

# **Butte County Department of Development Services**

TIM SNELLINGS, DIRECTOR | PETE CALARCO, ASSISTANT DIRECTOR



7 County Center Drive  
Oroville, CA 95965  
(530) 538-7601 Telephone  
(530) 538-7785 Facsimile  
[www.buttecounty.net/dds](http://www.buttecounty.net/dds)  
[www.buttegeneralplan.net](http://www.buttegeneralplan.net)

**Butte County Board of Supervisors  
AGENDA REPORT  
Butte County General Plan 2030  
Draft Agriculture Mitigation Ordinance Study Session**

March 25, 2014

Butte County Board of Supervisors  
25 County Center Drive  
Oroville, CA

**Subject: Draft Agriculture Mitigation Ordinance Study Session (Proposed Butte County Code Chapter 35, Protection of Agricultural Land, Article II)**

## **I. RECOMMENDATION**

- **Recommended Motion:** Review and provide staff with further direction on the 5 main topic areas relating to the Draft Agriculture Mitigation Ordinance (Attachment A) as set forth under this Agenda Report.

## II. BACKGROUND

For extensive background materials, the Board of Supervisors is referred to staff reports provided to the Planning Commission at hearings conducted on November 21, 2014 and January 23, 2014, provided under **Attachments 1 and 2**. These reports cover all of the background material and comment provided to the Planning Commission on the Draft AMO, as well as input received through the AMO Stakeholder Group and focus groups who helped to develop the Draft AMO. Additional background information, summarized from the Planning Commission's reports and recommendations is provided in this section.

On October 9, 2012, the Board of Supervisors directed staff to work with the Northern California Regional Land Trust (NCRLT) and other interested stakeholders in creating an Agriculture Mitigation Ordinance (AMO). A stakeholder group was formed providing representation from various interests, including the Farm Bureau, Butte County Cattleman, Farm Advisor's Office, environmental and conservation groups, County and City decision makers, staff from county and city planning departments, Butte LAFCo, Butte County Resource Conservation District, Butte County Association of Governments, USDA/Farm Service, the Natural Resource Conservation Service and other interested parties. The stakeholder group met five times over a 1-year period to develop the Draft AMO. Additionally staff held individual focus group meetings with the Butte County Farm Bureau, conservation interests, environmental interests, developer interests, and with the city planning staffs of Biggs, Oroville and Chico.

### **Butte County General Plan 2030 Direction**

The following two actions from the Agriculture Element of the Butte County General Plan form the basis for the creation of an Agriculture Mitigation Ordinance:

**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.

**AG-A2.2** Encourage municipalities in Butte County to adopt similar agricultural mitigation ordinances.

These two Actions were included in the Butte County General Plan in support of **Agriculture Element Goal AG-2**, which states: “Protect Butte County’s agricultural lands from conversion to non-agricultural uses.”

### **California Environmental Quality Act (CEQA) Review**

This project is considered a subsequent activity that is within the scope of the previously Certified Final General Plan 2030 Program EIR, and no new environmental document is proposed. Pursuant to CEQA Guidelines Sections 15162 and 15168, Butte County finds that this project would not generate any new effects and that no new mitigation measures would be required because the project does not include any effects not already examined in the Final General Plan 2030 Program EIR.

The Agriculture Mitigation Ordinance was not identified as a mitigation measure under the General Plan 2030 EIR in order to mitigate a significant environmental impact pursuant to the CEQA; rather, it was included in General Plan 2030 as an “action,” which is defined under the General Plan as “an implementation measure, procedure, or technique intended to help achieve a specified goal...”. For this reason the word “mitigation” is not used under the Draft AMO in a CEQA context. Action AG-A2.2 was included in the General Plan in order to support the overall goal of protecting Butte County’s agricultural lands from conversion to non-agricultural uses (General Plan Agriculture Element Goal AG-2). The Action Plan was approved by the Board of Supervisors at the time the General Plan was adopted. The Action Plan outlines projects that should be completed within the first five years after County adoption of General Plan 2030 in order to begin its implementation.

### **Planning Commission Recommendations**

The Planning Commission conducted public hearings concerning the Draft Agriculture Mitigation Ordinance on November 21, 2013, and January 23, 2014. Summary Notes from these hearings are provided under **Attachment B**, along with the Planning Commission’s Resolution recommending that the Board of Supervisors adopt the Draft AMO.

