider when reviewing Good Faith Effort documentation provided by the applicant.

Additional clarity was provided to clearly state that the applicant must have the Qualifying Conservation Entity hold the conservation easement or deed restriction. Staff wants to note that if multiple Qualifying Conservation Entities are unwilling to hold the proposed conservation easement or deed restriction on the applicant's proposed Mitigation Land, that could be indicative that the proposed mitigation land is not an appropriate site due to site-specific qualities that may impair the Mitigation Land. This would be taken into consideration by the Appropriate Authority when considering the application. Staff would also like to note that this is separate from the concern that there are no Qualifying Conservation Entities operating in a particular area of Monterey County. Currently, Monterey County is served by at least four Qualifying Conservation Entities: the Ag Land Trust, Big Sur Land Trust, Elkhorn Slough Foundation, and the Land Trust of Santa Cruz County.

Revisions were made in a few other sections of the proposed ordinance to clearly state that the applicant is the entity that is required to provide documentation to the Appropriate Authority. The Qualifying Conservation Entity is holding the conservation easement or deed restriction or administering the in-lieu fees pursuant to the requirements of Section 21.92.090. This clarifies the distinction between the Qualifying Conservation Entity and the applicant.

Finally, staff would like to note that many of the discussions around both clarifying the mitigation process and water supply of the agricultural operation were related to concerns from a specific agricultural mitigation example in Monterey County. These issues arose, and there were concerns that the property being proposed for mitigation was not substantially equivalent to the land being lost to conversion and development. Further, there were concerns that the property being proposed for mitigation did not have sufficient water supply for the continued agricultural operations, which could make the site not an appropriate site for mitigation.

### Water Supply of Agricultural Operation

There was concern expressed by members of the public and by members of the Planning Commission that the proposed ordinance should prevent poorer quality lands with compromised water from being utilized as mitigation land. The intent of the proposed ordinance is that farmland be protected with a conservation easement or deed restriction that is substantially equivalent to the farmland that is being lost to development or conversion. This concern has surfaced throughout the proposed ordinance's development and hearing process. Staff has consulted with various water agencies in Monterey County and discussed this issue at the Ad Hoc Subcommittee of the Agricultural Advisory Committee. Based on these discussions, the collective parties felt the language in the proposed ordinance was the most appropriate. As this issue was raised again at the Planning Commission and via public comments, the Planning Commission requested that staff look into the issue once again to see if some further refinement could be made.

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Staff reviewed the requirements for mitigation land and water supply in the proposed ordinance and made minor edits to clarify further the intent, which is to ensure that the lands being protected via a conservation easement or deed restriction are substantially equivalent to the land that is being lost to development or conversion.

Staff ultimately made two edits to the proposed ordinance to further clarify and reinforce the intent of protecting the water supply on the mitigation land. The first edit that staff made to the proposed ordinance is to Section 21.92.050.A.5 (Mitigation Land). Staff added the word “continued” to the language that details the requirements of the mitigation land water supply. This clarifies that the water supply on the mitigation land should be available for the continued agricultural operations to reinforce further that the intent of the proposed ordinance is to promote the long-term protection of agricultural land in Monterey County. The second edit that staff made to the proposed ordinance is to Section 21.92.070.A.5.b (Methods of Mitigation – Farmland Conservation Easements or Farmland Deed Restrictions). Staff added two words, “and retain,” to ensure the protection and retention of the existing water supply on the mitigation land.

As this discussion came up again at the Planning Commission, staff wanted to inform the Board of some additional alternatives with pros and cons for each alternative that could be added to strengthen the requirements of mitigation land. Staff would not recommend changes; however, should the Board direct staff, here are some options for consideration.

1. Be of substantially equivalent class of soil, based on the California Revised Storie Index or NRCS soil survey maps.
  - Pro:
    - There is an existing source of quantifiable data that is updated and maintained by the United States Department of Agriculture Natural Resources Conservation Service (Geographical Information Systems (GIS) data).
    - Utilizing soil class as an additional criterion for mitigation land would allow for a more granular analysis to be conducted within existing FMMP Important Farmland categories that are maintained by the California Department of Conservation.
    - This would allow the Appropriate Authority to differentiate between FMMP Important Farmland categories in a more granular way by reviewing soil classes.
  - Con:
    - This would require that the Appropriate Authority make a determination on the comparability of the soil class of the land being converted or developed and the mitigation land.
    - This would add additional complexity to the analysis of mitigation land that the Ad Hoc Subcommittee of the Agricultural Advisory Committee and the Agricultural Advisory Committee recommended against using

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more detailed farmland analysis data above and beyond the FMMP Important Farmland category data.

2. Be of substantially equivalent existing use to the farmland being lost to conversion or development.

○ Pro:

- Require that the applicant provide information detailing the current use of the mitigation land and the land being converted to development.
- This would allow the Appropriate Authority to differentiate between FMMP Important Farmland categories in a more granular way by reviewing current irrigation and cropping patterns. This could also allow the Appropriate Authority to review the current agricultural use of the mitigation land.
- This could address the scenario where you have two types of Prime Farmland. For example, where the mitigation land is being used to cultivate wine grapes while the farmland being converted to development is being used for lettuce production with multiple crops every year.

○ Con:

- Requirement that the applicant provide historic cropping patterns and current irrigation data for the land being converted and the mitigation land.
- The Appropriate Authority would need to make a determination on the substantial equivalence of use between the proposed mitigation land and the land being converted or developed.

3. Have substantially equivalent agricultural production to the farmland being lost to conversion or development.

○ Pro:

- This would allow the Appropriate Authority to differentiate between FMMP Important Farmland categories in a more granular way by reviewing agricultural production data.
- Historic agricultural production data would likely be available from the applicant.
- This could address the specific scenario where you have two types of Prime Farmland. For example, where the mitigation land is being used to cultivate wine grapes while the farmland being converted to development is being used for lettuce production with multiple crops every year.

○ Con:

- Requirement that the applicant provide historic agricultural production data for the land being converted and the mitigation land.
- The Appropriate Authority would need to make a determination on the substantial equivalence of agricultural production between the proposed mitigation land and the land being converted or developed.

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4. Have a water supply substantially equivalent to the farmland being lost to conversion or development.
  - Pro:
    - Requiring a similar water supply could allow for agricultural land that is of similar FMMP Important Farmland categories to be differentiated.
    - This could address the scenario where you have two types of Prime Farmland with similar soil types and climatological characteristics but with substantially different water supplies.
    - Historic water supply data would likely be available.
  - Con:
    - Requirement that the applicant provide water supply data for the mitigation land and the land being converted to development.
    - The Agricultural Commissioner's Office, the Ad Hoc Subcommittee of the Agricultural Advisory Committee, and the Agricultural Advisory Committee recommend not creating additional requirements for water supply in the proposed ordinance.
    - This would add additional complexity to the analysis of mitigation land that the Ad Hoc Subcommittee of the Agricultural Advisory Committee and the Agricultural Advisory Committee recommended against more detailed analysis of water supply.
    - This would require that the applicant provide historic water supply data for the land being converted and the mitigation land. Ultimately, this would require that the Appropriate Authority make a determination that the mitigation land has a substantially equivalent water supply to the land being converted to development.

