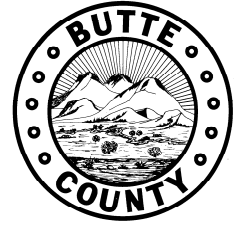


Butte County Department of Development Services

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TO: Honorable Chairman and Planning Commission

FROM: Dan Breedon, Principal Planner
Butte County Department of Development Services

SUBJECT: October 13, 2011 Special Study Session 1:00 pm Agenda Item on
Second Draft Zoning Ordinance Text: Follow-up from September
22, 2011, Planning Commission items

DATE: October 13, 2011

At the September 15, 2011 Planning Commission meeting, the Planning Commission asked staff to follow-up on six items related to the Second Draft Zoning Ordinance text and map, including the following:

1. Including new language for the REC-1 zone to allow minor expansions to existing facilities.
2. Review of Unique Agriculture Overlay and whether it should be extended to the Foothill Residential General Plan designation, and to the Woodleaf Farm property.
3. Determining whether native vegetation is a mandatory requirement under state law as set forth in Article 21 –Landscaping
4. Mitigation Banks Use and the Draft Zoning Ordinance.
5. Follow-up with Butte County Water and Resource Conservation Department regarding the allowance of Springwater Collection in the TPZ zone.
6. Review of Granite Construction company requests and further recommendations.

Additional staff analysis on each of these six items is provided below for the Planning Commission's consideration. A staff recommendation precedes each of the six sections.

1. **Including new language for the REC-1 zone to allow minor expansions to existing facilities.**

- ◆ **STAFF RECOMMENDATION:** Recommend to the Board of Supervisors amending Draft Zoning Ordinance Section 24-23 as set-forth below.

The Recreational Commercial-1 (REC-1) zone is implemented over areas of the county with existing facilities such as golf courses and other recreational uses. Most new uses are subject to receiving a Conditional Use Permit. The Planning Commission asked staff to allow limited expansion of existing facilities without being subject to a Conditional Use Permit. Staff reviewed CEQA Guidelines Section 15301 (e), which provides a Class 1 Categorical Exemption from environmental review for certain types of expansions. Staff therefore provides the following amendment to this section (shown in underline), based upon CEQA Guidelines:

Section 24-23 Development Standards for Commercial and Mixed Use Zones

- A. **Mixed Use Sub-Zones.** The MU zone is divided into three sub-zones, each with its own minimum parcel size. All standards that apply to the MU zone in general also apply to each individual sub-zone, except for minimum parcel area as specified in Table 24-23-1 (Parcel Size, Residential Density, and Intensity Standards for Commercial and Mixed Use Zones).
- B. **Parcel Size and Density.** Table 24-23-1 (Parcel Size, Residential Density, and Intensity Standards for Commercial and Mixed Use Zones) identifies the parcel size, residential density, and intensity standards that apply in commercial and mixed-use zones.
- C. **Structure Setbacks and Height.** Table 24-23-2 (Setback and Height Standards for Commercial and Mixed Use Zones) identifies structure setback and height standards that apply in commercial and mixed use zones.
- D. **Expansion of Existing Allowed Uses in the REC-1 Zone.** Expansion of existing allowed uses within the REC-1 zone is allowed through Administrative Permit for no more than:
 - 1. 50 percent of the floor area of the structure before the addition, or 2,500 square feet, whichever is less; or
 - 2. 10,000 square feet if:
 - a. The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
 - b. The area in which the proposed expansion is located is not environmentally sensitive.

3. The expansion and Administrative Permit shall be subject to all development standards (e.g., parking, landscaping, and setbacks) as set forth under this chapter.

2. **Review of Unique Agriculture Overlay and whether it should be extended to the Foothill Residential General Plan designation and to the Woodleaf Farm property (see attached exhibit map).**

- ♦ STAFF RECOMMENDATION: After reviewing the additional staff analysis as set-forth below, consider whether to recommend the allowance of the Unique Agriculture Overlay in the Foothill Residential designation and zone, and whether to include the Woodleaf Farm property within the Unique Agriculture Overlay.