Prior to their recommendation of approval, the Planning Commission directed that additional information and staff recommendations be brought back for further consideration for the

following four items. A staff response and the Planning Commission’s direction are provided for each of the four items.

1. Provide a definition of “Accessory Use” as it applies to a habitat being accessory to agriculture under the Draft AMO.

Staff recommended a definition in the Draft AMO as provided by the Butte County Zoning Ordinance, and also included text to address the definition of accessory habitat. Ultimately the Planning Commission recommended that the Draft AMO not address habitat issues, and the staff recommended definition was amended under section 3a. of the Draft AMO as follows:

**“Accessory Use:** A use that is incidental, related, appropriate, and clearly subordinate to the primary use of the parcel or zone, which does not alter the primary use of such parcel or zone, nor serve property other than the parcel of land on which the primary use is located. ~~Accessory Use as it applies to habitat conservation pertains to those habitat conservation activities that coexist with agriculture without compromising the ability of the property to support agriculture as a primary use, such as vernal pools on grazing land and giant garter snake habitat on rice land. It does not include replacing agriculture with habitat, such as planting native trees in place of orchard trees except when such activity is done for the management of non-productive areas of the property and in support of agriculture (e.g., windbreaks, hedgerows, screening, erosion control, and stabilization, etc.).~~”

2. Provide a provision that the agricultural use will be required to be maintained (not fallowed) 5 out of every 7 years when it is under an Agriculture Conservation Easement.

The following new provision was added to the Draft AMO under Section 6e. in response to the Planning Commission’s direction:

“Maintenance of Agricultural Use - Orchards, field and row crops, and grazing land shall remain under active use in 5 out of every 7 years; following of the agricultural use may occur in 2 out of every 7 years.”

3. Provide that parcels 20 acres or greater in size may utilize a mitigation credit banking option for agricultural mitigation.

Various edits to the Draft AMO have been made in response to the Planning Commission's direction to support that the mitigation credit banking option may be used for parcels 20 acres in size or greater.

4. The Planning Commission directed staff to include the exempted lands identified as specific plans to be developed under the General Plan as being applicable under the AMO.

Areas proposed for future growth as determined by the General Plan are also identified on the General Plan Land Use Map. These areas are identified as "Specific Plans to be Developed" on the General Plan Land Use Map and include the Doe Mill/Honey Run Specific Plan, the Paradise Urban Reserve Specific Plan, the Rio D' Oro Specific Plan, and the Stringtown Mountain Specific Plan. While these areas are identified for future growth through an Overlay Designation, their underlying General Plan designation, or portions of their underlying General Plan designation, is Agriculture.

Staff reported to the Planning Commission that there were no found policies, requirements or mitigation under the General Plan, General Plan EIR, or CEQA that would apply the Draft AMO's requirements to the Specific Plan areas to be developed under the General Plan. To the contrary, these areas have been designated for future growth under the General Plan, and were designated agriculture only until and unless a Specific Plan for urban growth is adopted, at which point the land use designation in the Specific Plan would replace the underlying Agriculture designation.

The Draft AMO would more appropriately apply to those agriculturally designated areas that are not proposed for future growth under the General Plan. In this way, the Specific Plan areas to be developed under the General Plan are encouraged and incentivized for the growth that is appropriately identified by the General Plan, and areas designated for continued agricultural use are discouraged for such growth, which would be contrary to the General Plan's Agriculture Element.

Staff therefore recommended that the Draft AMO not apply to the Specific Plan areas designated by the General Plan. The Planning Commission concurred with staff's

findings and recommendations concerning not applying the AMO to the Specific Plans as designated by the General Plan.

**Staff note:** *Further detailed discussion regarding this topic may be found under the Planning Commission's January 23, 2014 Staff Report, (Attachment 2).*

The Planning Commission provided further direction and recommendations on the Biggs Gridley Area of Concern (AOC). The AOC consists of a special planning area adopted by the Butte Local Agency Formation Commission for the unincorporated area between the Cities of Biggs and Gridley, comprising approximately 2,850 acres. The AOC's purpose is to help coordinate growth and facilitate communication and notification concerning development proposed by Biggs or Gridley within the AOC. This area is not proposed to develop in the County (i.e., would not be designated to a non-agricultural designation) and therefore was not originally proposed to be subject to the AMO.