### **REVISIONS TO THE PROPOSED ORDINANCE REFLECTING PLANNING COMMISSION'S RECOMMENDATIONS AND SUBSEQUENT INTERNAL/LEGAL REVIEW**

This section details changes made to the proposed ordinance considered at the Planning Commission meeting on November 8, 2023, reflecting a staff review of the proposed ordinance recommended by the Planning Commission and additional minor modifications deemed necessary upon staff and County Counsel subsequent review.

- The Definitions (Section 21.92.020) and Applicability (Section 21.92.030) sections were reordered to have the Definitions section come before the Applicability section.
- The Farmland Mitigation Plan (Section 21.92.040) was moved to a higher section of the proposed ordinance to make it clear what applicants are required to submit as a part of compliance with Chapter 21.92.
- Section 21.92.020.N – This section defined Good Faith Effort, which has been modified to respond to Planning Commission comments. Staff updated the definition to more clearly detail how applicants can satisfy the requirements of a Good Faith Effort.

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- Section 21.92.020.T – This section defined Qualifying Conservation Entity; after an internal review, it was determined for clarity that requirements that were previously embedded in Section 21.92.090 were more appropriate to include in the definition of Qualifying Conservation Entity.
- Section 21.92.040.B.1 – This section was revised after an internal review to more clearly state that the Qualifying Conservation Entity is holding the mitigation land and administering the in-lieu fees.
- Section 21.92.050.A.5 – This section was revised in response to Planning Commission and public comments to strengthen further the protections on the mitigation land related to water supply.
- Section 21.92.060.C.1-2 & 21.92.060.D.1-2 – A sentence was added at the end of each mitigation ratio statement to clarify further what the mitigation ratio means in plain language.
- Section 21.92.070 (Methods of Mitigation) – This Section was rewritten to include the mitigation process that was previously a separate section of the ordinance that the Planning Commission approved. This change was made in response to the Planning Commission and public comments to clarify further that the mitigation methods and mitigation process are clear.
- Section 21.92.070.A.5.b – This section was revised in response to Planning Commission and public comments to strengthen further the protections in the conservation easement or deed restriction related to water supply.
- Section 21.92.070.A.7 – This section was revised after an internal review to clearly state that the applicant is required to provide documentation that they have satisfied the mitigation requirements in the proposed ordinance to the Appropriate Authority.
- Section 21.92.070.B.2.b – This section was revised after an internal review to clarify at what stage applicants must have the appraisal completed to ensure the appraisal is completed within the appropriate timeframe.
- Section 21.92.070.B.5 – This former section was deleted after an internal review to clarify that applicants must complete two Good Faith Efforts before they are allowed to pay in-lieu fees. The prior section created confusion as it stated that the applicant could utilize in-lieu fees to satisfy some or all of their total mitigation without first completing two Good Faith Efforts, as is required by the mitigation process.
- Section 21.92.070.C.2 – This section was clarified after an internal review to clearly state the appraisal process as it relates to Alternative and Complementary Mitigation and how the value of the Alternative and Complementary Mitigation will be measured.
- Section 21.92.070.C.3 – This section was revised after an internal review to clarify at what stage applicants must have the appraisal completed to ensure the appraisal is completed within the appropriate timeframe.
- Section 21.92.090.A – This section was clarified after an internal review to clearly state that the Appropriate Authority shall make a determination about the proposed Qualifying Conservation Entity.



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**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. 23-038**

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

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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.

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

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

9. 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.

10. 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

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(Attachment 1). At least 10 days before the hearing date, notices of the hearing before the Commission were published in the Monterey County Weekly.

11. On November 8, 2023, the Commission recommended that staff review the definition of Good Faith Effort in the proposed ordinance (Attachment 1) to ensure that the mitigation process was clearly defined and applicants could complete their required mitigation. The Commission also recommended that staff review the definition of Water Supply in the proposed ordinance (Attachment 1) to ensure that, to the extent feasible, all conservation easements or deed restrictions have water for continued agricultural operations.

## 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, upon motion of Commissioner Getzelman, seconded by Commissioner Mendoza, by the following vote:

AYES: Gonzalez, Diehl, Roberts, Monsalve, Getzelman, Mendoza, Work

NOES: Shaw

ABSENT: Gomez, Daniels

ABSTAIN: None

DocuSigned by:  
  
9A435825B8244EC...  
Craig Spencer, Planning Commission Secretary

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

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,  
ADDING CHAPTER 21.92 TO THE MONTEREY COUNTY CODE RELATING TO  
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).

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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**

**Attachment C****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

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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:

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1. The amount of the In-lieu Fee shall be determined by using the appraised fair market value of acquiring a conservation easement on the land being converted. The 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

## Attachment C

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.



## **Attachment C**

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.

## **Attachment C**

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;

**Attachment C**

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 :

**Attachment C**

VALERIE RALPH  
Clerk of the Board

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

APPROVED AS TO FORM:

Kelly L. Donlon  
Assistant County Counsel

2/23/2024

To Monterey County Board of Supervisors

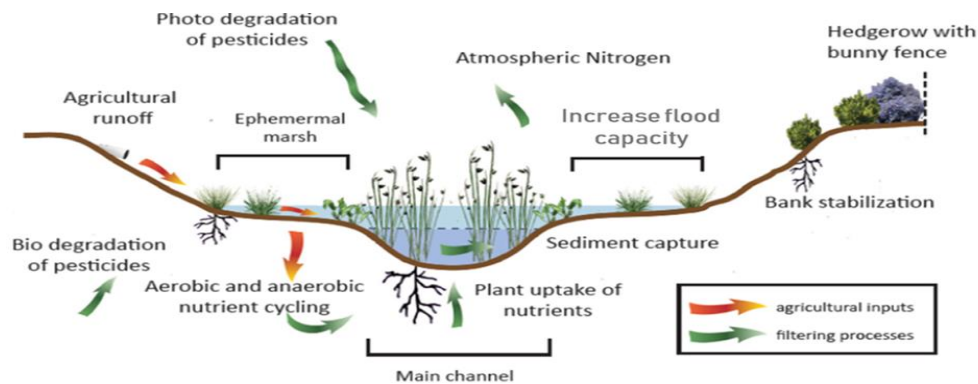
*RE: Regulations to Mitigate for Development on Farmland*

Members of the Monterey County Board of Supervisors;

I am writing in support of efforts by Monterey County Staff, the Board of Supervisors and the community to establish land use conservation policies to ensure that agricultural lands and the agricultural business community are protected within Monterey County for generations to come. Urban development has critically reduced farming in many portions of California and efforts to establish agriculture land conservation policies are needed to ensure Monterey County continues to be an agricultural region.

