



Legislation Details (With Text)

File #: 23-0076 **Version:** 1
Type: Work Session Item **Status:** Agenda Ready
File created: 2/24/2023 **In control:** Visalia City Council
On agenda: 3/6/2023 **Final action:**
Title: Receive presentation regarding the update on the release of the Draft Agricultural Preservation Ordinance, provide an overview of the ordinance, and to receive input from the City Council and community. Public comments pertaining to the Draft Agricultural Preservation Ordinance may be submitted to the City in writing until March 27, 2023.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Draft Agricultural Preservation Ordinance_02_24_2023, 2. Visalia APO CC WS2

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Agenda Item Wording:

Receive presentation regarding the update on the release of the Draft Agricultural Preservation Ordinance, provide an overview of the ordinance, and to receive input from the City Council and community. Public comments pertaining to the Draft Agricultural Preservation Ordinance may be submitted to the City in writing until March 27, 2023.

Deadline for Action: 3/6/2023

Submitting Department: Community Development

Contact Name and Phone Number:

Paul Bernal, Community Development Director, (559) 713-4025, paul.bernal@visalia.city
<<mailto:paul.bernal@visalia.city>>

Department Recommendation:

Staff recommends that City Council receive an update on the Draft Agricultural Preservation Ordinance and project timeline. The report and presentation are informational only and no direct action is required.

Summary:

The City Council directed staff to prepare an Agricultural Preservation Ordinance to implement the Agricultural Mitigation Program, as outlined in General Plan Policy LU-P-34. The adoption of the Agricultural Preservation Ordinance (APO) is a necessary step for projects in the Tier II and Tier III growth boundaries to move forward. Based on direction received from the City Council at their December 5th, 2022, Work Session, staff along with the City's consultant, has prepared a draft ordinance that has been posted on the City's APO webpage for a 30-day public review period (https://www.visalia.city/depts/community_development/planning/agricultural_preservation_ordinance.asp). Public comments pertaining to the draft ordinance may be submitted to the City in writing

until March 27, 2023.

Overview of the Agricultural Preservation Ordinance:

On February 24, 2023, the Draft APO was publicly advertised for review on the City's APO website. The purpose and intent of the ordinance is to implement the goals of the City of Visalia General Plan and address the conversion of prime farmland and farmland of statewide importance through the adoption of an agricultural land preservation program and to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects subject to the provisions of this ordinance.

A brief summary of the items contained in the Draft APO, including items discussed at the December 5, 2022, Work Session meeting are as follows:

Articles 1 General Provisions: “Title, Purpose and Intent, Objectives, Interpretation of Provisions, Definitions”

This section contains the purpose of the APO, which is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects. The interpretation section establishes a procedure to address and record interpretations by the Community Development Director, and also establishes a procedure for code interpretations by the Community Development Director to be appealed to the City Council as defined in Section 18.04.040.D.

Article 2 Program Requirements: “Applicability, Preservation Requirement”

The section addresses which projects are subject to the APO (i.e., projects that would result in the conversion of prime farmland or farmland of statewide importance), but also identifies which projects would be exempt or excluded, as directed by Council. As an example, a project exempt from the APO would include “a project or portion thereof, located on lands that are not within the Tier II Urban Development Boundary or the Tier III Urban Growth Boundary”. In addition, a project(s) of five acres or less in gross area. However, additional language related to the five-acre exemption is included to disallow the use of this exemption if it finds that the subject property has been subdivided into five-acre or smaller parcels in whole or in part to avoid the preserved land obligation. This is covered under Section 18.04.060.B of the Draft APO.

Examples of Exclusions identified in the draft ordinance include acreage not designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP), affordable housing projects, public facilities, etc., (see Section 18.04.060.C).

Article 3 Methods of Preservation: “Acquisition of Agricultural Conservation Easement, Payment of In-Lieu Fee”

Article 3 covers the two methods of preservation, conservation easement, which is the preferred method, and the “in-lieu” fee method. Eligibility for the easement method includes a preference for land to be within 10 miles of City limits but allows for easements within the five-county area. If an easement cannot be found within 10 miles of City limits, written confirmation from a certified land trusts is required stating that there is no land within 10 miles or that there is no willing seller. Upon submitting this documentation, the developer/project proponent then may proceed with seeking an easement within the five county area. Other provisions of this section include preserved land shall be a minimum of 20 contiguous acres in size, preserved land shall be zoned and planned for agricultural uses, have at least one water source, etc.