The Unique Agriculture Overlay (-UA), is currently only implemented in the Agriculture and Rural Residential General Plan designations, and is located in two locations, the North Table Mountain Olive Groves (Coal Canyon) and the East Oroville Foothills areas of Butte County.

The -UA Overlay provides the following purpose statement:

Purpose. The Unique Agriculture (-UA) overlay zone is intended to support and enhance Butte County's family farms, unique crops, or historic ways of farming by maintaining viable small-scale/historic agricultural operations and their essential rural setting in unique Rural Residential and Agricultural areas of the county. The -UA overlay zone accommodates a variety of uses developed at a scale that is complementary and accessory to unique agricultural pursuits. It encourages residents and visitors to learn more about agriculture in the county by allowing educational and tourism uses on working farms. This overlay zone also includes provisions to protect adjacent residential and agricultural uses.

The Planning Commission may wish to consider that the -UA overlay is currently only implemented on areas of the county that were considered unique in conformance with the Purpose Statement set-forth above.

The Coal Canyon Unique Agriculture Overlay is considered unique for the following reasons:

- Existing century old grove of Mission Olive Trees (about 900+ acres)
- Current owners motivated to maintain and enhance area and tourism potential (Olive oil, education, events, sales, farmstays, etc.)

- Historical precedent to innovate (original groves planted by U.C. Berkeley AG professors in early 1900's)
- Designation as Historic District required Caltrans to change alignment to SR-70 for new SR 70/SR149 intersection project
- Part of Sierra Oro Farm Trail

The East Oroville Foothills Unique Agriculture Overlay is considered unique for the following reasons:

- Center of citrus industry in Butte County (1900-1940s)
- Area provides microclimate with fewer frost days per year –ideal for citrus growing
- Also includes vineyards, orchards, organic gardens, wineries and olive oil tasting
- Area consists of smaller rural residential farms and parcels
- Part of Sierra Oro Farm Trail

Special consideration was taken on the part of the Planning Commission and Board of Supervisors to ensure that the –UA overlay was implemented on unique regional areas that provided opportunities for tourism and the enhancement of existing agricultural practices.

The Foothill Residential General Plan designation allows rural densities from 1 to 40 acres and permits farmsteads and agricultural uses. Allowing the –UA Overlay in the Foothill Residential zone would make over 59,700 acres of land eligible for the consideration of additional –UA Overlay locations.

The Woodleaf Farm –UA Overlay request made by Mike Evans on behalf of Mr. Carl Rosato pertains to 4 parcels of 26 (+/-) acres in total size located at 6167 Old Olive Highway in Oroville. Mr. Evans states that Mr. Rosato's farm is unique in that it is "possibly the premiere organic peach orchard in our region".

This request brings up an important consideration under the Draft Zoning Ordinance process. Previous implementation of the –UA Overlay has been to significant regions of the county involving many parcels and hundreds and thousands of acres of land. Mr. Evan's request involves a significantly smaller landholding. It would be appropriate for the Planning Commission to consider whether smaller individual landholdings should be eligible for the –UA Overlay, separate from the existing –UA Overlay regions of the county, such as the Coal Canyon and Eastern Oroville Foothills areas.

3. Determining whether native vegetation is a mandatory requirement under state law as set forth in Article 21 –Landscaping

- ◆ STAFF RECOMMENDATION: Do not recommend amendment to any language at this time. Staff will continue to review the State Water Efficient Landscaping Ordinance and will have additional recommendations for the Board of Supervisors consideration, later in the update process.

Staff reviewed whether native vegetation was a mandatory requirement of the State's mandated Water Efficient Landscaping Ordinance. While there are incentives to use native vegetation under the State Ordinance, there is no mandatory requirement. Native Vegetation, which is adapted to the use of less water, can limit water consumption of a site, and therefore provide the opportunity to budget more water in other areas of the site that may require more water. Staff is continuing to review the State's mandated Water Efficient Landscaping Ordinance and will have additional amendments to this section at the future Board of Supervisors meeting.