Sustainable agriculture, however, cannot be achieved solely through restrictions on development of farm lands. Other actions are necessary to ensure that water resources that our residents and farmers rely on are maintained and enhanced. Groundwater recharge, flood protection, stormwater capture and reuse, water quality enhancement and other environmental objectives are as critical to agricultural sustainability in Monterey County as is the restriction of development. Restoring watershed resources and flood conveyance processes is greatly needed if the County is to meet water resource needs (flood reduction and groundwater sustainability) and regulatory mandates (TMDLs).

It is important to recognize that such water resource enhancement efforts will require the strategic conversion of small portions of farm land located directly adjacent to our degraded drainage channel network.



*The physical, chemical, and biological processes that occur in wetlands help filter out pollutants*

*Figure 1. Example of water resource benefits achieved by working with willing growers to widen degraded channels and restore aquatic habitat.*

## Attachment D

Unfortunately, many of our water resource management objectives are hampered by 120 years of land reclamation, often sponsored or supported by the County. The resulting watershed drainage networks are undersized and poorly maintained, exacerbating flooding, water quality impairment and lost groundwater recharge potential. We believe it is in the best interest of the Monterey County Board of Supervisors to recognize the need to work with willing land owners to restore these drainage systems and work with local partners to reverse a century's degradation of natural watershed processes.

To meet these water resource challenges, County staff have worked with many stakeholders and partners to draft water resource management plans to restore these needed services. For instance, the Integrated Regional Water Management Plan and the Salinas Valley Stormwater Plan outline activities and projects, that have been awarded state grant funding, to reduce flooding, improve wetland habitat, clean water, increase recharge and provide open space for underserved communities of the Salinas Valley. The Valley's Groundwater Sustainability Plans outline measures to increase groundwater recharge through the Multi-Benefit Land Repurposing Program, aimed at transitioning least farmable (often most flood-prone) portions of farmland to lower water use purposes that support water resource enhancement.

Any restrictions by an agriculture land conservation policy that limit efforts underway to enhance water resources in the Salinas Valley would be unfortunate and counterproductive.

We have discussed with County staff our concerns regarding unintended consequences of the Regulations to Mitigate for Development on Farmland to restrict parallel efforts to transition small portions of farmland to creek and wetland habitat needed to increase water resource resiliency. Current language in the ordinance that references links to the Salinas Valley Basin Groundwater Sustainability Agency and the Central Coast Regional Water Quality Control Board provides opportunities to complete our work on farmlands under the guidance of these agencies. However, we are concerned that future review of wetland and floodplain restoration efforts will not be found to make sufficient linkages to these specific agencies and programs and may trigger farmland mitigation requirements.

Any additional assurances, in policy or on the record, that implementation of this mitigation order will accommodate necessary removal of small areas of irrigated lands to support water resource resiliency efforts would aid our current and future work to restore watershed processes and aquatic habitat in collaboration with our farming partners.

Thank you for your focus on these issues,



Ross Clark

Director, Central Coast Wetlands Group  
Moss Landing Marine Labs, [ross.clark@sjsu.edu](mailto:ross.clark@sjsu.edu)

## **Attachment D**

Date: February 26, 2024

To: County of Monterey Board of Supervisors

From: Robert Roach

Re: Item 28, Agricultural Lands Mitigation Ordinance

I support the draft ordinance and recommend its adoption. I believe staff has done an excellent job developing this ordinance. It is especially gratifying for me to see this coming forward since I was part of the 2010 GPU Team that developed the policy. There was extensive public process and outreach, which has resulted in an ordinance that is somewhat long and complex. But it is well-constructed and with appropriate incentives and disincentives to guide development in Monterey County to desired locations.

However, development will happen mostly in the cities. I had hoped that LAFCO would take it as an example to emulate, but their draft policy is very firm about having exactly a 1:1 replacement ratio, which is the minimum mitigation allowed by CEQA. They would not even accept staff's language that said, "No less than 1:1 replacement" and are looking for exceptions under CEQA to reduce it to less.

(At the time of this writing LAFCO has not taken final action.)



February 26, 2024

Supervisor Glenn Church, Chair  
Monterey County Board of Supervisors  
168 West Alisal St., 1st Floor  
Salinas, CA 93901  
cob@co.monterey.ca.us

Subject: LandWatch Monterey County's Comments for Agenda Item #28 Regulations to Mitigate for Development on Farmland

Dear Chair Church and Members of the Monterey County Board of Supervisors:

I write to request an additional change to the proposed ordinance.

1. Base mitigation ratio should be lowered even more for a conservation easement or deed restriction on permanent growth boundaries.

The staff report proposes to lower mitigation ratios by 0.125 off the base mitigation ratio for four kinds of priority mitigation areas: high potential groundwater recharge areas, water quality improvement projects, along the exterior boundary of CARCAHOs, and the exterior boundary of permanent growth boundaries and permanent agricultural edges as identified in Board of Supervisors approved City and County Memorandum of Agreements and Memorandum of Understandings.

However, we recommend an even lower ratio be applied to one category: the exterior boundary of permanent growth boundaries and permanent agricultural edges as identified in the Board of Supervisors approved City and County Memorandum of Agreements and Memorandum of Understandings. Preservation of these lands is critical to implementing these permanent growth boundaries. Furthermore, the cost of mitigation is likely to be higher for these lands because they are in the expected path of growth, notwithstanding the City-County MOUs or MOAs. Thus, we recommend that the mitigation ratio for this category of priority land be reduced by 0.250 off of their base mitigation ratio.



## Attachment D

2. Base mitigation ratio should also be lowered for development in growth areas.

The General Plan designates three kinds of growth areas in which future development should be directed: Community Areas, Rural Centers, and Affordable Housing Overlays. Conversely, future development should be discouraged outside of these growth areas.

To provide greater incentives to focus growth in these growth areas, we recommend that the base mitigation ratio be lowered by 0.125 for development in these areas. Doing so will encourage developers to consider these areas first for future projects.

Thank you for the opportunity to comment.

Regards,

A handwritten signature in black ink, appearing to read "Michael DeLapa". The signature is stylized and cursive.

