



Department of Development Services

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Butte County Board of Supervisors
AGENDA REPORT
Butte County General Plan 2030 – Draft Butte Creek Canyon Overlay Zone

April 24, 2018

To: Butte County Board of Supervisors
From: Tim Snellings, Development Services Director
Subject: **Butte County General Plan 2030**
Draft Butte Creek Canyon Overlay Zone Ordinance and Map

I. RECOMMENDATION:

1. Adopt a resolution approving an EIR Addendum pursuant to the California Environmental Quality Act (CEQA), and authorize the Chair to sign; and
2. Adopt an Ordinance amending Chapter 24, (Zoning Ordinance) making text and map amendments to include a new Section 24-34.1, entitled Butte Creek Canyon Overlay Zone, and authorize the Chair to sign.

II. AGENDA FOR PUBLIC HEARING

1. Development Services Staff Presentation (~10 minutes)
2. Board of Supervisors Question and Answer Period (~10 minutes)
3. Public Comment (~30 minutes)
4. Board of Supervisors Discussion and Action (~10 minutes)

III. BACKGROUND

This Agenda Report supplements the report provided to the Board of Supervisors at the February 27, 2018 public hearing. The public hearing for consideration of the Draft Butte Creek Canyon Overlay Zone and EIR Addendum was continued open from the February 27, 2018 hearing. At the conclusion of the February 27 hearing, the Board of Supervisors directed staff to provide more information concerning several issues as discussed in the following section.

Staff recommended changes to the Draft Butte Creek Canyon Overlay Zone Ordinance text and map are attached to this report as edits to the Draft Overlay Zone Ordinance. Recommendations concerning the specific landowner requests for exclusion from the Draft Overlay received at the February 27, 2018 public hearing are provided under item IV. 5 below.

IV. SUPPLEMENTARY ANALYSIS AND INFORMATION

1. Development Standards Comparison Summary Table

During the February 27, 2018 Board hearing concern was expressed about the new development standards under the Butte Creek Canyon Overlay and how they differed from existing standards imposed by the Zoning Ordinance. In response to this concern, Development Services Staff has prepared a Development Standards Comparison Summary Table (attached Table 1). This Table summarizes twelve development standards required under the Butte Creek Canyon Overlay, and compares them to current Zoning Ordinance standards.

2. Vegetation Removal

During public testimony, several people brought up the issue of vegetation removal, especially with regard to dead, dying, diseased, and/or hazard trees. A discussion took place concerning whether permits were necessary from CAL FIRE for the removal of such trees. **Development Services Staff contacted CAL FIRE concerning this issue and it was determined that CAL FIRE does not inspect or generate a permit for a homeowner to remove trees in this condition.** The State Forest Practice Act and the State Forest Practice Rules Exemption allows the removal of a fire hazard trees within 150 feet of a structure. Removal of fire hazard trees do not require the services of a Registered Professional Forester. A Licensed Timber Operator, tree removal service or a homeowner can take down an obviously dead or diseased tree.

Homeowners can use timber for their own private use, for firewood, or to mill into boards, for example. However, if owners sell, trade, or barter the timber, a permit is required

from CAL FIRE because such activity defines it as a wood product under State law.

CAL FIRE advises that the existing section of the Draft Overlay (Section 24-34.1 D.2.) regarding the State Forest Practices Act and State Forest Practice Rules provides homeowners the ability to remove dead, dying, diseased trees, as well as hazard trees without permits. In order to clarify this allowance, Development Services staff has included additional edits to this section, now reflected in the attached Draft Overlay Zone.

3. Septic System Setbacks

The issue concerning the applicability of the 200-foot septic system setback from perennial and intermittent rivers and streams for new development was discussed at the February 27, 2018 Board hearing. Members of the Board indicated that if technology can ensure maintenance of water quality, the 200-foot minimum setback could potentially be relaxed to a minimum of 100 feet.