Staff indicated that appropriate mitigation for the conversion of agricultural land located within the AOC would be addressed by the Cities of Biggs and Gridley when annexation takes place. The Planning Commission found that it would be appropriate to apply the AMO to the AOC to ensure that its agricultural protections apply to the agricultural land within this area. Further, the Planning Commission directed that agricultural conservation easements be excluded from being created within the AOC, as well as within the Specific Plans to be developed under the General Plan so that future easements would not conflict with planned growth (Draft AMO Section 6c.).

### **III. BOARD OF SUPERVISORS STUDY SESSION TOPIC AREAS**

The final Draft AMO is provided under **Attachment A**. The AMO is proposed to be included under Butte County Code Chapter 35 -Protection of Agricultural Land, Article II. This final Draft AMO includes all of the changes directed by the Planning Commission at their hearings discussed above.

Since this project started on October 9, 2012, when the Board of Supervisors first provided staff direction to work with the Northern California Regional Land Trust on the development of the draft AMO, five main topic areas have developed, which require further Board discussion and direction. These topic areas received discussion both during the process of developing the AMO with the Stakeholder's group and other focus groups, as well as at the Planning Commission. The five main topic areas are discussed below, with summaries of information and additional staff recommendations. Staff requests that the Board provide direction on each of these topic areas, with that direction ultimately being incorporated into the Final Draft AMO.

The revised Final Draft AMO will then be brought back to the Board at a public hearing for consideration of adoption.

- 1. Applicability (Where and when the AMO would apply):** Staff recommends the AMO be applied to areas designated Agriculture by the General Plan, but the AMO would not apply to specific plans that are to be developed as designated by the General Plan, or to agricultural uses that are not designated Agriculture by the General Plan (e.g., conversion of an orchard to residential uses when the property is currently zoned for residential uses). Staff recommends that the AMO apply when a General Plan Amendment/Rezone is proposed from an Agriculture designation to a non-agricultural designation (e.g., change to Commercial, Industrial or Residential General Plan designation). This direction is consistent with the language set forth under AG-A2.1, which is the General Plan action that directs creation of the AMO.

Further, staff recommends against applying the AMO's mitigation requirements to the growth areas designated by the General Plan as "Specific Plans to be Developed". Areas identified as "Specific Plans to be Developed" on the General Plan Land Use Map include the Doe Mill/Honey Run Specific Plan, the Paradise Urban Reserve Specific Plan, the Rio D' Oro Specific Plan, and the Stringtown Mountain Specific Plan. While these areas are identified for future growth through an Overlay Designation, their underlying General Plan designation, or portions of their underlying General Plan designations, is Agriculture. Stated another way, during the General Plan process, it was clearly the intent that these areas would be held in large parcels for future, planned urban development.

Under the County's General Plan, the underlying Agriculture designation remains during the interim period between General Plan adoption and the future development of land within a Specific Plan area. This is not intended to promote or prevent agricultural operations in this location, rather, it is a land use planning strategy that provides an interim use, and prevents additional subdivision of the property, prior to development of the property in accordance with General Plan 2030. Recognizing that the Agriculture designation is an interim designation that is effective until development, staff does not recommend that the AMO apply to development of these areas that are consistent with the General Plan.

- 2. Treatment of Habitat Uses under the Draft AMO:** Staff recommends that the AMO not apply in such instances where habitat conservation is accessory to the agricultural use (i.e., habitat conservation that does not require a General Plan Amendment). The greater issue has arisen during this process as to whether the complete conversion (as opposed to habitat that is accessory to an agricultural use) of agricultural uses on land designated Agriculture by the General Plan to a habitat use would trigger the AMO's mitigation requirements.

Currently, such conversions are not supported by the Agriculture General Plan designation or zone, although conversions of this sort do take place. It is difficult for the County to regulate such conversions because they generally take place via private agreements between a non-profit land trust and a property owner. Conservation easements executed in such instances do not involve County oversight and are typically completed without any assessment of whether the easement causes a change in use that would require a General Plan Amendment. If the State of California ultimately purchases property for habitat, the County no longer exercises land use jurisdiction (i.e., the County's General Plan and zoning regulations would not apply). There are areas of the County that were appropriately designated RC (Resource Conservation) due to the habitat uses that take place in these areas. The majority of these areas are owned and operated by the State of California and managed exclusively for habitat uses.