Michael DeLapa  
Executive Director

## Attachment D

**From:** [Beretti, Melanie](#)  
**To:** [Robert Roach](#)  
**Cc:** [Price, Taylor](#)  
**Subject:** RE: Ag Mitigation  
**Date:** Thursday, November 9, 2023 11:29:18 AM

---

Received, thank you, Bob.

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)

-----Original Message-----

From: Robert Roach <[roachb@comcast.net](mailto:roachb@comcast.net)>  
Sent: Thursday, November 9, 2023 10:20 AM  
To: Beretti, Melanie <[BerettiM@co.monterey.ca.us](mailto:BerettiM@co.monterey.ca.us)>  
Cc: Price, Taylor <[PriceT1@co.monterey.ca.us](mailto:PriceT1@co.monterey.ca.us)>  
Subject: Ag Mitigation

[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 liked your thought yesterday about "substantial equivalence." That's really what we are after in a mitigation process, like for like, lands with similar agriculture capabilities. That should be a first principle, and clearly stated in the ordinance. Many factors will determine that capability, too many to prescribe in an ordinance. The likelihood of future availability of water is only one factor, an important one but difficult to ascertain. Others include the current water supply quantity and quality, aquifer recharge, soil composition and chemistry, topography, micro-climates, surroundings, infrastructure, presence of deleterious organisms, and more. Perhaps leave it so, that the parcels must have substantially equivalent agricultural capabilities, based on such factors as are applicable to the particular situation. A land trust is going to weigh those factors because they should not want to be a party to a deal that could be seen as not providing adequate mitigation and get drawn into a third-party lawsuit. (Lawsuit avoidance is a cornerstone policy of the ALT.) The County has the Agricultural Advisory Committee to review and make recommendations on particular proposals.

The SVBGSA continues to gather data and formulate plans and I have confidence that nearly all of our agricultural lands will have adequate long-term water supplies, absent a severe change in the climate. The current state of knowledge already identifies sub-basins in overdraft and some trouble spots. There should be sufficient data available to forecast the future availability of water for agricultural operations in any particular area, and our knowledge of the local hydrology will continue to develop. The SVGBSA cannot issue a will-serve letter, but how reliable are those anyway? I'm sure the water provider believes they will be around in 50 or 100 years, but there is a non-zero probability that they will not. Will-serve letters are necessarily based on current knowledge and are considered a reasonable assurance.

Bob

# Attachment 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.



# Agricultural Advisory Committee (AAC)

<b>ACTION MINUTES</b>		
<b>Location:</b>	<i>Ag Conference Center, 1428 Abbott Street, Salinas, CA. 93901</i>	
<b>Date:</b>	September 28, 2023	
<b>Time:</b>	2:30 p.m. to 4:30 p.m.	
<b>Present:</b>	<i>Committee Members</i>	<i>Staff and Guests</i>
	Sherwood Darington Alex Eastman- <i>Vice Chair</i> ** Mike Ferguson CJ Miller Kevin Piearcy Scott Storm Scott Violini- <i>Acting Chair</i> *	Juan Hidalgo, Ag Commissioner, <i>ACO</i> Nadia Garcia, Ag Programs Manager, <i>ACO</i> Rich Ordonez, Deputy Ag Commissioner, <i>ACO</i> Mary Grace Perry, Deputy County Counsel Kayla Nelson, <i>HCD Planning</i> Taylor Price, <i>HCD Planning</i> Melanie Beretti, <i>HCD Planning</i> Norm Groot, <i>Monterey County Farm Bureau</i> Mike Novo, <i>Ag Land Trust</i> Taven Kinison-Brown, <i>City of Gonzales</i> Kathryn Avila, <i>Avila Construction</i> Mr. Alderete, <i>Alderete Ranch LLC</i>
<b>Absent:</b>	Kurt Gollnick, Erik Heacox, Nick Huntington, Matt Shea	

\*Scott Violini acting Chair for this meeting

\*\* Alex Eastman arrived at 2:39pm during Item No. V- *Agricultural Commissioner's Update*

## I. Call to Order

The meeting was called to order by Acting Chair Scott Violini at 2:36 pm.

## II. Additions and Corrections

- None

## III. Consent- Committee Business

A. Approval of Minutes from August 24, 2023

**MOTION:** Approval of minutes were moved and seconded by Committee Members CJ Miller and Mike Ferguson and **failed** by the following vote:

**AYES:** Ferguson, Miller, Piearcy, Storm, Violini

**NOES:** None

**ABSENT:** Eastman, Gollnick, Heacox, Huntington, Shea

**ABSTAIN:** Darington

**Attachment F**

**IV. Public Comment- On items not on the agenda.**

- *None*

**V. Agricultural Commissioner's Update**

*Juan Hidalgo, Agricultural Commissioner*

- FIRA USA Event update – new technology in agriculture.

**PUBLIC COMMENT:**

- Norm Groot, *Monterey County Farm Bureau*- Comment on CAL-OSHA regulations prohibiting autonomous machines and this poses a problem for ag technological advancements.

**VI. Monterey County Housing and Community Development - Planning Department**

**A. ALDERETE RANCH LLC**

**Project Planner:** Christina Vu, Assistant Planner

**Project Title:** Alderete Ranch LLC

**Planning File No.:** PLN230032

**APN(s):** 145-072-008-000 & 145-072-009-000

**Project Location:** 29580 Chualar Canyon Road, Chualar

**Zoning/Area Plan:** Farmland, 40 acres, Design Control (F/40-D); Central Salinas Valley Area

**Project Description:** Design Approval to allow construction of a new 7,777 square foot two-story single-family dwelling with a 1,621 square foot attached garage, 1,972 square foot covered patio & entry and associated site improvements on Williamson Act contracted property (Ag Preserve Contract No. 68-094).

**ACTION REQUESTED/CEQA ACTION:** Recommend support approval to the Zoning Administrator to allow the construction of a new 7,777 square foot two-story single-family dwelling with an attached garage, 1,972 square foot covered patio & entry, and associated site improvements. Grading of approximately 3,900 cu. yds. of cut and 1,205 cu. yds. of fill on an existing Williamson Act property with an established grazing operation/ **CEQA Action:** Support finding that the project is Categorically Exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Code of Civil Regulations (CCR) Section 15304- *Minor Alterations to Land* and there are no exceptions pursuant to Section 15300.2.