In addition, the form and terms of the easement shall be approved by the City Council to ensure consistency with the ordinance terms and requirements. Subsequent easement form reviews, which were initially approved by the City Council, may permit the Council to authorize a designee to review and confirm future easements. This provision is addressed in Section 18.04.080.D of the Draft APO.

However, in the event an easement cannot be obtained as specified in Section 18.04.080, a developer/project proponent may seek the payment of an “in-lieu fee”. Use of the in-lieu fee is subject several factors as identified in Section 18.04.090 of the Draft APO. A brief overview of the standards for the use of an in-lieu fee are as follows:

- Total preserved land obligation is less than 20 acres.
- If land obligation is 20 acres or more, the applicant must demonstrate at least one of the following to the satisfaction of the City:
 - No qualified entity exists.
 - No qualified entity is able or willing to assist with the acquisition (confirmed in writing by the qualified entity).
 - Working with a qualified entity, the applicant has made at least one good faith offer to purchase an easement, but any such offer has been declined.

The in-lieu fee will be determined on a case-by-case basis and shall include:

- Purchase price = 35% of the average purchase price per acre of three comparable lands, confirmed through an appraisal report
- Transaction costs = closing costs, due diligence, administrative costs
- Endowment cost = establishment of an endowment for ongoing monitoring, administration, enforcement
- A reasonable amount to cover additional contingencies.

The in-lieu fee section also requires the City Council to approve the amount of the fee, and payment of the fee will be directly from the project proponent to the qualified entity. Please note, use of the in-lieu fee method limits the acquisition of easements within Tulare County only (see Section 18.04.090.D Use of Fee).

Article 4 Monitoring and Compliance: “Qualified Entity, Compliance Review, Severability”

Article 4 addresses “qualified entities”, and identifies qualifications for entities to be considered including:

- Entity must be a nonprofit public benefit corporation, operating within the state of California.
- Qualified to hold conservation easements under California Civil Code section 815.3.
- Must be approved by the City Council for the purpose of holding and managing agricultural conservation easements.

In addition, monitoring and reporting by approved qualified entities is required annually. Such reporting shall be submitted to the City by February 1st and shall include:

- Accounting of the previous calendar year, including acquisitions and associated costs.
- Actions taken to enforce easements.
- Accounting of the amount and use of administrative and in-lieu fees.

- Confirmation of accreditation status.

Next Steps:

The Draft APO is available for a 30-day public review period. Public comments pertaining to the draft ordinance may be submitted to the City in writing until March 27, 2023. Input received during the public comment period will be considered in preparing the APO for public hearing. Staff anticipates the introduction and first reading of the APO to occur May 2023 with the ordinance taking effect June 2023.

Fiscal Impact:

On September 19, 2022, the City Council authorized the City Manager to award a contract to Provost & Pritchard Consulting Group of Visalia, CA for the preparation of Agricultural Preservation Ordinance in amount of not to exceed \$150,000. Staff is also seeking if the allocated SB 2 Planning Grant monies can be used for the preparation of this ordinance.

Prior Council Action:

- On December 5, 2022, the City Council received a presentation and provided direction regarding a series of options for the City Council's consideration ahead of a future adoption of an Agricultural Preservation Ordinance to implement the City's Agricultural Mitigation Program as outlined in General Plan Land Use Policy LU-P-34.
- On August 18, 2022, the City Council adopted Resolution No. 2022-50 which rescinded the adoption of Resolution No. 2021-44, which approved General Plan Amendment No. 2021-01, a request to by the City of Visalia to amend language to General Plan Land Use Policy LU-P-34 by removing the requirement for properties converting farmland within Growth Tiers II and III to enter into an Agricultural Mitigation Program (AMP).

The adoption of the resolution to rescind the adoption of Resolution No. 2021-44 was based on the ruling of the Superior Court of the State of California, County of Tulare, which invalidated the City of Visalia's approval to General Plan Amendment (GPA) No. 2021-01 and the related certification of an addendum to a previously certified environmental impact report (EIR).

Other: None.

Alternatives: None.

Recommended Motion (and Alternative Motions if expected):

No motion is needed for this work session item. This report and presentation are informational only, all comments received will be collected and reviewed.

Environmental Assessment Status:

No environmental assessment required at this time. The adoption of an APO will require CEQA documentation to be completed by City staff.

CEQA Review:

Not at this time. The adoption of the APO will require CEQA documentation to be completed by City staff.

Attachments:

1. Draft Agricultural Preservation Ordinance
2. PowerPoint Presentation