Development Services staff consulted with the Environmental Health Division of the Public Health Department concerning this issue. Environmental Health supports setbacks for septic systems as set forth in the Draft Overlay ordinance, and recognizes the review and discussion from the Wastewater Advisory Committee and the conservative nature of the proposed setback standard. **Environmental Health advised that allowing a reduction to 100 feet is appropriate provided no other feasible alternative exists, and provided that water quality can be maintained.** Accordingly, Development Services staff has amended this section of the Draft Ordinance.

4. Clustered Development

The issue of Clustered Development, as currently prohibited under the Draft Overlay, was discussed during public testimony and Board deliberations. Clustered development has the advantage of retaining undeveloped open lands for habitat and for the protection of natural resources in exchange for the ability to cluster smaller parcels (a minimum of 7,500 sq. ft. and a maximum of 1-acre in size) in less environmentally-sensitive portions of a property.

Public testimony has provided both support and opposition to clustered development. The Butte Creek Canyon Overlay Committee continues to oppose clustered development. Their concerns include that clustering encourages denser development that would be out of character for the Butte Creek Canyon community. They are also concerned that clustered development could exacerbate fire danger, erosion, as well as access and circulation problems on both Centerville and Honey Run Roads.

The Board of Supervisors discussed that clustered development could compliment migratory deer herd ranges, but that density incentives (as currently allowed under the Clustered Development ordinance) would not be appropriate. The Board also discussed that property that was clearly unfit for development (due to severe slopes) would not be appropriate for the transfer of development as allowed under clustered development.

Development Services staff is recommending that Clustered Development continue to be prohibited under the Draft Overlay due to the contributing factors outlined below. A combination of factors contribute to staff's recommendation. The Butte Creek Canyon area is susceptible to natural disasters, especially from forest fires and flooding. Circulation in and out of the Butte Creek Canyon area is limited to Honey Run Road and Centerville Roads (the exception being the subdivisions accessed from the Skyway, such as Spanish Gardens and Skansen). While there are connections on both ends of Honey Run and Centerville Roads providing for secondary access, they are several miles away from most canyon locations. During an evacuation or emergency response, access in and out of the canyon area could be hindered or blocked, with no other feasible alternatives. Clustered subdivisions, which will intensify development, especially in more level areas of Butte Creek Canyon, would contribute to these life-safety impacts.

Factors Contributing to the Staff Recommendation to Prohibit Clustered Development:

- **Parcel Size.** The average parcel size in the Butte Creek Canyon area is 8-acres, much larger than the allowed clustered parcel size of 7,500 sq. ft. to 1-acre.
- **Erosion Hazard.** Moderate to Severe Erosion Hazards are identified in most areas of Butte Creek Canyon under General Plan Health and Safety Element Figure 7.
- **Flooding.** Level areas of the Butte Creek Canyon Overlay near the Creek are prone to flooding pursuant to FEMA mapping.
- **Flood Impacts.** Clustered Development is restricted in Flood Zones unless it can be determined to pose no more of an impact than conventional development, or is determined to reduce flood-related hazards.
- **Fire Hazard.** High to Very High Fire Hazard Severity Zones are located in the majority of the Butte Creek Canyon Overlay area. Clustered development would be more susceptible to fire impacts.
- **Circulation.** Clustered Development may intensify development in more level areas of the Canyon and could exacerbate fire safety and traffic ingress and egress during evacuations related to natural disasters including floods and fires.
- **Community Input.** The Butte Creek Canyon Community's project proponents are not in favor of Clustered Development in Butte Creek Canyon.