**PUBLIC COMMENT:**

- None

**MOTION:** Item A was moved and seconded by Committee Members Kevin Pearcy and Alex Eastman and passed by the following vote to recommend support approval of the project:

**AYES:** Darington, Eastman, Ferguson, Miller, Pearcy, Storm, Violini

**NOES:** None

**ABSENT:** Gollnick, Heacox, Huntington, Shea

**ABSTAIN:** None

## Attachment F

### **B. COPPERHEAD CREEK LLC**

**Project Planner:** Christina Vu, Assistant Planner

**Project Title:** Copperhead Creek LLC

**Planning File No.:** PLN230078

**APN(s):** 424-061-002-000, 424-061-040-000, & 424-061-041-000

**Project Location:** 73550, 73552, 73554 & 73556 Pleyto Cemetery Road, Bradley

**Zoning/Area Plan:** Permanent Grazing, 40 acres (PG/40); South County Area Plan

**Project Description:** Lot Line Adjustment between two (2) legal lots of record consisting of: Parcel 1 with 66.7 acres and Parcel 2 with 188.9 acres, resulting in two legal lots of record consisting of *reconfigured Parcel 1* with 183.1 acres and *reconfigured Parcel 2* with 72.5 acres. Properties is not under Williamson Act.

**ACTION REQUESTED/CEQA ACTION:** Recommend support approval of the Lot Line Adjustment between two legal lots of record by the HCD Chief of Planning/ **CEQA Action:** Support finding that the project is Categorically Exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Code of Civil Regulations (CCR) Section 15305- *Minor Alterations to Land Use Limitations* and there are no exceptions pursuant to Section 15300.2.

#### **PUBLIC COMMENT:**

- None

**MOTION:** Item B was moved and seconded by Committee Members Alex Eastman and Mike Ferguson and passed by the following vote to recommend support approval of the project:

**AYES:** Darington, Eastman, Ferguson, Miller, Piearcy, Storm, Violini

**NOES:** None

**ABSENT:** Gollnick, Heacox, Huntington, Shea

**ABSTAIN:** None

### **C. AGRICULTURAL LAND CONSERVATION MITIGATION PROGRAM – FARMLAND MITIGATION ORDINANCE**

**Project Planner:** Taylor Price, Associate Planner

**Project Title:** Agricultural Land Conservation Mitigation Program – Farmland Mitigation Ordinance

**Planning File No.:** REF220044

**APN(s):** Not Applicable

**Project Location:** Inland areas of the unincorporated Monterey County

**Project Description:** Draft ordinance adding Chapter 21.92 to the Monterey County Code related to mitigation requirements for development on farmland.

**ACTION REQUESTED/CEQA ACTION:** Consider the draft ordinance adding Chapter 21.92 to the Monterey County Code related to mitigation requirements for development on farmland. Consider making a motion to recommend that staff bring the revised draft ordinance to the Planning Commission (Commission), including the Agricultural Advisory Committee's (AAC) recommendation on the proposed Chapter 21.92 and provide input to staff/ **CEQA Action:** The proposed program and draft ordinance are exempt from CEQA pursuant to CEQA Guidelines Section 15308, which exempts actions taken by regulatory agencies, as authorized by state or

## Attachment F

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. In addition, as the proposed program and draft ordinance implement the 2010 Monterey County General Plan, pursuant to Section 15162 of the CEQA 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.

### **PUBLIC COMMENT:**

- Taven Kinison-Brown, *City of Gonzales*
  - Supports the Agricultural and Winery Corridor Plan (AWCP) exemption.
- Mike Novo, *Ag Land Trust*
  - Supports the Agricultural and Winery Corridor Plan (AWCP) exemption.
  - Supports requiring the receiver site have water supply availability.
  - Supports adding the County as a “qualifying entity” for administering of mitigation bank monies/sites in the event no “Qualifying Conservation Entity” is secured.
- Norm Groot, *Monterey County Farm Bureau*
  - Supports the Agricultural and Winery Corridor Plan (AWCP) exemption.
  - Attend Planning Commission hearing to educate the Planning Commissioners on the work that went into the Ag Land Mitigation Draft Ordinance.

**MOTION 1: Add the Monterey County General Plan *Agricultural and Winery Corridor Plan (AWCP)* and those uses allowed and permitted under the AWCP to the list of exemptions in the Farmland Mitigation Ordinance (proposed Chapter 21.92 of the County’s Zoning Code); this motion was moved and seconded by Committee Members Scott Storm and Alex Eastman and passed by the following vote:**

**AYES:** Darington, Eastman, Ferguson, Miller, Pearcy, Storm, Violini  
**NOES:** None  
**ABSENT:** Gollnick, Heacox, Huntington, Shea  
**ABSTAIN:** None

**MOTION 2: Recommend approval of the draft Farmland Mitigation Ordinance as presented by HCD staff, subject to incorporating the added AWCP exemption Motion 1 above, and adding wording for the appraisal of land to have a timed term and also adding the County as a “qualifying entity” for administering of mitigation bank monies/sites in the event no “Qualifying Conservation Entity” is secured; this motion was moved and seconded by Committee Members Alex Eastman and Scott Storm and passed by the following vote:**

**AYES:** Darington, Eastman, Ferguson, Miller, Pearcy, Storm, Violini  
**NOES:** None  
**ABSENT:** Gollnick, Heacox, Huntington, Shea  
**ABSTAIN:** None

## **Attachment F**

### **VII. Administrative Matters**

- Nadia Garcia reminded the AAC of the 2023 AAC dates: October 26 and November 16; no meeting in December.
  - At the October 26 meeting, the AAC will consider the 2024 Williamson Act Applications- very important meeting and a quorum would be much appreciated.

### **VIII. Agricultural Advisory Committee Comments**

None

### **IX. Adjournment**

There being no further business before the Committee, the meeting was adjourned at 4:35 p.m.



# Attachment G

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).

D. The 2010 County of Monterey General Plan Agricultural Element Goal AG-1 is to promote the long-term protection, conservation, and enhancement of productive and potentially productive agricultural land.

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E. This ordinance is being adopted pursuant to the 2010 County of Monterey General Plan, Chapter 6 Agricultural Element Policy AG-1.12, which directs the County of Monterey to adopt an agricultural conservation mitigation program.

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

G. Regulation concerning the conversion of farmland is necessary because agriculture is a significant and important contributor to the economy of Monterey County. The success of agriculture is due to the favorable climate, fertile soils, and water availability that comprise the foundation for the largest industry and the indirect source of more than a quarter of all employment in Monterey County.

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

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

J. The purpose of this ordinance is to protect Monterey County's most productive and valuable farmland from conversion to non-agriculture use. Monterey County's agricultural land is a finite and irreplaceable resource, and once agricultural land is lost to development, it is permanently lost. Monterey County must balance the need to protect its farmland and agricultural industry's long-term sustainability and commercial viability with other critical public goals. Monterey County recognizes that permanently protecting all of its farmland is not feasible. In some cases, the conversion of farmland to other uses, such as housing, may be in the best interests of the people of Monterey County. In some circumstances, it may be appropriate to allow the conversion of farmland but also to require that such conversion be accompanied by mitigation that provides increased protection for other comparable agricultural lands. Thus, this ordinance creates a program for the mitigation of farmland lost permanently to development.

