



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482

120 WEST FIR STREET · FORT BRAGG · CALIFORNIA · 95437

STEVE DUNNICLIFF, DIRECTOR

PHONE: 707-234-6650

FAX: 707-463-5709

FB PHONE: 707-964-5379

FB FAX: 707-961-2427

pbs@co.mendocino.ca.us

www.co.mendocino.ca.us/planning

MEMORANDUM

TO: MENDOCINO COUNTY PLANNING COMMISSION

FROM: PLANNING STAFF

DATE: JUNE 4, 2015

SUBJECT: ORDINANCE AMENDMENT #OA_2014-0005 - AGRICULTURAL PRESERVES
POLICIES AND PROCEDURES UPDATE RESPONSE TO COMMENTS

Comments were received on the Draft Policies and Procedures Update in writing from the Mendocino County Farm Bureau for the above referenced project (see attached letter dated April 22, 2015). In addition, comments were taken from Cathy McKeon (see attached email dated May 19, 2015) representing surface mining interests with respect to current or future mining operations on Williamson Act contracted land. County staff has evaluated the comments as listed below and responds as follows.

Mendocino County Farm Bureau (MCFB) Comments:

Definition of "Entertainment Events or Religious Assembly": The draft document included a definition of "Entertainment events or religious assembly" under Section 3.0(N). Concerns were raised regarding, (1) potential impacts to existing agricultural operations from events within Agricultural Preserves, (2) inconsistencies with the defined use type listed in County Code Section 20.168.020 with respect to allowable duration of events, and (3) how income derived from such events will be evaluated to meet minimum income requirements for contract eligibility.

The definition of "entertainment events or religious assembly" has been removed from the definitions section as an unnecessary addition. The term remains in Section 9.4(E)(3) as a miscellaneous compatible use which is already defined as a use type under Appendix A. The definition includes the reference that any such event shall not exceed five days in any six month period and staff proposes to revise Section 9.4(E)(3) to eliminate the last clause of the sentence "provided that the events last no longer than five consecutive days" to avoid inconsistencies with the stand alone code reference.

Regarding concerns that such uses may conflict with existing agricultural operations, the permit application and review process for an entertainment event includes noticing adjacent property owners, as well as an assessment of the potential effects of the events. Interested members of the public are welcome to express concerns as part of the Administrative Permit process.

Income from such entertainment events is not included within Section 5.2(D) of the draft Policies and Procedures and so could not be considered when determining qualifications for or continuing eligibility for Williamson Act contracts. Only income sources stated in Table 5.2 are considered qualifying income sources.

Property Taxation of Parcels: MCFB was seeking additional clarification on how portions of the contracted lands considered unsuitable for agriculture would be assessed, as well as how income would be used to qualify unutilized acreage.

Section 5.2(B) requires at least 50% of contracted land to be continuously used or maintained for agricultural uses, unless the Board of Supervisors makes specific findings. While a minimum of 50% of the land must be used for agricultural uses, the entire parcel will be taxed at the same rate. The total agricultural production income will need to be sufficient to cover the entirety of the property in question.

Use of Income for Eligibility and Compliance: MCFB has expressed concerns regarding the process of compliance with annual income requirements for grazing properties covered under a Williamson Act contract. Specifically, grazing capabilities of both prime and non-prime land are treated the same under Table 5-2 with respect to income qualification and it is felt that non-prime grazing lands should not be held to the same standards when considering income requirements.

Table 5.2 was established by staff after consultation and input from stakeholders to represent a reasonable/attainable minimum economic threshold for "Non-Prime Agricultural Land" (or rangelands) that was deemed appropriate. At the current proposed level, a 380-acre parcel currently restricted with a Williamson Act contract would need to show a minimum of \$2,950 in gross revenue per year to qualify or retain eligibility. Staff feels that the current proposed minimum income requirements are appropriate for this land type. While grazing and hay production on "Prime Agricultural Lands" are not specifically addressed in Table 5.2, the County could add a second category. However, the annual income requirements would likely be set at a level reflecting the increased production potential of such lands.

Concerns were also raised regarding income qualification and certain types of lease agreements that might not provide adequate dollar amounts. Based on this concern, staff will propose that the two-asterisk footnote to Table 5.2 be revised to read as follows:

****Evidence of substantial investment/development, including capitalized improvements, maintenance and other costs, may be substituted for annual income.*

The footnote as revised will allow contract holders to qualify/remain eligible for a Williamson Act contract on the basis of income and/or evidence of expenditures. This value can include allowances for capitalization, maintenance, costs, etc., pursuant to the footnote to Table 5.2.

