

BUTTE COUNTY PLANNING COMMISSION MEETING NOTES
September 22, 2011 Special Meeting
Commission Workshop on Second Draft Butte County Zoning Ordinance

Commissioners Present: Commissioners Becker, Nelson, Marin, Kennedy and Chair Wilson

Staff Present:

Butte County Counsel
Felix Wannemacher, Chief Deputy County Counsel
Butte County Department of Development Services
Tim Snellings, Director
Chuck Thistlethwaite, Planning Manager
Dan Breedon, Principal Planner
Kim McMillan, Commission Secretary
Butte County Agricultural Commissioner
Richard Price, Agricultural Commissioner
Butte County Environmental Health
Vance Severin, Deputy Director of Environmental Health

After the Workshop was opened by Chair Wilson, Principal Planner Dan Breedon provided an overview of the day's workshop. He briefly discussed the four staff memorandums and staff responses to public comments received that were provided to the Planning Commission in advance of the workshop.

A. *Agricultural Subzones*

Director of Development Services Tim Snellings discussed how minimum parcel sizes in the Agriculture (AG) subzones of the Draft Zoning Ordinance range from 20 to 320 acres. Actions taken by the Commission on previous change requests have raised questions for staff of consistency in the application of these subzones.

Staff has developed five options for the Commission's discussion and consideration. The Commission may choose to recommend any or none of these actions to the Board of Supervisors:

- Option 1: Keep all Agriculture subzones as currently reflected on the Second Draft Zoning Ordinance Map.
- Option 2: Change all AG-320 and AG-160 subzones to AG-80, in accordance with the direction provided by the Planning Commission on Brouhard, Swartz, and Preservation Partners areas unless the larger subzoning is requested by a property owner

- Option 3: Change only the AG160 subzones to AG-80, keeping all AG-320 subzones
- Option 4: Change only AG-320 subzones to AG-160, keeping all AG-160 subzones
- Option 5: Change all AG-320 subzones to AG-160 and all AG-160 subzones to AG-80 subzones

All staff recommendations would retain the minimum parcel size for lands enrolled in the Williamson Act consistent with the existing Williamson Act contracts.

Development Services staff showed a 4-minute video featuring Ms. Holly Foster and her multi-generational ranching operation in Butte Valley.

Mr. Breedon emphasized that agriculture is an important part of the future of Butte County under the General Plan. He then introduced Butte County Agricultural Commissioner Richard Price.

Mr. Price provided the Planning Commission with Cost Studies for Almond, Walnut, Cattle and Rice operations; each produced by the University of California at Davis. Each Cost Study used an assumption for the minimum size of a productive farming unit. Almond operations were assumed to be 100-acres, cattle were 160-acres, and rice was 320-acres. Mr. Price stated that the reduced sizes of farming units reduced their ability to benefit from farm aid programs and also to meet increasingly stringent water quality requirements. Reduced parcel sizes also make it harder to buffer agricultural uses from non-agricultural uses. The viability of the County's right-to-farm ordinance is also affected by smaller parcel sizes.

Commissioner Nelson: What are the benefits and how are minimum parcel sizes set in the Williamson Act? Is the existing A-40 zone in conflict with the Williamson Act?

Richard Price: The Williamson Act itself does not require a specific zoning to be present on a parcel for inclusion, but the minimum parcel size required under the locally adopted Williamson Act Rules must be satisfied before inclusion can occur. As mentioned, 160-acres is the minimum for inclusion of new parcels used for grazing. Multiple parcels cannot be aggregated into a single Williamson Act contract under the current rules.

Felix Wannemacher: Some older pre-existing Williamson Act contracts have, in the past, allowed aggregated parcels to meet the required minimum parcel sizes,

but new contracts must stand on their own under the current rules. Each parcel must meet the contract minimum parcel size.

Commissioner Kennedy: Are the establishment of contract minimums a state or County decision?

Richard Price: This is a County decision, as a result of the 2004 Department of Conservation audit of Butte County's Williamson Act program.