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

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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 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

##### Sections:

- 21.92.010 Purpose.**
- 21.92.020 Definitions.**
- 21.92.030 Applicability.**
- 21.92.040 Farmland Mitigation Plan.**

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**21.92.050 Mitigation Lands.**

**21.92.060 Mitigation Requirements.**

**21.92.070 Methods of Mitigation.**

**21.92.080 Timing of Mitigation.**

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

### **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 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.

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. "Appropriate Authority" means that person, official, or body designated to hear, grant, deny, modify, condition, revoke or otherwise act on permits required by Title 21 of the Monterey County Code.

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.

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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 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” or “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 21.92.040.

L. “Farmland of Local Importance” means land as so designated by the County of Monterey 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 provided documentation to establish it has: 1) has made a thorough effort to locate quality Mitigation Land that provides long-term protection and conservation of substantially equivalent farmland to the land being lost to development or conversion; 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, if the applicant does not already own the proposed Mitigation Land.

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.

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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 requirements pursuant to Section 21.92.060.

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 an entity eligible to hold a Farmland Conservation Easement, hold a Farmland Deed Restriction, or collect In-lieu Fees. The Appropriate Authority shall consider the following criteria when considering a Qualifying Conservation Entity for these purposes:

1. Whether the entity is a non-profit 501(c)(3) corporation that is 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;

2. If the entity 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;

3. Whether one of the entity's primary purposes is administering conservation easements or deed restrictions for the purpose of conserving and protecting land in agriculture;

4. 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;

5. Demonstrate that they have an annual monitoring and reporting program; and

6. That the Qualifying Conservation Entity can comply 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 requirements of the Agricultural Order and Monitoring and Reporting Program.

W. “Third-Party Group or Programs” means a Central Coast Regional Water Quality Control Board approved third-party program that can assist growers in achieving compliance with the Agricultural Order.

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

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

### **21.92.030 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);

2. Projects that require a Use Permit or Administrative Permit where Farmland in an Agricultural Zone is converted to non-agricultural; and

3. Projects where Farmland in an Agricultural Zone is converted to non-agricultural use that require 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;

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

4. Acreage used 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;

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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 Quality 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.

### **21.92.040 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.

B. Before consideration by the Appropriate Authority, the applicant shall submit an updated Farmland Mitigation Plan for the change in land use designation, Use Permit, Administrative Permit, or variance where the maximum building site coverage is exceeded. The Farmland Mitigation Plan shall contain all information and documentation in sufficient detail, as specified in this Section:

1. The Qualifying Conservation Entity that will hold the Mitigation Land or administer the In-lieu Fees, 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.



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### 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 continued 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.*

### 21.92.060 Mitigation Requirements.

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

B. The Base Mitigation Ratio shall be determined by the Important Farmland classification 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. This means for every acre of Prime Farmland converted or developed two acres shall be protected.
2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.75:1. This means for every acre of Statewide, Unique, and Local Farmland converted or developed, one and three-fourths acres shall be protected.

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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.~~375~~:1. This means for every acre of Prime Farmland converted or developed, one and ~~a~~ halfthree-eighths acres shall be protected.

2. Statewide, Unique, and Local Farmland shall be mitigated for at a replacement ratio of 1.~~125~~:1. This means for every acre of Statewide, Unique, and Local Farmland converted or developed, one and ~~a quarter~~one-eighths acres shall be protected.

E. Priority Projects. Land being converted for a priority project shall have the following adjustment factors applied, where relevant, to modify the Base Mitigation Ratio.

1. If the land being converted is for the development of dwelling units (pursuant to Section 21.06.370) and has a gross density (pursuant to Section 21.06.300) of 15 dwelling units/acre gross or greater, the Base Mitigation Ratio shall be reduced by up to a maximum of .125.

2. If the land being converted is a site as identified in the Housing Element, per Government Code section 65583 et seq., the Base Mitigation Ratio shall be reduced by up to a maximum of .125.

~~EF.~~ 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.

~~FG.~~ 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.

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

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

4. If the Mitigation Land is located along the exterior boundary of Community Areas and/or Rural Centers ~~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:~~

5. If the Mitigation Land is located 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, the Base Mitigation Ratio shall be reduced by up to a maximum of .250.

H. The Mitigation Ratio shall not be less than 1:1. This means that for every acre of Prime Farmland or Statewide, Unique, and Local Farmland converted or developed, not less than one acre shall be protected.

~~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; and~~

~~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.—~~

### **21.92.070 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. 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.

2. 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.

3. The proposed Mitigation Land for Farmland Conservation Easement or Farmland Deed Restriction shall not move from a subbasin with no exceedances of its

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minimum thresholds in the applicable groundwater sustainability plan, to a different subbasin with exceedances of its minimum thresholds in its applicable groundwater sustainability plan as identified by the recognized groundwater sustainability agency.

4. 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 Subsections A.2 and A.3 of this Section, then the applicant shall be required to locate a Farmland Conservation Easement or Farmland Deed Restriction elsewhere in Monterey County.

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

a. It 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. It shall protect and retain the Water Supply on the Mitigation Land;

c. It shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land;

d. It shall prohibit the sale, lease, or conveyance of any interest in the Mitigation Land except for fully compatible agricultural uses; and

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

6. 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.

7. 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:

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1. Applicants shall make two Good Faith Efforts before applicants are allowed to pay In-lieu Fees to the Qualifying Conservation Entity.

2. The payment of an In-lieu Fee shall be subject to all the following provisions:

a. 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.

b. The appraisal of the fair market value of acquiring a conservation easement on the land being converted shall be completed within 90 days from consideration by the Appropriate Authority. 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.

c. 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 or Farmland Deed Restriction, including the cost to administer, monitor, and enforce a Farmland Conservation Easement or Farmland Deed Restriction, and the payment of the estimated transaction costs associated with acquiring a Farmland Conservation Easement or Farmland Deed Restriction.

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

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

3. The applicant shall provide documentation to the Appropriate Authority that the In-lieu Fee is consistent with this Chapter, and that the terms are acceptable to the Qualifying Conservation Entity.

C. Alternative and Complementary Mitigation. The applicant may propose Alternative and Complementary Mitigation at any stage of the mitigation process.

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

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a. Projects that implement a groundwater sustainability plan to comply with the Sustainable Groundwater Management Act;

b. Projects for water quality improvement 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 Quality 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. 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.

2. The total dollar value of the Alternative and Complementary Mitigation project must be equal to or valued more than the appraised fair market value of acquiring a conservation easement on the land being converted. The applicant shall provide documentation substantiating the total dollar value of the Alternative and Complementary Mitigation project. The fair market 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.

