



SUMMARY NOTES

Butte County Planning Commission

PUBLIC HEARING – Draft Butte Creek Canyon Overlay Zone

November 9, 2017

The Butte County Planning Commission held a Public Hearing on November 9, 2017, for the consideration of the proposed Draft Butte Creek Canyon Overlay Zone Ordinance and Overlay Map. Principal Planner Dan Breedon provided a staff presentation and an overview of the public workshop and outreach process to date. Mr. Breedon also reviewed staff's recommendations to the Planning Commission.

PLANNING COMMISSION QUESTIONS AND COMMENTS

Commissioner Kennedy asked staff a question about Administrative Relief, would this require a variance, making it difficult to develop?

Staff Response: The draft ordinance does not require a variance, it is a determination that the Development Services Director makes, so there is not an impediment to development.

THE HEARING WAS OPENED FOR PUBLIC COMMENT

Mark Gegoire: Owns home on 10 acres in Butte Creek Canyon. In favor of protecting environment of Butte Creek Canyon. Indicates that he did not receive adequate notice, only attended 3 workshops and would like to have attend all 4. Provided document entitled "Scorched Earth" and another document from USDA entitled "A Summary of Fuel Treatment Effectiveness." He indicated that there needs to be more discussion on the fuel reduction plan.

Staff indicated that fuels reduction was a subject covered under the overlay and specifically provided for.

Westly Bristol: Addressed applicability of the Overlay, indicated that he was not located in the overlay, now he is. Is concerned that the Overlay is adding applicability. Overlay automatically makes his house nonconforming. Spent \$150,000 in buying his property for view of canyon. Concerned if his house burns down whether he would have to move it, or if he wanted an addition can it be done? He is concerned about value of home going down if overlay is passed. Expressed concern about ridgeline setbacks and that valley homes, as opposed to ridge top homes, have more environmental impact. Supported removal of the Nimshew Ridge area from the proposed overlay boundaries.

Commissioner Kennedy inquired as to whether he can rebuild? Or put on an addition? Staff responded that yes he can rebuild at the same location. For an addition, a review would be required, the ridgeline setback would apply or the alternative design standards would be applicable. In addition, an erosion and sediment control plan would be required.

Chair John asked if the Overlay Zone was applied to properties in the proximity of the creek, and staff confirmed this.

Cheryl Silva: Resident of Nimshew area; asked that properties in the Nimshew area be removed from the Proposed Overlay. She asked how parcels were chosen for inclusion in the overlay. Also indicated that notices were not sent out for all workshops. Concerned about coordination with state agencies, and property takings. Staff responded with the criteria used to include parcels in the overlay.

A review of mapping of the overlay, and the Nimshew area ensued

George Silva: Stated his property should not be in overlay zone, it is not agriculture and asked that it be removed immediately. His property borders Nimshew Road and is in AG zone below the ridgeline. He stated it is a taking of his property without due process.

Mark Dale: Resident of Nimshew ridge (Nimshew Road and Humbug Road), 11 miles distant from Butte Creek Canyon. Neighbors feel that the regulations in General Plan 2030 are adequate to protect the environment. Respectfully requests that the Planning Commission consider exempting properties along Nimshew Road and Humbug Road from the Overlay Zone. He stated the County has done a great job keeping residents informed.

Robert Catalano: Brought up fire danger for houses on ridges, and that setbacks help in fighting fires on ridgelines and slopes. Also indicated that Nimshew Ridge area is in the Butte Creek Watershed.

Allen Harthorne: Chair and Executive Director of Friends of Butte Creek. Focused on Butte Creek and spring run salmon, indicating that it is the last and best run of spring run salmon, an endangered species. Indicated that the overlay's purpose was to protect Butte Creek and its habitat. If it is the decision of the Planning Commission to remove Nimshew Ridge he believes that is fine, but the ridgeline development standards are mostly about fire protection.