Chair Wilson: What is the minimum contract size for other crops?

Richard Price: Along with the 160-acre minimum parcel size for contracts of grazing lands, Butte County requires 40-acre minimum parcels for Orchard crops and 80-acre parcels for rice.

Commissioner Becker: There are many 20-acre walnut orchards in this County that work out fine; perhaps not as the sole source of income for a farm residence household, but they remain productive agricultural lands.

Commissioner Kennedy: What are minimum parcel sizes in the Unique Agriculture Overlay zone?

Tim Snellings: The GIS Overlay of both proposed zoning designations and Williamson Act enrollment status is available for the Planning Commission to review the proposed zoning designations and their relationships to Williamson Act Contracts.

Commissioner Kennedy: How many parcels proposed for AG-320 have not been divided below that acreage?

Tim Snellings: The goal of today's meeting is to take the Commission's input and direction, and provide a clean version for the Board of Supervisor's review.

Commissioner Nelson: What are the areas of controversy? Is it the 320-acre zoning designation?

Director Snellings replied not necessarily. He noted one area where there has been some controversy is the area between Biggs and Gridley where minimum parcel sizes are currently proposed to change from A-40 to AG-160.

Commissioner Nelson noted these policy issues were considered in the past and are now being reconsidered under a largely different Commission.

At this point Chair Wilson opened the workshop for public comment.

Wally Roney: Stated he tried to participate in the Williamson Act at one time in

the past. Mr. Roney would like to have a smaller minimum parcel size (His property in Butte County is currently proposed to be rezoned from A-40 to AG-320). He stated his property in Tehama County is zoned A-40. He said his property is Class I soils and he has had problems with selling a portion of the property in Tehama County to a neighbor. Orchard land is worth about \$6,000 per acre and grazing land is around \$1,000 per acre. He has opted out of Williamson Act because of 160-acre minimum parcel size for parcels used for grazing. Mr. Roney stated that the overall viability of agricultural lands is not determined by the size of parcel, but by the flexibility of its use. His longevity in the livestock business is at risk. He has non-conforming parcels for estate planning. Parcels have gone through 5 different estates. It is all run as one ranch. The five estates are used to help with estate taxes. He wants his ranch to stay at 40-acre zoning.

As a cattleman in Butte County, Mr. Roney would like to see the Cattlemen included to a greater extent in the process. He didn't see any definition in the glossary for Mitigation Bank. He borders two mitigation banks with his ranch and is concerned about HCP issues. Mr. Roney stated just because a mitigation bank owner says they are going to graze the land, doesn't mean it will stay that way.

Director Snellings stated there will be a workshop before the Planning Commission regarding the Butte County HCP/NCCP; probably in October of this year.

Wally Roney: Don't get conservation easements and conservation banks confused. They are two different things. The HCP and mitigation banks need to be specifically addressed in the County General Plan for their impacts in agricultural production and should be reviewed by the County.

Michael Evans addressed the Planning Commission stating he was representing properties that are in Williamson Act, but are not currently being used for farming.

Holly Foster addressed the Planning Commission stating she is a fourth generation rancher, currently Second Vice President of the Butte County Farm Bureau, and Past Chair of their Land Use Committee. Property surrounding her ranch has been proposed for zoning at an 80-acre minimum compared than their 160-acre minimum which raises issues of fairness. The Farm Bureau Board supports an 80-acre minimum for land that was formerly classified as "Orchard and Field Crops" to discourage "leapfrog" development. This was a difficult policy decision that the Bureau balanced with property rights. She stated "Zoning is the first line of defense in protecting agriculture." Ms. Foster spoke of "concern about inflation of land values and their impact on agricultural operations". Concerns about ranchette development has led to the Farm Bureau's recommendation of an 80-acre minimum on former Orchard and Field Crop designated lands and 160-acres on former Grazing and Open Space designated

lands. Even parcel sizes as large as 20 acres can become an attractive homesites, instead of orchards. Likewise, 40-acre minimums may not be sufficient to discourage ranchette development.

