

Attachment H

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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

Attachment H

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

Attachment H

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.

Attachment H

- 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

Attachment H

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

Attachment H

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

Reviewed by: Nadia Ochoa, Agricultural Resource and Policy Manager

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