5. Requests from the Public – Staff Recommendations

Eight property owners made requests for the removal of property from the Draft Overlay boundaries. Some of these requests were received prior to the February 27, 2018 public hearing, and several others were made during public testimony. Development Services Staff has reviewed these requests and makes the following recommendations:

Parcels Recommended for Removal from the Draft Overlay Zone (these removed parcels are shown on the attached Butte Creek Canyon Overlay Zone Exhibit Map):

- 1) **René Vercruyssen, Knife River Construction, APN: 017-260-180; Zoning: GI (General Industrial); 7-acres.** The provisions of the Butte Creek Canyon Overlay zone are directed at residential development and not industrial development. Additionally, the development of Industrial buildings and uses would be subject to additional development regulations regarding drainage and stormwater run-off pursuant to County Improvement Standards and the State Regional Water Quality Control Board.
- 2) **Marsha and Roman Krapf, APN: 063-040-120 (and related parcels); Zoning: FR-40 (Foothill Residential, 40-acre minimum parcel size); 10-acres.** This property is located in the far northeastern extent of the overlay and is not located in the Butte Creek Canyon area. The property is off Doe Mill Ridge Road and is close to the community of Forest Ranch. Similar to the Nimshew Road area removed from the Draft Overlay, this area is not located in the Butte Creek Canyon community, and is not located on a ridgeline. Staff recommends the removal of this parcel, as well as four other adjacent parcels (APNs: 063-040-116, 063-040-129; 063-040-027; and, 063-040-030).
- 3) **Magalia Dam South 8 Parcels (Staff Recommendation).** Zoning: RC (Resource Conservation) and RR-5 (Rural Residential, 5-acre minimum parcel size) 066- 010-002, -003, -008, 066-510-004, -005, -007, -008, -032; 8 parcels 234-acres total. These properties are more closely related to the Magalia area and are not located in the Butte Creek Canyon community.

Parcels Not Recommended for Removal from the Draft Overlay Zone:

Development Services Staff does not recommend the approval of the following requests:

- 1) **Dan Allen, Signalized Intersection West LLC.** Zoning: AG-40 (Agriculture, 40-acre minimum parcel size; 3 parcels totaling 325 (+/-) acres; APNs: 017-090-141, 017-090-140, 017-090-099

- 2) **René Vercruyssen, Knife River Construction.** Zoning: FR-5 (Foothill Residential, 5-acre minimum parcel size); APN: 017-250-021; 65 acres
- 3) **Greg Colby.** Zoning: FR-20; 3 parcels totaling 9.5 acres; APNs: 017-090-102, 017-140-046, 017-140-045
- 4) **Joan Stewart.** Parcel 1 Zoned FR-20 (Foothill Residential, 20-acre minimum parcel size), 56.11 acres, APN: 017-270-035; Parcel 2 Zoned FR-5 (Foothill Residential, 5-acre minimum parcel size), 9.7 acres, APN: 017-270-035
- 5) **Dave Maurer.** Zoning: VLDCR (Very Low Density Country Residential); 3.3-acre parcel; APN: 017-260-159
- 6) **Mike Wimer.** Zoning: AG-40 (Agriculture, 40-acre minimum); 2 parcels of 4.25 and 5.23 acres; APNs: 017-100-084, 017-100-085

(Mr. Wimer was also concerned about Heavy Equipment regulation. The development standard pertaining to heavy equipment setbacks and screening only applies to the FR and RR zones, adjacent to County roads, the standard does not apply to Mr. Wimer's property, which is zoned Agriculture.)
- 7) **John Bessolo.** Zoning: FR-20 (Foothill Residential, 20-acre minimum parcel size); 5 parcels of 2.8, 1.46, 7.85, 3.61, and 19.12 acres, APNs: 017-050-027, 017-050-016, 017-050-008, 017-060-018, and, 017-050-028

The primary criteria used for these recommendations includes the location of these parcels in Butte Creek Canyon, similar to other parcels in their vicinity, the Foothill Residential and Agriculture zoning at a minimum parcel size of 40-acres or less, and the potential for residential development.

The application of the additional development standards in the Draft Overlay will not take away development rights provided by the base zoning, or prohibit the ability to develop or subdivide if already allowed under the base zoning. The Draft Overlay's boundaries and development standards are applicable where additional residential development is likely to occur, and where the use of these standards support the stated purpose of the Overlay Zone:

The purpose of the Overlay Zone is to facilitate the protection and preservation of the scenic resource and the historical and ecological foundation of Butte Creek Canyon, including the survival of endangered wild salmon, steelhead and other sensitive plants and animals such as the East Tehama Deer herd, preservation of historical sites and ecological preserves, and the optimum balance of recreation and residential use.