In response to those who believe that higher minimum parcel sizes serve as a disincentive to those who want to enter the field of agriculture, Ms. Foster stated that initial up-front costs may be higher for those seeking to enter agriculture, however these costs will eventually fall as the urban development potential is eventually removed from seller's expectations in land prices. In Butte County 30k legal developed parcels already exist, and 12,000 undeveloped parcels are already available.

Tania Dunlap addressed the Commission and stated she bought property in 1974 with artesian springs. Now water is not free flowing nor year-around in Butte Valley where her and Ms. Foster are located. If the County will not give property owners a water district to control development, please do not reduce the minimum parcel sizes of agricultural parcels below 160-acres.

Commissioner Kennedy: What is the primary type of agriculture in Butte Valley?

Tania Dunlap: It is primarily grazing with some orchards and intensive agriculture.

Colleen Cecil addressed the Planning Commission as Butte County Farm Bureau's Executive Director. She stated she was somewhat frustrated to have to readdress this issue because four property owners have requested different zoning designations. Ms. Cecil provided handouts from the California Rangeland Coalition and the Butte County Crop Report. She requested the Commissioners keep them handy as they make decisions affecting agriculture. The timing of today's workshop is problematic for members of the agricultural community who are busy in their businesses. Agriculture in Butte County is valued at \$622 million/year before economic multipliers are applied. The General Plan states the County's goal is to protect, maintain, promote, and enhance agriculture. If large sized agricultural parcels are not maintained, additional agricultural business enterprises will be lost to Glenn and Colusa counties. If the Commission has questions regarding habitat conservation and planning and financial issues and agriculture.

John Scott: Butte Valley resident representing the Butte Valley Coalition (60 people). Reports from CAC meetings indicated input was not to change zoning due to water constraints. Applying the same zoning to all areas in Butte Valley is flawed due to the varying conditions in the area. Development of the area into 3 - 5-acre ranchettes does not have sufficient groundwater supplies. Large Parcels north of Durham-Pentz Road should be rezoned to 160-acre minimums.

Stacey Gore: Avoid painting with a broad brush in applying zoning. Smaller

sized parcels are not economically viable agriculture.

At this point in the meeting, Chair Wilson closed the public comment period.

Tim Snellings: Your Commission has a range of options. You can stay the course with the 17,000 acres of changes recommended for AG subzones at the last meeting, or address the 320-acre minimum.

Commissioner Wilson: Has no problem with the 320-acre minimum.

Commissioner Nelson: Neither does he.

Commissioner Kennedy: There are a lot of people we haven't heard from. There are concerns about estate planning and she is leery of large parcel sizes. 80-acre minimums will not lead to a large-scale sell-off.

Commissioner Becker: Stated he is strongly opposed to a 320-acre minimum as it is far too restrictive. There are many farming families in Butte County, but there are also many entities that farm or ranch for other reasons. Option 5 fits his philosophy the best.

Commissioner Marin: 160-acres is appropriate for the cattle ranchers and rice farmers, but not lesser minimum parcel sizes.

Tim Snellings: We need you to give your best recommendation to the Board of Supervisors. You have already made a recommendation. The fairness issue does somewhat concern him.

Commissioner Nelson: Asked the Commission what is their opinion on Option 4.

Commissioner Becker: Stated he prefers Option 5, together with the previous actions taken by the Planning Commission on October 8th regarding properties in the Butte Valley area. He is willing to make that a motion.

Commissioner Nelson: We need to be consistent with application of zoning.

Commissioner Kennedy: No, we need to reflect local conditions.

Commissioner Marin: Clarified that as a result, the only AG-320 would be in Butte Valley on Williamson Act lands.

Commissioner Becker: Inquired of staff if the Citizens' Advisory Committee (CAC) recommended application of any 320-acre minimum zoning?

Dan Breedon: No, the CAC reviewed general concepts regarding zoning at the beginning of the meeting series and did not make specific recommendations for

parcel sizes on individual properties.