4. Mitigation Banks Use and the Draft Zoning Ordinance

- ◆ STAFF RECOMMENDATION: Do not recommend the inclusion of mitigation banks as a use within the current Draft Zoning Ordinance. Recommend including all additional public comment and testimony concerning mitigation banks in future work on General Plan Actions AG-A2.1 and COS-A7.3. The completion of these actions may include future updates to the Draft Zoning Ordinance concerning mitigation banks.

A Mitigation Bank is a use allowing the purchase of credits to offset biological impacts of a development project. The Mitigation Bank is located on a parcel or parcels of land with abundant biological resources, such as a federal or state listed species, vernal pools, riparian habitat, or wetlands. The process allows development of biological resources potentially many miles away from the mitigation bank if a developer purchases a predetermined amount of credits, which protects similar resources within the bank. This process requires the purchase of credits that will protect a 1:1 ratio of lands protected to lands disturbed or more.

During the September 22, 2011 Planning Commission meeting, a member of the public requested that the Draft Zoning Ordinance provide further information concerning Mitigation Banks and how they would be regulated under the new Zoning Ordinance.

The General Plan addresses the subject of Mitigation Banks under the Conservation Element and the Agriculture Element. One goal, and several policies and Action Plans from the General Plan are listed below:

Agriculture Element Goal AG-5 states that the County will:

“Reduce conflicts between urban and agricultural uses and between habitat mitigation banking and agricultural uses.”

Agriculture Element Policy AG-P5.1 and Policy AG-P5.2 states the following:

AG-P5.1 Agricultural uses shall be the primary uses within the Agriculture land use designation. Residential uses, such as a farmer’s home, and habitat mitigation banking uses shall be considered accessory uses.

AG-P5.2 Urban development and habitat mitigation banking uses shall not limit the financial sustainability of agricultural operations.

Agriculture Element Action AG-A2.1 states the following:

AG-A2.1 Create an agricultural mitigation ordinance in which developers will be required to permanently protect agricultural land of equal or greater value in place of land that is redesignated from Agriculture to a non-agricultural designation. This ordinance may include the option of paying an in-lieu fee that would contribute to an agricultural resource protection fund that could be used to purchase voluntary conservation easements or complete other projects that will protect and conserve agricultural land. The ordinance will establish mitigation standards that address the valuation and geographic location of agricultural land.

Conservation Element Policy COS-P9.2 d. states the following:

COS-P9.2 If special-status plant or animal species are found to be located within a development site, proponents of the project shall engage in consultation with the appropriate federal, State and regional agencies and mitigate project impacts in accordance with State and federal law. Upon adoption of the Butte Regional Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP), mitigation requirements of the HCP/NCCP shall be implemented for development projects within the HCP/NCCP area. Examples of mitigation may include:

d. Mitigate for the loss of special-status species by purchasing credits at an approved conservation bank (if a bank exists for the species in question), funding restoration or habitat improvement projects at existing preserves in Butte County, or purchasing or donating mitigation lands of substantially similar habitat.

Conservation Element Action COS-A7.3 states the following:

COS-A7.3 Establish a mitigation bank program for impacts to habitats for protected species, such as oak woodlands, riparian woodlands and wetlands, in locations outside of the approved Butte Regional Habitat Conservation Plan and

Natural Community Conservation Plan Planning Area, using mitigation fees on new development projects as a funding mechanism.

Both Actions AG-A2.1 and COS-A7.3 address the establishment of a Mitigation Bank program or Agricultural Mitigation Ordinance. As “Actions” under the General Plan, these Actions are identified under the Action Plan as projects to be implemented after General Plan adoption, generally within the first five years. AG-A2.1 was scheduled to be completed during Fiscal Year 2010/2011, and COS-A7.3 is scheduled to be completed during Fiscal Year 2011/2012.