The issue of habitat conversion in areas designated Agriculture by the General Plan is a complex policy issue that may not be adequately addressed by the Draft AMO process. This issue was last explored by the County in 2002, when a draft ordinance was considered to require a Use Permit for the development of habitat on agriculturally designated land. That process was discussed at length but ultimately was not adopted by the Board at that time. If the Board so directs, staff can review this issue again, separately from the Draft AMO, and bring back further information for Board discussion and direction.

- 3. Location of Agricultural Mitigation Lands (Where AG Conservation Easements would be located):** Staff recommends against the use of mitigating loss of agricultural land (through agricultural conservation easements) within a set distance or radius from the area of conversion as originally proposed under a prior draft AMO. Removing this limitation provides more flexibility in siting easements where they can be most effective, it also provides more opportunities for landowners who may be interested in providing an easement. Additionally, staff recommends that all agriculture conservation easements be sited within Butte County (i.e., lands outside of the County would not be eligible to mitigate land within Butte County). Relatedly, staff recommends that development projects outside of Butte County would not be allowed to mitigate agricultural loss through easements created inside of Butte County.
- 4. In-Lieu Fees (Fees Submitted In-Lieu of Acquiring an Agricultural Conservation Easement):** Staff recommends that the amount of the in-lieu fee shall be determined case-by-case in consultation with the Qualifying Entity (s) approved by the Board of Supervisors. In no case shall the in-lieu fee be less than 35 percent of the average per acre price for five (5) comparable land sales in Butte County. According to the Northern California Regional Land Trust, the 35 percent minimum provides an average amount of money necessary to put the in-lieu fee towards an agricultural conservation easement purchase, while still providing remaining funds for on-going monitoring and reporting requirements.



5. **Mitigation Ratio (e.g., for each 1-acre of AG land lost to development 2-acres (2:1) shall be acquired under easement):** Staff recommends a 2:1 mitigation where the AMO is applicable for purposes of providing adequate protection of agricultural resources. At the very most, a 1:1 ratio would only result in the protection of 50 percent of the designated agricultural lands in Butte County. A 1:1 ratio may not adequately uphold Agriculture Element Goal AG-2, which directs that Butte County's agricultural lands be protected from conversion to non-agricultural uses. The intent and purpose of the Agriculture Mitigation Ordinance is to support Goal AG-2 in protecting agricultural lands from conversion.

By imposing a 2:1 mitigation ratio the AMO would incentivize growth within those areas identified and approved for growth under the Butte County General Plan, and discourage growth in agriculturally designated areas that are not approved for future growth. The General Plan has substantial reserves of developable land built-in for use over the planning period ending in 2030, and beyond, to provide many development opportunities without the need to convert additional land designated Agriculture by the General Plan to non-agricultural designations.

One additional staff-recommended change to the Draft AMO that has taken place after the Planning Commission's action pertains to Section 35-57 –Final Approval. Under this section the staff recommended edit is shown in ~~strikeout~~ and underline text (**Attachment A**). This change is now recommended to address consistency with Draft AMO Section 35-54 Mitigation Requirements, which indicates that Agricultural mitigation be required prior to or concurrent with approval of a General Plan Amendment and/or a rezone from Agriculture to a non-agricultural designation and/or zone. The language shown in ~~strikeout~~, which is being replaced, would have deferred mitigation until prior to the recordation of a subdivision map, issuance of a conditional use permit or other ministerial or discretionary permit. The change is necessary to ensure that mitigation takes place as soon as the Agriculture designation is amended to a non-agricultural designation.

#### **IV. NEXT STEPS**

After today's Study Session, and should the Board so direct, the Draft Agriculture Mitigation Ordinance will be brought back before the Board for a first reading of the ordinance.

Should you have any questions please do not hesitate to contact me at 538-6821 or Principal Planner Dan Breedon at 538-7629.

Sincerely,

Tim Snellings, Director  
Butte County Department of Development Services

#### **ATTACHMENTS:**

- A. Agriculture Mitigation Ordinance
- B. Planning Commission Resolution and Summary Notes for the Planning Commission's November 21, 2013, and January 23, 2014 public hearings

#### **Planning Commission Staff Reports:**

- 1. November 21, 2013, Planning Commission Staff Report
- 2. January 23, 2014, Planning Commission Staff Report