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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 8th 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:

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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**

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- 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

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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.

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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.

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

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

2. Enforcement and Monitoring. The Qualifying Conservation Entity shall monitor all Farmland Conservation Easements, Farmland Deed Restrictions, or In-lieu Fees for mitigation purposes acquired in accordance with these regulations and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. It shall enforce compliance with the terms of the Farmland Conservation Easement and Farmland Deed Restriction.

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

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

21.92.100 Farmland Mitigation Plan.

A. The applicant shall submit a Farmland Mitigation Plan to the Appropriate Authority for projects subject to this Chapter 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;

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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 :

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VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Kelly L. Donlon
Assistant County Counsel