The creation of a Mitigation Bank program is beyond the scope of the Draft Zoning Ordinance Update. Due to the complexity of permitting this land use, staff proposes to defer the inclusion of a mitigation bank use within the Draft Zoning Ordinance until both of the actions set forth above are completed. A variety of issues must be addressed before Mitigation Banks can be included in the draft Zoning Ordinance, including conformance with various zoning districts, consistency with the General Plan, state and federal laws concerning Mitigation Bank development, public comment, and the development of policy through the Planning Commission and ultimately the Board of Supervisors.

Several Mitigation Banks currently operate, or have operated, in Butte County in consistency with the Zoning Ordinance. For example, mitigation banks that are intended to protect federally listed species such as vernal pool fairy shrimp could also allow grazing activities, which would maintain an agricultural use. Once a mitigation bank’s credits become “sold-out”, in other words, all of the credits have been bought and all of the land within the bank is protected, grazing could still be a viable use for many years to come. Currently, however, there is no formal permit process in the existing Zoning Ordinance to address Mitigation Banks.

The Board of Supervisors approved the current Action Plan on October 26, 2010, during the adoption of General Plan 2030. In reviewing the approved schedule for the Action Plan, it is apparent that an update is necessary to provide the Board with a revised schedule for actions that were scheduled to be completed in the 2010/11 Fiscal Year. Many actions, including AG-A2.1 and COS-A7.3 have remained incomplete or have not been started because they were tied to the completion of the Draft Zoning Ordinance, which has been delayed for part of the year due to litigation. In other instances, the original Action Plan’s schedule could not be met due to reduced staffing, reduced revenue, and other resource limitations. Further update to the Action Plan’s overall schedule will necessitate rescheduling AG-A2.1 and COS-A7.3 to a future time.

5. Follow-up with Butte County Water and Resource Conservation Department regarding the allowance of Springwater Collection in the TPZ zone.

- ◆ **STAFF RECOMMENATION:** After reviewing the additional staff analysis as set-forth below, consider recommending to the Board of Supervisors whether Springwater Collection use should be deferred and reviewed within the context of General Plan Actions W-A2.2 and W-A3.2 for further study and recommendation. Alternatively, the Planning Commission may wish to recommend that this use be subject to a Conditional Use Permit.

A request was received from a member of the public to consider the collection of springwater in the TPZ zone within the draft Zoning Ordinance. This use was first considered by the Planning Commission on September 22, 2011.

Staff recommended that if the Planning Commission wished to provide for this use in the Draft Zoning ordinance that it would be subject to a Use Permit. Prior to making a final recommendation, the Planning Commission asked staff to review this matter with Butte County Department of Water and Resource Conservation staff concerning permitting requirements. Staff met with Water and Resource Conservation Director Paul Gosselin and it was determined that this use would not be subject to a groundwater transfer permit process pursuant to Butte County Code Chapter 33 –Groundwater Conservation.

Although this use would not be subject to permitting under Chapter 33 – Groundwater Conservation, it would be required to go through CEQA review and would be subject to analysis to determine impacts to water resources including groundwater, surface water, water quality, and biological impacts and others impact areas.

In addition to CEQA review, the General Plan’s Water Resources Element contains one goal and several policies and actions that are related to water use and potential impacts to groundwater.

Goal W-3 requires that the County:

Effectively manage groundwater resources to ensure a long-term water supply for Butte County.

Water Resources Element Policy W-P3.3 states:

W-P3.3. The County shall protect groundwater recharge and groundwater quality when considering new development projects.

Water Resources Element Policy W-P2.9 states:

W-P2.9. Applicants for new major development projects, as determined by the Department of Development Services, shall demonstrate adequate water supply to meet the needs of the project, including an evaluation of potential cumulative impacts to surrounding groundwater users and the environment.

Water Resources Element Action W-A2.2 states:

W-A2.2. Develop Criteria to implement Policy W-P2.9, including thresholds for the size of development projects that triggers the need for an analysis of water supply and standards to demonstrate adequate water supply and evaluate impacts to surrounding groundwater users.

Water Resources Element Action W-A3.2 states:

W-A3.2. Evaluate gaps in existing federal, State and local standards, and develop additional standards as needed to preserve groundwater recharge and protect groundwater quality.