Dave Mower: Lives in Spanish Gardens, which has CC&Rs that regulates many things. He indicates that you are going to change the rules for the people who have lived on their property for many years. Takings clause requires the government to pay owners when it deprives owners of all viable use of their land. Concerned about vegetative buffer part of the overlay. He related that the creek had moved closer to his property, and is also concerned with the 100 foot creek setback.

Rich Basset: Nimshew property owner. His property is located 600 feet from the ridgeline. Given the slope of his property he felt that erosion control was not an issue, and that fire standards for construction were already adequate to address fire danger. Supported that Nimshew Ridge should not be a part of the Proposed Overlay.

Tom Rider: Centerville resident. Lighting standards are not needed, he is concerned that lighting is necessary to see animals such as snakes and bear for safety reasons. He is also concerned that septic systems would not be compliant and would need to be replaced at the sale of a property. He noted the Centerville Estates property has dumpsters which should be removed.

Staff responded that the lighting regulation does not prohibit lighting but does require that glare be shielded from neighbors.

John Campbell: Stated concern about the Signalized Intersection property's fire trail. Fish and Game still has an open complaint on this. Hopes the County will cooperate with us.

Commissioner Chase: What is the connection between what was raised by Mr. Campbell and the subject of this hearing? **Chair John:** Is there someone investigating his complaints about this illegal road that was put in by his neighbor?

Staff responded that the complaints have been received and reviewed by the Land Development Division of Public Works. The County was compelled to issue a grading permit after it had originally been denied by the Board of Supervisors and litigated in Butte County Superior Court.

Chair John: Directed staff to follow-up on whether there is a code enforcement issue related to this with Public Works and Code Enforcement.

Greg Colby: He is a resident in the Canyon and has not seen any valid or legitimate reason for this overlay. Indicated that reports on water quality are good to excellent and the fish are not being impacted. Believes that Administrative relief is a stop-gap, and puts people at mercy of an unelected bureaucrat. Some properties were removed because of legal objections from an attorney; all FR zoned properties should be exempted. The regulations must allow people to manage property as they see fit. There is no way to predict how a home will burn in a fire, the setback is not going to improve this situation. There is no proof of the efficacy of impervious surface limitation.

Pamela Posey: Recapped process concerning the Overlay that started in 2010. All parts of the overlay are taken from General Plan 2030. Ms. Posey provided a PowerPoint presentation. The area is unique and invaluable to wildlife, deer herds and endangered plants. Area contains incredible archaeological sites and structures. Discussed optimum balance of recreation and residential uses. Fishers, rafters, cyclists, hikers all use the area. Many individuals support the overlay and keeping rural Butte Creek canyon protected. Property values can only go up due to the desirability of location. The main concern is to have smart planning for the future.

Daniel Kennedy: His property is within the Sphere of influence for the Town of Paradise, near Oliver Road and Wagstaff road. He has a 5-acre parcel in overlay zone. Questions the appropriateness of this parcel being in the Overlay. It does not front on the creek. Requests that this parcel and the one next to it be removed from the Overlay because they are so far removed. Mr. Kennedy pointed out where the parcels were on an exhibit map.

Deborah Watt: Lives on Nimshew Ridge. She owns 17 acres in the AG zone. Concerned about PG&E shutting off water through Centerville Ditch, impacting wildlife access to water. County should consider the benefits of soil development, water capture, and sustainability. Wishes to develop walnuts and gardens to be self-sustaining. Should not be concerned about the color of my house. Wishes property to be removed from overlay.

Roman Krapf: Owns property on Doe Mill Ridge. He noted that the underground economy and marijuana cultivation has made the construction of a home hard. Had building permit expire and now has to go through another layer of permits and expense. Worked hard to get where he is at and now it is being taken away. Requests to be removed from overlay.

