



Legislation Details (With Text)

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Title: A Public Hearing and First Reading of Ordinance No. 2023-02, a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34. The project applies citywide to properties within the Urban Growth Boundary Tiers II and III established by the Visalia General Plan. A Notice of Exemption was prepared for the new ordinance in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183 (Public Resources Code §21083.3). Notice of Exemption No. 2023-23 disclosed that the Agricultural Land Preservation ordinance will have no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34, uniformly on development projects that convert prime farmland and farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Ordinance No. 2023-02 - Agricultural Preservation Ordinance – Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, 2. Exhibit “B” – Public Correspondence Received, 3. 2023.05.01_Visalia APO CC Hearing Slides

Date	Ver.	Action By	Action	Result
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Agenda Item Wording:

A Public Hearing and First Reading of Ordinance No. 2023-02, a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34. The project applies citywide to properties within the Urban Growth Boundary Tiers II and III established by the Visalia General Plan. A Notice of Exemption was prepared for the new ordinance in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183 (Public Resources Code §21083.3). Notice of Exemption No. 2023-23 disclosed that the Agricultural Land Preservation ordinance will have no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34, uniformly on development projects that convert prime farmland and farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

Deadline for Action: 5/1/2023

Submitting Department: Community Development

Contact Name and Phone Number:

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

Department Recommendation:

Staff recommends that the Visalia City Council hold a public hearing, receive a presentation and staff report, and introduce the first reading of Ordinance No. 2023-02, approving a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an Agricultural Preservation Ordinance to implement Visalia General Plan Land Use Policy LU-P-34.

Summary:

The City Council directed staff to prepare an agricultural preservation ordinance to implement General Plan Policy LU-P-34, which required the establishment of an Agricultural Mitigation Program. The adoption of the Agricultural Land 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 March 6, 2023 and December 5, 2022 Work Sessions staff, along with the City’s consultant, prepared a draft APO that was posted for a 32-day public review period and has finalized the APO for the City Council’s review and adoption.

Overview and Changes to Agricultural Land Preservation Ordinance:

On February 24, 2023, the draft APO was publicly advertised and posted for a 32-day public review. During the public review of the draft APO, the consultant and staff provided the City Council with a detailed overview of the draft APO at the March 6, 2023 Work Session that highlighted key aspects of the APO including: processes for securement of easements; in-lieu fee assessments, process, and remittance; and, monitoring and compliance. During the 32-day public review period, staff received several correspondence e-mails and letters from individuals related to the draft APO. A copy of all correspondence items received is attached as Exhibit “B” to this staff report. Based on the comments provided by the City Council and the public, the final APO is included as Attachment “A” of Ordinance No. 2023-02 for the City Council’s consideration and adoption.

The following are key highlights of the final APO, including a brief overview of revisions made to the draft APO based on comments received:

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

Article 1 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 development projects. The interpretation section establishes a procedure to address and record interpretations made by the Community Development Director in the implementation of the APO, 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.

One key revision to this section is an update to the “public facility” definition to also include general hospitals and public cemeteries.

Article 2 Program Requirements: *Applicability, Preservation Requirement*

Article 2 outlines which projects are subject to the APO (i.e., development 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. Only one key change to note in this article is found under

Section 18.04.060.C.2 “Exclusions, Project Type or Use”. Based on comments received, the “affordable housing project” language was updated to include the following language “*comply with State Density Bonus Law*”.

In addition, the final APO still retains the exemption provision for projects of five acres or less in gross area as being exempt from the APO provisions. Although comments received requested a revision to this section seeking to have the exemption increased to 20 acres to align with the threshold for easement acquisitions, staff retained the 5-acre provision based on staff’s assessment that under the California Environmental Quality Act (CEQA) projects of five acres or less can be exempt from any further CEQA review based on the Class 32 In-fill exemption. Projects greater than 5 acres and up to a maximum of 20 acres would be afforded the option of using the in-lieu fee provision of the ordinance and/or demonstrate compliance with the APO through participation in a “agricultural land mitigation bank” which is addressed in the staff report under the Article 3 discussion below.

Furthermore, the APO retains the “roadways” exclusion as including major roadways as addressed in the Visalia General Plan. The General Plan identifies major roadways as Freeways, Arterials, and Collectors, which are designed to carry significant traffic volumes through the future growth areas of the entire Visalia planning area. Local streets, which were requested to be included as an “exclusion” to the APO requirements as noted in public comment letters received, are not included as these roads are built to serve the proposed development within each of the land use areas.

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

Article 3 covers the two methods of preservation, acquisition of conservation easements, which is the preferred method, and the in-lieu fee method. One revision includes the addition of language based on comments received regarding the ability to demonstrate compliance with the APO through use of an “agricultural land mitigation bank”. Use of a land mitigation bank would allow a developer to secure easements within a land mitigation bank to offset their conversion of agricultural lands. Such lands within the mitigation bank are required to meet the same standards of land eligible for agricultural conservation easements, such as location and zoning of the land. However, this additional method of securing easements and/or paying into the land mitigation bank to secure the necessary acreage for the conversion of agricultural land will provide additional flexibility for project proponents to demonstrate compliance with the APO.