The Planning Commission may wish to consider whether it is more appropriate to categorize springwater collection within a broader definition that would include the pumping of groundwater or surface water for off-site commercial purposes. The bottled water industry will often site bottling plants at the source of springwater or groundwater pumping wells. These uses have the potential to influence water resources and must be evaluated for their consistency with the General Plan and impacts to the environment.

While a Use Permit would allow for a review of many different aspects of a project, including the application of CEQA, it may be very difficult for an applicant to overcome complex issues related to water resources without a set of criteria as set-forth under W-A2.2. Further, the Draft Zoning Ordinance should include performance standards that would apply to all projects proposing commercial water use. Such standards could address the amount of water use, monitoring for on-site and off-site impacts to water quality and water quantity, and other development related requirements.

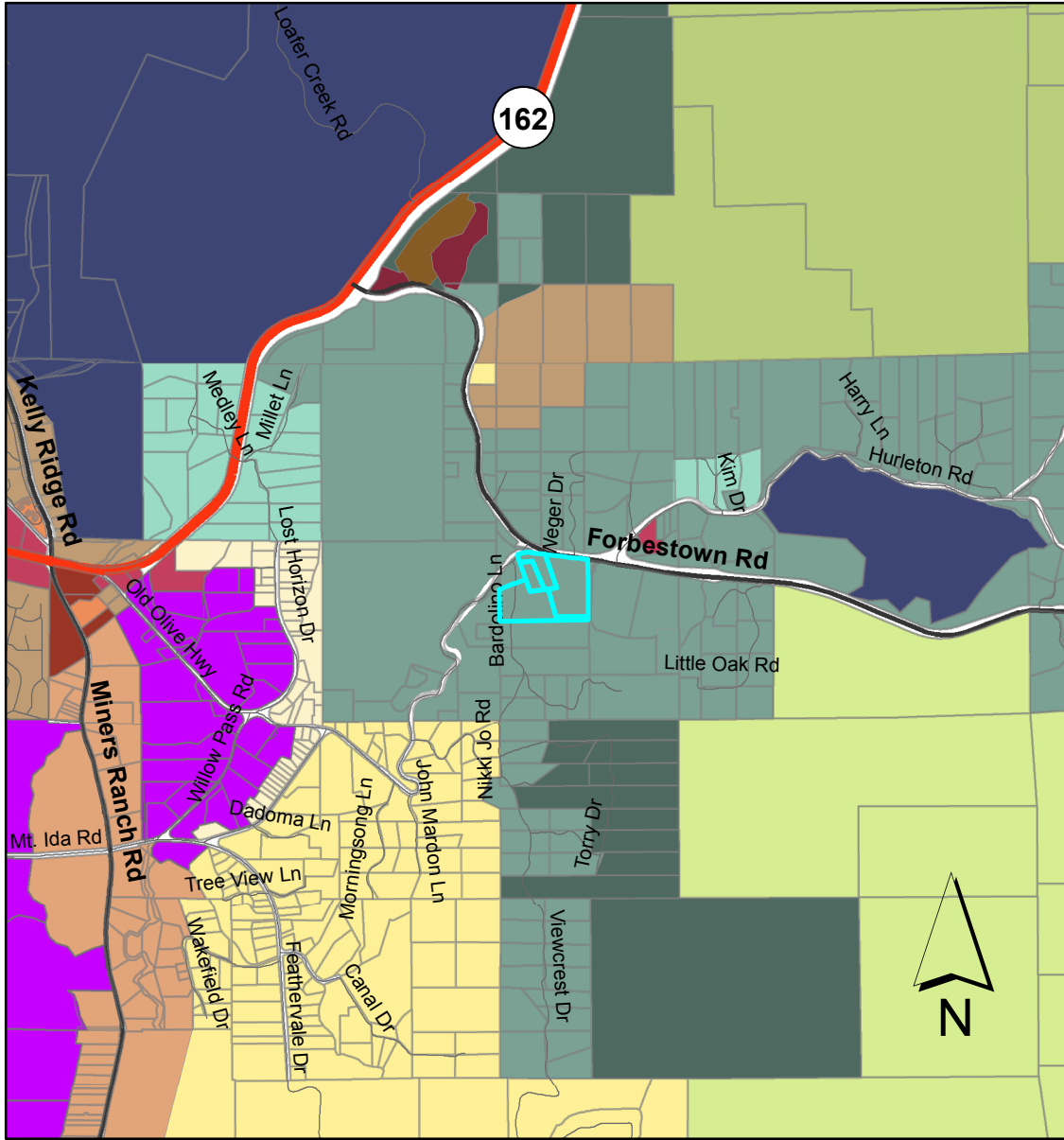
6. Review of Granite Construction company requests and further recommendations.