Michael Evans: No, our discussions regarding zoning were much more general. I think the discussion you are having is the natural evolution of the concepts that began at the CAC level.

Commissioner Kennedy: Seconds Commissioner Becker's motion.

Commissioner Becker: Restates motion.

Tim Snellings: How about going through a two step process to see where is the opinion of the Commission? You could make the motions in a two-step process: 1) Keep previous actions from October 13th; and 2) change all AG-160 acre zoning to AG-80 and change all AG-320 acre zoning to AG-160 acre.

Commissioner Becker: Withdraws his previous motion; makes motions as guided by Director Snellings.

Commissioner Marin: Withdraws his second.

Commissioner Becker (through Director Snellings): Move to affirm actions to recommend to the Board of Supervisors the rezoning of properties taken on October 13, 2011.

Commissioner Marin: Second

Vote 5-0 (Unanimous)

Commissioner Becker (via Director Snellings): I move that all parcels zoned AG-320 east of Highway 99, excluding parcels recommended by the Planning Commission on October 13th to be rezoned to AG-320, be recommended to be rezoned to AG-160.

Commissioner Marin: Second

Commissioner Nelson: I can't support the last part of that motion.

Vote: 3-2 (Commissioners Nelson and Chair Wilson NO)

Commissioner Becker (via Director Snellings): I move that all parcels zoned AG-160 west of Highway 99 excluding parcels previously recommended to be rezoned from AG-320 to AG-160 be rezoned to AG-80.

Commissioner Marin: Second.

Tim Snellings: To clarify, does this include a review of Williamson Act Contract

minimum parcel sizes and their incorporation in the minimum parcel sizes?

Commissioner Becker: That ruins the uniformity of the zone. No.

Vote: 3-2 (Commissioners Nelson and Chair Wilson NO)

At this time Chair Wilson recessed the Planning Commission meeting for lunch.

1:45pm Reconvene Meeting

A. Agricultural Subzones (Continued)

Commissioner Becker: Following discussion, Commissioner Becker provided clarification of his previous portion that the boundary runs along SR99 and SR149 south to SR 70. Made motion.

Commissioner Marin: Repeated his second of Commissioner Becker's motion.

Vote: 3-2 (Commissioners Nelson and Wilson NO)

B. Property Owner Requests

Principal Planner Dan Breedon provided an overview of the property owner zoning change requests received focusing on the requests that staff does not support.

Designation of the SE Corner of Robinson's Corner as Commercial. Staff Recommends Approval.

Paradise Bluffs parcel (located southwest of the existing Paradise Pines Subdivision) requesting 40-50 ac. to be zoned for 0.5-ac parcels instead of 2.5-acre parcels. Supervisor Becker questioned the capacity of sewer and water availability.

There were four parcels with requested zoning changes by Michael Evans that were not supported by staff. Parcels in the Berry Creek area were recommended to retain previous designations due to deer herd constraints and the relatively large size of the parcels.

Commissioner Marin: Asked what he termed a "loaded" question about the timing of resolution of errors in General Plan and Zoning Ordinance. Dan Breedon agreed with Commissioner Marin that any errors need to be addressed and resolved. This is why the Planning Commission is taking sufficient time at this point to be careful in its review and deliberations with the Draft Zoning Ordinance.

At this point Chair Wilson opened the public comment period.

Michael Evans: Commented that he did not appear to have the most up to date maps. Mr. Evans used the Lake Oroville Bed and Breakfast as an example. He questioned why there were four different zones in a very small geographic area with parcels all very similar to each other. All parcels in the Potter's Ravine area are similar to each other and will not be further subdivided. He stated the parcels should be zoned consistent with their existing size.

Dan Breedon responded that the Rural Residential zoning was recommended in areas closer to developed or urbanizing areas than Foothill Residential zones. At the direction of the Board of Supervisors, exceptions to the Deer Range were carved out to recognize existing rural subdivisions.