Several inquiries were made to Development Services Staff after the hearing concerning the applicability of the Draft Overlay standards to existing development. The Overlay's standards apply to new development only and do not limit the ability of homeowners to maintain their homes, accessory structures, or driveways. The Draft Overlay also states that the Butte Creek Canyon Overlay Zone shall not require changes to existing legal uses and structures, or cause such structures or uses to become nonconforming.

V. NEXT STEPS

Upon adoption by the Board of Supervisors, the Butte Creek Canyon Overlay Zone will become effective in 30 calendar days.

**TABLE 1. Development Standards Comparison – Summary
Butte Creek Canyon Overlay Zone Compared to Existing Zoning Ordinance Standards**

	Development Standard	Butte Creek Canyon Overlay	Existing Zoning Ordinance
1.	Development Limitation on Slopes > 15 percent	Yes. Administrative relief if no site under 15 percent slope is available.	No limitation.
2.	Limitation on Vegetation Removal outside of Development Area	No removal of healthy veg/trees outside of Development Area (allowances for defensible space, fuel breaks, diseased, dying, dead, or hazard tree removal, public utilities, non-native plant removal, trails, AG grading)	No limitation (Cohasset Overlay Zone imposes some restrictions on vegetation removal)
3.	Clustered Development pursuant to Zoning Ordinance (Article 18)	No.	Yes. Allowed in the TM, FR, RR, VLDR, VLDR-2.5, VLDCR, and LDR zones
4.	Ridgeline Development Setback (100-150 ft.)	Yes (with alternative building design standards allowing development in setback)	No setback
5.	Historic, Cultural, and Arch. site records review for building permits and discretionary permits	Yes, for selected important sites	No records review for building permits; yes for discretionary permits
6.	Heavy Equipment Storage (Screening and Setback from County Roads)	100-foot setback and screening from County roads in FR and RR zones	No screening or setback (VLDR , RCR and FCR Zones require screening but only apply standard building setback)
7.	Outdoor Lighting (shielding)	Yes, including AG zones	Yes, but not in AG zones
8.	Restriction on Rezones allowing additional parcels	Yes (unless amended by Board of Supervisors)	No restriction (Magalia Watershed Protection Overlay Zone has similar restriction)
9.	Maximum Developed Impervious Surface Limitation	15 percent of a parcel's size for parcels 1-acre or larger; separate standards for parcels of less than 1-acre	Only in North Chico Specific Plan Area (same as BCCO Zone) and Magalia Watershed Protection Overlay Zone (50 percent of total site area)
10.	Vegetative Buffer from Streams	100 feet from top of bank	50 feet from top of bank (Magalia Watershed Protection Overlay: -100 ft. for streams, -200 ft. for lakes)
11.	Septic System and Chemical Toilet Setback from Streams	200 feet from top of bank ^[1]	50 feet from top of bank (Magalia Watershed Protection Overlay: -150 ft. for streams, -250 ft. for lakes)

12.	Erosion Control	<ul style="list-style-type: none"> • Erosion and Sediment Control Plan for all building permits, by Reg. Civil Eng. • Driveways require 2-inches of aggregate base • No soil disturbance during rainy season (Nov 15 - Apr 1) • Clearing completed between April 1 - Nov 15 shall be re-vegetated and stabilized by Dec 1. 	No erosion control (Magalia Watershed Protection Overlay Zone has identical requirements)
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[1] **Septic System Setback Allowances:** A 100-foot septic system setback may be allowed for new development if it is determined by the Local Enforcement Agency that water quality can be maintained. Repair or replacement of a septic system on existing development that does not comply with the 200-foot setback may be allowed if it is determined by the Local Enforcement Agency that water quality can be maintained.