- ◆ **STAFF RECOMMEDATION:** Recommend approval to the Board of Supervisors of the amendments requested by Granite Construction Company as modified and set forth below.

Staff reviewed Granite Construction Company requests in more detail and provides the following final recommendations for the Planning Commission's consideration:

1. Section 24-175A: Include “Installation, Operation and Maintenance of Pumps” under #5 Utilities
2. Section 24-76B: Include a new subsection #4 that states “Associated with an approved use permit, mining permit, tentative parcel or subdivision map”.
3. Section 24-76C: Include new subsection #6 that states, “When a permit is obtained from a regulatory agency such as the U.S. Army Corps of Engineers or the California Department of Fish and Game.”
4. Section 24-147 Vibrations, include new subsection 24-147A, that states:
“Exceptions. Upon written application from the owner or operator of an industrial or commercial vibration source, the review authority, as part of a permit approval, may conditionally authorize exceptions to this section, based upon analysis supported by the Development Services, in the following situations:
 1. Infrequent Vibration
 2. If, after applying best available control technology, a use existing prior to the effective date of the Zoning Ordinance is unable to conform to the standards established by this section”
5. Section 24-222, include additional sentence stating the following: “For a Use Permit associated with a Mining Permit the expiration of permits shall be in accordance with Butte County Code Chapter 13”.
6. Section 24-284B, include new underline section as follows:
“Applicants for projects requiring major discretionary approvals, as determined by the Department of Development Services, shall negotiate development agreements with the County to ensure that the County’s interests will be protected. Terms of development agreements shall be commensurate with a project’s anticipated impacts, while also providing a net benefit to the County and its residents not otherwise obtainable through other processes”.

Woodleaf Farm Request for Unique Ag Overlay



Legend

UAG_Overlay	Resource Conservation (40-ac minimum)	Foothill Residential - 10 (up to 1 du/10 ac)	Sports and Entertainment
Zoning Jul 8, 2011	Residential Zones	Foothill Residential - 20 (up to 1 du/20 ac)	Industrial Zones
Agricultural Zones	Rural Residential - 5 (up to 1 du/5ac)	Foothill Residential - 40 (up to 1 du/40 ac)	Light Industrial
Agriculture - 20	Rural Residential - 10 (up to 1 du/10ac)	Commercial and Mixed Use Zones	General Industrial
Agriculture - 40	Very Low Density Residential (1 du/5 ac to 1 du/ac)	General Commercial	Heavy Industrial
Agriculture - 80	Low Density Residential (1 to 3 du/ac)	Neighborhood Commercial	Special Purpose Zones
Agriculture - 160	Medium Density Residential (3 to 6 du/ac)	Community Commercial	Public
Agriculture - 320	Medium High Density Residential (6 to 14 du/ac)	Mixed Use - 1	Airport
Agriculture Services	High Density Residential (14 to 20 du/ac)	Mixed Use - 2	Research and Business Park
Natural Resource Zones	Foothill Residential - 1 (up to 1 du/ac)	Recreation Commercial - 1	PUD
Timber Mountain (160-ac minimum)	Foothill Residential - 2 (up to 1 du/2 ac)	Recreation Commercial - 2	
Timber Production (160-ac minimum)	Foothill Residential - 5 (up to 1 du/5 ac)		