Reviewing the zoning in the area of Section 15, north of Forbestown Road, Mr. Evans stated the existing Unclassified zoning designation was originally proposed at a five-acre minimum, but was later changed to a 20-acre minimum. These properties should be consistently zoned at a 10-acre minimum as was originally intended by action of the Board of Supervisors.

In regards to the Lake Oroville Country Club, Mr. Evans requested a change to the REC-2 zone. He questioned why the existing country club was considered non-conforming and how business friendly. His comments were generally agreed with by Commissioners Marin and Becker. Director of Development Services Tim Snellings noted that the General Plan EIR did not analyze the full range of potential development that could occur by right in the REC-2 zone in this area and cited resort hotels as one example.

Howard Tugel addressed the Planning Commission regarding his property APN 055-310-025. Mr. Tugel read a letter into the record regarding about his history of financial losses in his opinion due to zoning requirements and their application. He stated that deer herd issues affecting the development of his parcel were addressed in by its being part of a prior subdivision in 1995. He wants a FR-5 zoning designation in the proposed ordinance.

Terry Lunz a resident of in Area 23 (south and east of the City of Oroville) stated she appreciated the opportunity for public involvement in this process. Ms. Lunz spoke regarding the Unique Agricultural Overlay (-UA) and expressed a concern that medical offices and clinics should be excluded from the Unique Agricultural Overlay zone.

D. C. Jones spoke about medical offices and clinics in the -UA Overlay zone and brought the proposed Mixed Use zone along Miner's Ranch Road to the Commission's attention.

Jim Bishop from the East Oroville foothills addressed the issues of clinics in the Rural Residential zone and the –UA zone in particular. He did not see the need for such clinics in the area and cited the following:

- There are ample zones adjacent to the Oroville area to locate clinics; and
- Medical Officer and Clinics are not compatible with the stated purpose of the -UA Overlay.

Mr. Bishop requested the specific exclusion of clinics from the -UA Overlay zone. Commissioner Kennedy asked Mr. Bishop to cite examples of specific conflicts that he could foresee between the outpatient clinics and the overlay zone. Mr. Bishop replied that medical clinics do not promote agricultural uses and that they “distract from the remote pastoral farm agricultural nature of the area.”

Pamela Leis indicated that lack of public transportation, narrow roads, and difficulty in parking is another example of why medical clinics are inappropriate in the –UA overlay district.

Pete Giampolli spoke representing Jim Paiva on a property North of Bell Road and South of Mud Creek. Proposed zoning is AG-80. Property is along extension of Eaton Road. Existing parcels are as small as 10 acres and he seeks zoning consistent with the existing parcel sizes. He also seeks moving the Greenline west over time.

Dori Hammel addressed the Planning Commission representing Berry Creek Association and the 95916 zip code. The Association is concerned about the proposed heavy equipment storage provisions, particularly off of private roads. This is in opposition to the desires of the Berry Creek Community Association.

Jeanne Checchi stated she felt the numbers regarding the events provisions are a reasonable compromise regarding the Unique Agricultural Overlay zone.

Planning Commission and Staff Discussion:

Dan Breedon discussed Michael Evans' request to rezone areas east of Lake Oroville and north of Forbestown Road. A motion was made by Commissioner Marin and second by Commissioner Becker. Passed unanimously (5-0).

The Commission discussed changing the parcel APN 069-360-068 from Medium Density Residential. It was moved by Supervisor Becker and seconded by Commissioner Marin. The motion passed 4-1 (Commissioner Nelson NO).

Commissioner Kennedy requested discussion of the request by Howard Tugel. The Commission discussed the limitations of the Deer Herd overlay. Commissioner Becker requested review of the properties further south along Pentz Road for consistency in application of County policies. Commissioner Nelson suggested an FR-10 zone may be appropriate. A motion was made by

Commissioner Kennedy and seconded by Commissioner Marin. The motion passed unanimously (5-0).