3. The appraisal of the fair market value of acquiring a conservation easement on the land being converted shall be completed within 90 days from consideration by the Appropriate Authority. 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.

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.

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

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

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 of Monterey that the mitigation has been completed. If the applicant does not submit evidence that the mitigation has been completed within 24 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 where the maximum building site coverage is exceeded 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 of this Section, 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 shall determine whether an entity qualifies as a Qualifying Conservation Entity.

B. The Appropriate Authority shall require that a Qualifying Conservation Entity that receives a Farmland Conservation Easement, Farmland Deed Restriction, or In-lieu Fees for mitigation purposes under this Chapter conform to all of 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

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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.

**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 \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Chair, Glenn Church  
Monterey County Board of Supervisors

A T T E S T :



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VALERIE RALPH  
Clerk of the Board

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

APPROVED AS TO FORM:

Kelly L. Donlon  
Assistant County Counsel

## Attachment H

### BOARD OF SUPERVISORS

February 27, 2024

Public Hearing to consider adoption of an ordinance 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 Title:** REF220044 – Regulations to Mitigate for Development on Farmland

**Proposed Location:** Inland unincorporated area

**Proposed California Environmental Quality Act (CEQA) action:** Categorically Exempt pursuant to CEQA Guidelines Section 15308 and consistent with the scope of the previously certified Final Environmental Impact Report (FEIR) pursuant to CEQA Guidelines Section 15162.

#### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find adoption of the ordinance categorically exempt pursuant to CEQA Guidelines Section 15308 and consider and find adoption of the ordinance is consistent with the scope of the certified FEIR for the 2010 General Plan pursuant to CEQA Guidelines Section 15162; and
- b. Adopt an ordinance (**Attachment 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.

#### SUMMARY:

The proposed ordinance would amend Title 21 of the Monterey County Code and add a new chapter to the inland zoning ordinance (Chapter 21.92) to establish criteria for the mitigation of projects that convert farmland in inland areas of unincorporated Monterey County (see **Attachment A**). The proposed ordinance would implement the 2010 Monterey County General Plan, Agricultural Element Policy AG-1.12.

The proposed ordinance's purpose is to provide clear and consistent regulations to mitigate the loss of farmland to development or conversion of farmland to non-agricultural use. The proposed ordinance's primary goal is to promote the long-term viability of productive and potentially productive farmland. Further, the regulations put in place are intended to encourage growth in or near developed or developing areas, thereby ensuring the commercial viability of Monterey County's agricultural industry. Where conversion of farmland is proposed, the ordinance would also establish clear requirements for mitigating the loss of the farmland.

After numerous meetings and workshops with the public and targeted stakeholders, the Planning Commission (Commission), an Ad Hoc Subcommittee of the Agricultural Advisory Committee (Subcommittee), and the Agricultural Advisory Committee (AAC), the proposed ordinance has been refined and is being presented for final adoption by the Board of Supervisors (Board). On September 28, 2023, the AAC passed a motion of 7-0 (4 members absent) recommending the proposed ordinance to the Planning Commission. The AAC's motion included recommending adding additional language related to the timing of appraisals and that staff consider adding language to allow the County to hold conservation easements, deed restrictions, or in-lieu fees in

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specific circumstances (**Attachment G**). On November 8, 2023, the Planning Commission passed a motion of 7-0 (2 members absent) to adopt a resolution recommending the proposed ordinance to the Board of Supervisors (**Attachment C**). The Planning Commission's motion included a recommendation for staff's review of the definition of Good Faith Effort and the mitigation process, and that staff ensure the language in the proposed ordinance prevents poorer quality lands with compromised water from being used to satisfy an applicant's mitigation requirements.

The key features in Chapter 21.92 are included below:

- The required mitigation quantities.
- The methods applicants can utilize to reduce the required mitigation ratios.
- Minimum requirements for the land that is being proposed to mitigate the loss of farmland to development or conversion.
- The mitigation process applicants must comply with, with the focus being on protecting farmland with a conservation easement or deed restriction.
- Additional mitigation options include payment of in-lieu fees and alternative mitigation methods.
- Requirements for when the mitigation must be completed to comply with the proposed ordinance.
- Requirements of the third-party non-profit applicants are required to work with to hold the conservation easement, deed restriction, or receive payment of in-lieu fees.

### DISCUSSION:

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 **Attachment E**). Development of these regulations to mitigate development on farmland is a critical component of implementing the Program.

Development of the proposed ordinance began in earnest in May 2022, with a workshop with the AAC. Staff held a workshop with the Planning Commission in October 2022, where the Commission directed staff to work with the AAC via its Subcommittee to develop the proposed ordinance that is being presented to the Board 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.

The following is a highlight of provisions that are included in the proposed ordinance (**Attachment A**):

- The projects that must comply with the mitigation requirements in the proposed ordinance, including redesignation of land from an agricultural designation to any designation and projects that require a Use Permit or Administrative Permit where farmland is converted to non-agricultural use.
- Exemptions from the mitigation requirements in the proposed ordinance include acreage used for affordable and inclusionary housing, agricultural employee housing, agricultural

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processing plant, agricultural support service, groundwater recharge or benefit projects, and water quality improvement projects that address agricultural pollutants.

- Tiered mitigation ratios, which are lower for development occurring within Community Areas, Rural Centers, and Affordable Housing Overlays.
- Tiered mitigation ratios based on Farmland Mapping and Monitoring Program (FMMP) Important Farmland classifications as mapped by the California Department of Conservation.
- Minimum requirements for the land being proposed by applicants to be protected by a conservation easement or deed restriction (called mitigation land in the proposed ordinance). Minimum requirements include that the land must be of substantially equivalent FMMP Important Farmland category or better, have a water supply available for continued agricultural operations and use, and be located within the County of Monterey.
- Reductions to mitigation ratios if applicants locate mitigation land in priority areas for mitigation, such as areas of high potential groundwater recharge, along the exterior boundary of Community Areas and Rural Centers, and along the exterior boundary of permanent growth boundaries or permanent agricultural edges, as identified in Board approved agreements between the County and cities.
- The mitigation process that applicants must follow to comply with the mitigation requirements. Applicants are allowed to propose alternative and complementary mitigation at any stage of the mitigation process. Applicants must make two good faith efforts to find mitigation land to protect with a conservation easement or deed restriction before they are allowed to pay in-lieu fees to the third-party non-profit.
- The mitigation requirements in the proposed ordinance must be completed within twenty-four months of the approval of the zoning change, prior to or concurrent with the recordation of a parcel or final map or prior to the issuance of the first construction permit, depending on the activity that is triggering the mitigation requirements.
- Applicants must work with the third-party non-profit (in the proposed ordinance called the Qualifying Conservation Entity) to have it hold, monitor, and manage the conservation easement or deed restriction protecting the mitigation land. The third-party non-profit must meet the minimum requirements detailed in the proposed ordinance, including how it uses the in-lieu fees, enforces and monitors the conservation easements or deed restrictions, and provides documentation of compliance to the Appropriate Authority.
- The proposed ordinance details the documentation applicants must submit to the Appropriate Authority.