For cases in which Non-Prime Agricultural Land owners are unable to provide income and/or expenditure amounts to cumulatively meet the stated requirements, it is possible that the lease values have been undervalued in the past. To reinforce the Williamson Act's focus on production agriculture, the first sentence of Section 8.1 may be revised to refer to "commercial agriculture."

Finally, regarding noted concerns over drought or other conditions, the Board of Supervisors has the ability to amend the minimum requirements through a resolution, to adjust for impacts from drought or other natural occurrences.

Section 9.3 and Incompatible Uses: MCFB comments stressed the importance that compatible uses should not interfere with existing agricultural operations.

While the Board of Supervisors has the ability to override the area and use limitations upon the making of certain findings, the principles of compatibility stated in Government Code sections 51238.1 through 51238.3 are specifically referenced in Section 9.2, which states that *any* compatible use shall comply with those Government Code sections.

Section 9.4(E)(2) and Solar Power: MCFB comments additionally expressed concerns that utility scale solar power facilities could be considered a compatible use within agricultural preserves by listing "Major impact services and utilities" (County Code Section 20.020.075) as compatible under Section 9.4(E)(2). MCFB's reading of State law would exclude solar power facility uses as non-compatible.

Paragraphs (1) and (2) of subdivision (a) of Government Code section 51238.1 specifically permit electric facilities as an allowable compatible use and prohibits the non-issuance of a Williamson Act contract based on the presence of that use. There appears to be some debate as to whether solar facilities should be

considered compatible or incompatible with agricultural land. Staff believes it is appropriate to apply the statutory principles of compatibility to applications for solar facilities on contracted land on a case-by-case basis as opposed to attempting to define a specific size that would be disallowed or per se incompatible.

Section 10.2(C)(2) and Contract Termination: Clarification was sought by MCFB with respect to rules governing protests to County initiated non-renewals.

Staff recommends that the following be added to the end of Section 10.2(C)(2):

“Pursuant to Section 426 of the Revenue and Taxation Code, a timely protest will insure that the landowner is afforded the Williamson Act value on their contracted parcel until there is less than 6 years remaining on the contract during the nonrenewal period.”

Section 12.2(A) and Mailing of Reporting Statements: MCFB comments requested that reporting statements be mailed on a regular basis to ensure compliance with Williamson Act requirements as the current draft document does not include such language.

As a result, staff recommends that a time frame be added to Section 12.2(A), such as:

“The Assessor’s Office shall mail agricultural preserve questionnaires to the owners of contracted land no less than every 4 years, but may mail questionnaires or requests for information pursuant to Revenue & Taxation Code Section 441 at any time.”

To address a concern raised over combining reporting statements and currently used “tree and vine” reports, staff also recommends that the following language be added regarding the tree and vine report:

“The Assessor’s Office may use the annual tree and vine report in lieu of mailing a Williamson Act agricultural preserve questionnaire.”

In addition, the revised reporting statement will have a comment section where contract holders can explain extenuating circumstances that impacted their annual incomes. Contract holders also always have the ability to include additional sheets of information as part of their reporting statement.

Section 12.5: A final comment was included requesting that property owners be informed of their rights under the law by adding (in bold) the clause “Pursuant to Government Code Section 51251” to Section 12.5 before the text that currently reads “the County or landowner may bring any action in court necessary to enforce any contract...”

Staff recommends the addition of the requested language.

Comments Regarding Surface Mining Interests

As noted above, comments were also received regarding surface mining operations and compatibility within Williamson Act contracted lands.

Section 9.3(A) of the draft document includes provisions limiting the area in which compatible uses could be allowed to “15% of the contracted land as a whole, or 5 acres, whichever is less.” These limitations may be exceeded subject to certain findings by the Board of Supervisors listed in subsection (B), including (7) which reads “[t]he use will not significantly change the character, appearance, or operation of the agricultural or open space uses of the contracted land.”

The primary concern raised was over the words “character” and “appearance” when considering a surface mining operation that exceeds the 15% or 5 acre limitation. Surface mining by its nature would likely involve a “change” of the agricultural operation’s character and appearance, which could lead to difficulties in making the required finding with respect to these areas.

As a result, amended language to this section was requested adding to the end 9.3(B)(7) the clause “unless such change would ultimately enhance the land for the operation of the agricultural use, in which case an exception to this finding can be made.” Staff will recommend similar amended language that required finding Number 7 be revised to read:

“The use will not significantly affect the operation of the agricultural or open space uses of the contracted land. In cases in which the character or appearance of the agricultural operation is temporarily impacted, a plan shall be submitted and approved by the Board of Supervisors detailing how the property is intended to be restored for future agricultural uses.”