Commissioner Becker requested discussion of the Boyle Parcel (APN 041-470-091). A motion to change the zoning to FR-10 was made by Commissioner Marin and seconded by Commissioner Becker. The motion passed 3-2, (Commissioners Nelson and Wilson NO).

The Planning Commission next discussed the request regarding APN 041-470-087 for Flournoy. A motion to change the zoning to FR-10 was made by Commissioner Marin and seconded by Commissioner Becker. The motion passed 3-2, (Commissioners Nelson and Wilson NO).

The Planning Commission then discussed the request by Grant Pello for APN 041-470-116. A motion to change the zoning to FR-10 was made by Commissioner Marin and seconded by Commissioner Becker. The motion passed 3-2, (Commissioners Nelson and Wilson NO).

The Planning Commission next discussed the request to change the designation for the Oroville Country Club from REC-1 to REC-2. Dan Breedon indicated staff's recommended zoning is consistent with other golf courses and similar facilities. Commissioner Becker stated he supported a change to the text of the REC-1 zone to allow limited expansions to existing REC-1 uses by right in order to promote economic development in Butte County.

Commissioner Becker moved to take the remaining actions as recommended by staff with the caveat that a change be considered to the REC-1 zone to allow for limited expansions to existing uses by right in that zone. The motion passed unanimously (5-0).

Special events in the Unique Agriculture (-UA) Overlay Zone

Dan Breedon discussed the staff memorandum outlining options for allowing the maximum area of a property to be used and the maximum (peak) number of attendees for special events in the -UA Overlay.

Public Comment

Jean Checchi: The Sierra-Oro Farm Trail has grown over the past four years and has helped the community and stated she supports the staff developed option.

D.C. Jones: Stated he lives approximately one-quarter mile from the Grey Fox Vineyard and has no problem with the proposed special events provisions.

Michael Evans: Supports the staff developed special events provisions and the

extension of the -UA Overlay zone. The Commission discussed the extension of the -UA zone for a property to the east of the existing Overlay zone in the FR zone.

Public comment was closed.

Regarding clinics, the Commission provided clarification to its previous action of September 13, 2011.

A motion was made by Commissioner Marin and seconded by Commissioner Becker. The motion passed unanimously (5-0).

Spring Water Collection in the TPZ zone

Staff discussed the request by Dale Mancino for the collection of spring water on his Timber Preserve Zone (TPZ) zoned property. Staff recommends some review should be required for consistency with the Timber Preserve Zone and potential construction impacts.

Motion by Commissioner Becker to amend the text of the Draft Zoning Ordinance to establish collection of spring water as a conditional use in the TPZ, Timber Mountain (TM) and Foothill Residential (FR) zones.

Chief Deputy County Counsel Felix Wannemacher suggested this use might require review by the Water Department or Water Commission and special findings to be made in order to grant a Use Permit for this type of permit. Director Tim Snellings stated he didn't see he saw how the provisions of Chapter 33 of Butte County Code applied. Both agreed that water export is a controversial. Director Snellings suggested this needed to be discussed with Water Department Director Paul Gosselin and addressed at the Planning Commission's October 13, 2011 meeting.

Granite Construction Comments.

Yasha Saber of Granite Construction discussed his submitted comments regarding Development Agreements and other sections of the draft zoning code.

Public comments closed.

Moved by Commissioner Becker and seconded by Commissioner Marin to make the modifications provided by Mr. Saber, subject to review by County Counsel for consistency with the law. Motion passed unanimously (5-0).

Indoor Recreation Uses in the General Industrial Zone

Dan Breedon introduced the topic of a potential change to the text of the Draft

Zoning Ordinance to allow indoor recreational use within the General Industrial Zone.

Public Comment:

None

Dan Breedon discussed a request received to allow indoor recreational use within the General Industrial Zone. The Commission discussed whether a Minor Use Permit or Conditional Use Permit should be required. It was moved and seconded to allow indoor recreational uses in the General Industrial zone subject to a Minor Use Permit. The motion passed unanimously (5-0).