THE PUBLIC HEARING WAS CLOSED –Planning Commission Discussion

Commissioner Grundmann: Concerned about the perception of arbitrary removal of areas from the overlay. Need to take a careful look at the areas. Discussed Mr. Kennedy’s property on Wagstaff and Oliver as an example. He noted the letter from Mr. Allen’s attorney indicated that the AG-20 zone was being treated differently. There is also legitimate comment about the difference in how valley properties are being treated differently than ridge properties.

Chair John: There are a lot of limitations on development on the creek area as well, including setbacks etc. Does not agree with comment that only people are on Nimshew are being regulated differently.

Commissioner Grundmann: Fuel management aspects are appropriate and work. Lighting regulations are in concert with zoning, but really need to look specifically on the outlying areas.

Commissioner Kennedy: The first workshop was full, and half were against and half were for it. Voiced concerned that the overlay only applies to people who have not developed yet. Also concerned about the lack of notification and properties in the overlay that should not be there. Does not agree with heavy equipment limitations because it limits small businesses. Concerned with administrative relief and the cost and time involved. She believes the Proposed Overlay is more for individual desires rather than public need. Does not see a need for the Overlay and believes existing regulations are adequate.

Commissioner Chase: Indicated that the comments about having plenty of deer and that the salmon are fine, but this is planning and we are looking to the future. The resources are public resources, the salmon particularly are a public resource. It is not reasonable to say everything is

fine now, it does not give you an overarching view of how the resource is doing. She would like clarification about mapping of watershed. Agrees that a look at the individual outlying properties is a good idea as well as reviewing the location of the overlay. People's perception of the watershed may be affected by its scale.

Staff responded about how the overlay was defined and created. The original Proposed Overlay was refocused through the workshops on residential zones and AG-20 zone. The process has left remnant areas in the upper reaches of the watershed, primarily in the Doe Mil and Nimshew area.

Chair John: Asked about the Kennedy properties on Wagstaff and why these were located in the overlay.

Staff responded that the reason they were included was due to their Rural Residential zoning, but that it was in the purview of the Planning Commission to make recommendations to include or not include areas within the Overlay, particularly relating to the Nimshew Road and Doe Mill Ridge areas.

Staff reminded the Planning Commission of the two additional recommendations as set forth in the staff report to remove a parcel that is not located in the Butte Creek Canyon Overlay, and to provide direction regarding the boundary where a watershed crosses over a parcel and whether the parcel should be included in its entirety, or whether the overlay should only be applied to where it is located on the property.

Commissioner Grundmann: Concerned about the view restrictions if the main concern is protecting fisheries. A discussion about lighting and views ensued.

Staff responded concerning the number of additional permits required within the proposed Overlay and indicated that to develop within the setback from a ridge, one additional permit, an Administrative Permit, would be required.

Commissioner Grundmann: Does not feel technically qualified to give direction on the Nimshew or Humbug Road area other than to find out about watershed.

Commissioner Chase: Agrees that we should stick to the watershed and not the community, the spirit of the General Plan direction on Butte Creek Canyon is biological and ecological and not community based planning. Stated concern about how this occurred when this project was being discussed.

Chair John: Asked for staff clarification about the claim that the inclusion of the Nimshew area had changed. Staff responded that the Nimshew road area was always located in the Overlay. Original draft maps included areas to the east of Nimshew Road, but those areas were removed

in later drafts. Staff also provided an overview of the General Plan process at the request of Commissioner Chase.

Commissioner Grundmann: Asked if there is anything still included in the Overlay that does not drain into the Watershed. Staff responded no, except for those parcels that staff is requesting direction on that are split by the watershed boundary. He also inquired about how many 20-acre parcels could be created from the AG-20 zoned parcels and staff discussed that process.

Commissioner Chase: Motion to approve with the proviso to redo the map to remove portions of the parcels that are not located within the watershed and the parcel that is outside the watershed. Motion died for lack of a second.