Furthermore, the APO language has also been revised to clarify that easements can be obtained within the southern San Joaquin Valley five-county region without first requiring that the project proponent they demonstrate that they have met with qualified entity and the entity is unable to assist with the acquisition of an easement within 10 miles of the City limits. The preference language for easements to be located within the 10-mile radius; however, the additional steps to demonstrate that there is no land available within the 10-mile radius has been removed.

Other provisions of this article include a requirement that conserved land shall be a minimum of 20 contiguous acres in size, shall be zoned and planned for agricultural uses and shall have at least one verified water source. This requirement does not preclude a land trust from requiring more than one source of water through their own due diligence process.

The APO also includes provisions in the event an easement cannot be obtained. Pursuant to Section 18.04.090 of the ordinance, a project proponent may pay an “in-lieu” fee as an alternative to purchasing a conservation easement when certain conditions are met. The in-lieu fee section was

amended to be consistent with the easement language as noted in Section 18.04.080 by removing the requirement that limited the use of the in-lieu fee to only Tulare County. The revision, as noted in Section 18.04.090.D, allows the use of the in-lieu fee collected to be used for the acquisition, administration, monitoring, and enforcement of agricultural conservation easements and such easements shall be located within the Southern San Joaquin Valley (i.e., the defined five-county region).

The in-lieu fee will be determined on a case-by-case basis, as this provision has not changed and shall include:

- Purchase price = 35% of the average purchase price per acre of three comparable lands, confirmed through an appraisal report prepared by a licensed appraiser with experience in agricultural land appraisal. The appraisal shall be based on the highest and best use of the land without an agricultural conservation easement (this is consistent with other ordinances established that require an in-lieu fee calculation on a case-by-case basis).
- 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. Approval shall occur prior to remittance of the in-lieu fee directly from the applicant to the qualified entity.

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

Article 4 addresses qualified entities, and identifies qualifications for entities to be considered including: the entity must be a nonprofit public benefit corporation operating within the state of California; the entity is qualified to hold conservation easements under California Civil Code section 815.3.; and, the entity must be approved by the City Council for the purpose of holding and managing agricultural conservation easements in accordance with the APO. In addition, monitoring and reporting by approved qualified entities is required annually. Such reporting shall be submitted to the City by February 1st.

The overall language included in this section remains unchanged with the exception to Section 18.04.110.A.1.b, Compliance Review. This section states that the City of Visalia shall not issue any permit directly authorizing or resulting in disturbance to the converted land acreage until the preserved land obligation is satisfied. The preserved land obligation shall be satisfied when, a. The approved agricultural conservation easement has been recorded, or b. *When the applicant has remitted the approved in-lieu fee to the qualified entity.*

Public Comments Received:

During the 32-day public review comment period for the draft APO, staff received several items of correspondence regarding the draft APO. All comments, e-mails, and letters received are included as attachment Exhibit "B".

Next Steps:

Staff will place the second reading of Ordinance No. 2023-02 on the City Council's next available meeting if the City Council adopts the first reading of Ordinance No. 2023-02. The ordinance will go

into effect 30 days from the second reading.

In the interim, if the ordinance is adopted, City staff will continue to process projects in the Urban Growth Boundary Tier II for those land uses eligible, and the Tier III boundary for industrial land, that were placed on hold as result of the City needing to adopt an agricultural preservation ordinance to address the conversion of prime farmland and farmland of statewide importance in Tier II and Tier III. Staff anticipates in the next few months to begin processing several new residential projects through the public hearing process that will incorporate the adopted APO into their conditions of approval, as applicable, to demonstrate compliance with Land Use Policy LU-P-34.

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 March 6, 2023, the City Council received a presentation and update on the release of the draft APO. During the Work Session presentation, the consultant and staff provided an overview of the ordinance and received input from the City Council and community on the content of the draft ordinance.
- 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 APO to implement 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 by the City of Visalia to amend language to General Plan Land Use Policy LU-P-34 by removing the requirement to establish an Agricultural Mitigation Program (AMP) for properties converting prime farmland and farmland of statewide importance within Growth Tiers II and III. 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:

The City Council may, in lieu of the recommended motion specified above, consider any of the following alternatives:

1. Refer all or parts of the project back to staff for further review; or
2. Continue the matter to a future City Council hearing for additional information.

Recommended Motion (and Alternative Motions if expected):

I move to introduce the first reading of Ordinance No. 2023-02, approving a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”, to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34.

Environmental Assessment Status:

A Notice of Exemption was prepared for the APO in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183(g)(7) (Public Resources Code §21083.3). Notice of Exemption No. 2023-23 disclosed that the APO requires no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34 and that the APO will be uniformly on development projects that convert prime farmland or farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

CEQA Review:

Notice of Exemption No. 2023-23 was prepared for Ordinance No. 2023-02 in in accordance with State California Environmental Quality Act (CEQA) Guidelines Section 15183(g)(7) (Public Resources Code §21083.3).

Attachments:

1. Ordinance No. 2023-02 - Agricultural Preservation Ordinance - Title 18 “Agricultural Land Preservation”, Chapter 18.04 “Agricultural Land Preservation Program”.
2. Exhibit “B” - Public correspondence received.
3. PowerPoint Presentation