On November 8, 2023, the Planning Commission held a public hearing on the proposed ordinance and recommended that the Board adopt Regulations to Mitigate for Development on Farmland, with additional recommendations (**Attachment C**). The following is a summary of the Planning Commission recommendations and how they have been addressed:

- The Planning Commission asked staff to ensure the mitigation process was clear and that the definition of “Good Faith Effort” was well defined. The Commissioners requested that staff ensure that Good Faith Effort supported the mechanics of the mitigation process.

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- The proposed ordinance was modified to more clearly articulate the definition of Good Faith Effort and to clarify how applicants can satisfy the requirements of a Good Faith Effort. (Section 21.92.020.N)
- The proposed ordinance was modified to clearly state that the applicant, not the Qualifying Conservation Entity, is required to provide documentation to the Appropriate Authority to ensure the requirements of the proposed ordinance are satisfied.
- The Planning Commission recommended that staff review the proposed ordinance to ensure that poorer quality lands with compromised water were not allowed to be utilized to satisfy the mitigation requirements in the proposed ordinance. The Planning Commission also recommended staff review the proposed ordinance to ensure that the water supply on mitigation land was appropriately protected.
  - Staff modified the proposed ordinance in two separate locations to ensure that the water supply of the mitigation land is protected and that poorer quality lands could not be utilized to satisfy mitigation requirements. Sections 21.92.050.A.5 (Mitigation Land) and 21.92.070.A.5.b (Methods of Mitigation) were slightly modified to add greater clarity to the importance of protecting the water supply on the mitigation land.

Staff's research and detailed response is located in the Detailed Discussion - **Attachment B**.

Policy AG-1.12 of the 2010 General Plan includes a discussion of annexations, which are governed by the Local Agency Formation Commission (LAFCO) process. Staff coordinated with the Salinas Valley cities during the ordinance development process. There are currently discussions at LAFCO related to the annexation process as well as between the Salinas Valley Cities and Housing and Community Development staff. These discussions are continuing on a separate and parallel track to the County's development of Chapter 21.92.

For more detailed discussion and background related to the policy, please refer to the Detailed Discussion included as **Attachment B**.

### OTHER AGENCY INVOLVEMENT

Housing and Community Development Department staff worked in collaboration with the Agricultural Commissioner's Office to develop the proposed ordinance and with the Office of County Counsel to review as to form. Staff formally consulted with the following agencies: Salinas Valley Basin Groundwater Sustainability Agency, the Central Coast Wetlands Group, Central Coast Regional Water Quality Control Board, Central Coast Water Quality Preservation, Inc., Monterey County Local Agency Formation Commission, Building Industry Association of the Bay Area, Ag Land Trust, Big Sur Land Trust, Elkhorn Slough Foundation, and the Land Trust of Santa Cruz County, and United States Department of Agriculture. For more detailed discussion and background related to other agency involvement, please refer to the Detailed Discussion included as **Attachment B**.

The Agricultural Advisory Committee considered and recommended the proposed ordinance at its September 28, 2023 meeting. On November 8, 2023, the Planning Commission considered the proposed ordinance and recommended the Board adopt Regulations to Mitigate for

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Development on Farmland. The Planning Commission recommendation included a request that staff further review and refine as appropriate the mitigation process, the definition of “Good Faith Effort,” that poorer quality mitigation land could not be utilized to satisfy the mitigation requirements and the protection of the mitigation land’s water supply. The Planning Commission passed a motion of 7-1 (2 absences) recommending approval of the proposed ordinance to the Board of Supervisors. During the discussion, a concern was made about the blanket exemption policy in the proposed ordinance rather than having the ability to review exemptions on a case-by-case basis, similar to how the process works for variances. Another concern expressed was the desire to have additional clarification on the water supply discussion before recommending support.

### FINANCING:

HCD staff time was partially funded by a State of California Department of Conservation Sustainable Lands Conservation Program (SALC) grant that reimbursed County staff time from July 1, 2021, through June 14, 2023. Staff time was submitted for reimbursement by HCD, County Counsel, and the Office of the Agricultural Commissioner. Total staff time reimbursed by the grant was \$70,492.87 and serves as the required grant match, with a total of \$111,873.13 remaining on the grant at the time of expiration. The adoption of Chapter 21.92 (also known as Regulations to Mitigate for Development on Farmland) is not expected to impact the general fund, and this policy is not expected to add significant new work to Housing and Community Development staff time. There would be no change in the fee structure and no additional revenues to the County. Further, staff would expect that the adoption of this ordinance would provide guidelines that can be utilized by staff when reviewing projects that need to comply with the ordinance requirements.

### BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Adoption of Chapter 21.92 (also known as Regulations to Mitigate for Development on Farmland) supports the Board of Supervisor’s Strategic Initiatives for Economic Development in that it strengthens the agricultural industry of Monterey County by protecting valuable, productive, and potentially productive agricultural land in Monterey County. Adoption of Chapter 21.92 supports the Board of Supervisor’s Strategic Initiatives for Administration by promoting efficient and standardized processes for mitigating the conversion of agricultural land to development. Adoption of Chapter 21.92 supports the Board of Supervisor’s Strategic Initiatives for Infrastructure as it encourages development in developed and already developing areas of the County, which encourages the utilization of already existing infrastructure and more sustainable dense communities.

#### Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

#### Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer service, accountability and transparency.

#### Health and Human Services:

- Improve health and quality of life through County supported policies, programs, and

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services; promoting access to equitable opportunities for healthy choices and health environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Taylor Price, Associate Planner, 831-784-5730

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Reviewed by: Lori Woodle, Finance Manager I

Approved by: Melanie Beretti, AICP, Acting Chief of Planning, 831-755-5285

Approved by: Craig Spencer, Acting HCD Director

The following attachments are on file with the Clerk of the Board:

Attachment A – Proposed Ordinance

Attachment B – Detailed Discussion

Attachment C – Planning Commission Resolution – November 8, 2023

Attachment D – Correspondence

Attachment E – Policy AG-1.12

Attachment F – PowerPoint Presentation February 27, 2024

Attachment G – Agricultural Advisory Committee Action Minutes – September 28, 2023

cc: Front Counter Copy; Planning Commission; County Counsel; Agricultural Commissioner; CAO's office; Agricultural Conservation Mitigation Interested Parties List; Planning File REF220044