Commissioner Grundmann: Discussed Kennedy at Nimshew and Humbug area. Staff indicated that those parcels are located in the watershed. Made motion to approve with the removal of the Nimshew and Humbug area and two properties on Wagstaff and Oliver. Motion was seconded by Chair John. Motion failed 3-2.

Commissioner Donati: Concerned about ability to build on AG parcels, and how we remedy that. Staff indicated that a lot of the areas are fairly constrained by access and topography. Also discussed isolated parcels not being appropriate for inclusion in the Overlay. A discussion ensued concerning the ability to develop and the amount of growth allowed as discussed in the staff report.

Commissioner Grundmann: Discussed Paradise Pines area and the need to not be arbitrary in applying the Overlay equally. Staff pointed out the direction of the General Plan's Action, which related specifically to Butte Creek Canyon. Staff also pointed out that other directions from the General Plan address watershed protection.

Commissioner Donati: Indicated that he was not in favor of the regulation concerning heavy equipment.

Commissioner Chase: What is the alternative to regulating heavy equipment? It was related to people storing equipment and using it elsewhere. The storage and use of heavy equipment for agricultural purposes is allowed.

Commissioner Kennedy: Stated that small businesses need the ability to store and have more than 2 pieces of equipment.

Commissioner Donati: The ability to store equipment in rural residential areas is expected.

Chair John: Should we remove the item related to Storage of Heavy Equipment, Item 6, but keep item 6d related to screening?

Commissioner Donati: Discussed clean-ups regarding the overlay's applicability, agreed to the two areas for removal already discussed, then also the high density subdivision parcel.

Commissioner Grundmann: It may be appropriate to take it (the high density parcel) out also due to the intervening ridge.

Commissioner Donati: There are reasons to include and not include Nimshew Road area.

Commissioner Grundmann: If you review Paradise Pines, it seems you should leave Nimshew Road out.

Chair John: Nimshew residents have a good point that you cannot see this location at all from Butte Creek Canyon. Motion to remove the Nimshew and Humbug areas, and the two properties near Wagstaff/Billie Road, and the property on the southern tip of Magalia, as well as adding in Rocky's (Commissioner Donati) suggestion to remove all of the items under Section 6 relating to Heavy Equipment with the exception of Item 6 d. related to the screening of heavy equipment. The motion was seconded by Commissioner Grundmann. Commissioner Grundmann again confirmed the areas being removed visually with staff, and also confirmed that staff's recommendations including the removal of the parcel that was located outside of the Overlay, and to apply the overlay on parcels only where the watershed was present.

Motion passes 3-2, with Commissioners Kennedy and Chase voting no.

PLANNING COMMISSION DIRECTION

The Planning Commission recommends to the Board of Supervisors the Amendments to the Zoning Ordinance and Zoning Map as set forth under the attached **Resolution (Attachment A and Exhibit 1)**; and, the approval of an **EIR Addendum (Attachment B)** to the General Plan 2030 Final EIR and Supplemental EIR prepared in accordance with the California Environmental Quality Act (CEQA). Further, the Planning Commission recommends as visually confirmed by staff at the hearing:

1. The removal of the Nimshew/Humbug Road area from the Overlay
2. The removal of Assessor Parcel Number: 051-030-041 from the Overlay, located south of Paradise Pines
3. The Removal of Assessor Parcel Numbers 051-030-030, and 051-030-029 from the overlay located west of Wagstaff Road.
4. The removal Assessor Parcel Number 017-090-105 as recommended by staff due to the parcel not being located within the Butte Creek watershed.
5. The removal of those portions of parcels that were previously identified as being located in the Overlay due to those portions not being within the Butte Creek watershed. This

will result in some portion of each parcel being designated as within the Overlay and other portions not being designated within the Overlay.

6. The removal of Draft Butte Creek Canyon Overlay Zone Sections 6.a thru 6 c. pertaining to the regulation of Heavy Equipment Storage.