

AGRICULTURE TECHNICAL ADVISORY COMMITTEE MINUTES
OF JANUARY 28, 2021

The San Joaquin County Agriculture Technical Advisory Committee met in regular session on January 28, 2021 at 10:30 a.m., by phone conference on Microsoft TEAMS from the Community Development Department, 1810 East Hazelton Avenue, Stockton, California.

I. The meeting was called to order.

II. Roll Call:

(present)

Committee Members

Renee Puig-Hink, Chair
Joe Petersen, Vice Chair
John Beckman, Vice Chair
Matt Arnaiz
Stanton Lange
Tom Doucette

San Joaquin County Staff

David Kwong, Director
John Funderburg, Principal Planner
Megan Aguirre, Senior Planner
Zayante (Zoey) P. Merrill, County Counsel
Allen Asio, Office Assistant Specialist

(absent)

Steve Coldani

III. Discussion Items:

1. Approval of Minutes from April 23, 2020, Meeting

Joe Petersen made a motion to adopt the minutes. Seconded by Stanton Lange. Motion passed on a vote of 6-0.

2. Status Update: Planning Commission Meeting for Development Title Text Amendment No. PA-2000004 (Draft Changes to the Agricultural Mitigation Chapter of the Development Title)

Megan Aguirre provided an update from the Planning Commission meeting on May 21, 2020. The Planning Commission voted to forward the Development Title Text Amendment with a recommendation of approval to the Board of Supervisors, as proposed. Included in the hearing was a discussion of letters

submitted by the Delta Protection Commission (DPC) and Delta Stewardship Council (DSC). Both agencies submitted comment letters requesting that the term “in perpetuity” not be removed from Chapter 9-1080 Agricultural Mitigation with the proposed amendment. However, the Planning Commission did not move to include the requested phrase. Instead, the Planning Commission added language to clarify that the easements would be recorded on title. Recording the easements on title would essentially mean that they would be in perpetuity.

Joe Petersen indicated that removing “in perpetuity” appears to be an oversight.

John Beckman stated that the changes to the ordinance were intentional corrections.

Avery Livengood, Delta Stewardship Council (DSC), indicated that she was available to answer questions about her agency’s comment letter.

Zoey noted that she would want to review the language if changes were made to make sure there is no additional consequence, as that could require going back to the Planning Commission.

Megan Aguirre shared the draft changes to Development Title Section 9-1080.7 (c) Disposition of Land on-screen and explained that the term “in perpetuity” had been removed well prior to the final edits to the chapter for the text amendment.

John Beckman indicated that it appeared to be removed when the AgTAC was attempting to incorporate the changes regarding the Qualifying Entity into the chapter.

Megan Aguirre noted that the easement language developed by the AgTAC in the past includes the term “in perpetuity.”

John Beckman noted that the previous discussions had been to use a Williamson Act-like identifier in the County records and that property could later be swapped for another piece of land.

Joe Petersen clarified that a court process is required to make that change.

John Beckman stated that it may have been a misnomer to use the phrase “in perpetuity” in the ordinance previously.

Zayante P. (Zoey) Merrill said that the language may not have been appropriate previously, but it is accurate now.

Stanton Lange said it is what the easement is all about.

John Beckman stated that he didn’t think the language needed to change at this point.

Stanton Lange asked if it was taken care of with the easement.

Zoey Merrill stated that the term was correct in the previous version, even though the ability was there to use the change in circumstances to move the easement; however, the language does not need to be used with County records because it is a different mechanism. The committee could further explore the language and the change to the subsection.

Stanton Lange noted that the committee could use their own method of tracking the easements and does not have to use the Williamson Act as an example.

Virginia Gardener, Delta Protection Commission (DPC), stated that conservation easements are perpetual in duration to mitigate as per California Civil Code Section 815.2 regarding the loss of farmland.

Joe Petersen asked if the DPC was satisfied with Section 9-1080.6(c) Change in Circumstances.

Virginia Gardener indicated that the DPC was satisfied with this section as long as it was based on judicial proceedings.

Matt Arnaiz stated that the committee had already agreed on the language, so they should not make any changes and just move forward.

Stanton Lange stated that if it was not wrong, the committee should change the language.

John Beckman noted that there are two different goals: to preserve the Delta and to preserve agricultural land. The AgTAC is not focused on the Delta.

Joe Petersen stated that he was concerned about not meeting the requirements of "in perpetuity" and about the time and energy spent on this if the County could be sued.

John Beckman asked what requirement was not being met.

Zoey Merrill also asked for clarification.

Joe Petersen clarified that he meant not meeting legal requirements.

John Beckman stated that these were Delta requirements.

Stanton Lange stated that he understood these to be State of California requirements.

John Beckman noted that the AgTAC is creating this ordinance.

Zoey Merrill mentioned that there are very prescriptive requirements for the

California Farmland Trust (CFT) and that the AgTAC removed the Qualifying Entity requirements after reviewing the information with the CFT.

Renee Puig-Hink said that last year the AgTAC gave flexibility compared to the CFT language. There was a lot of time and energy spent to ensure that the language set in place felt right for the AgTAC. It has been a long time since the last meeting, and she wants to move forward.

John Beckman also said that he wanted to move forward.

Renee Puig-Hink said that it was the correct next step to move forward.

Joe Petersen stated that the AgTAC veered away from the CFT because it was not really for agriculture in the long term. He also does not remember specifically discussing removal of “in perpetuity.” He said that the strawberry farm in the middle of the City of Stockton should be able to move their easement in the future. Property owners need the flexibility to move easements, but not like Williamson Act, which is a 10-year commitment.

John Beckman said that it creates a problem for the County. The AgTAC wanted to make the ordinance workable for the County to administer.

Zoey Merrill said that the AgTAC can add the language “in perpetuity” after “County records”. It would not create an issue for the County. Property records are generally kept in perpetuity. To reintroduce the term does not create a problem. It was removed as a part of a change in structure. Adding it does not create an issue, as per David and Megan.

Renee Puig-Hink noted that it has been crossed out since 2019, or August 2018. The draft was an ongoing fluid document and that term had been stricken for well over a year.

Stanton Lange asked if, even though this hadn’t been part of the discussion for over a year and a half, does it make it right?

Renee Puig-Hink, John Beckman, and Matt Arnaiz all agreed that the AgTAC spent time on this section and discussed it in depth.

Avery Livengood discussed the applicability of the State, and that the State has no authority over the County agricultural mitigation requirement, but that there may be future impacts because the requirements are different from the State requirements. When there is development or a specific plan that has to meet both requirements, there are two separate standards, and it would be better to come to an agreement for private property to meet a single set of requirements. It would be less confusing.

John Beckman stated that if the AgTAC was concerned about this, they would have gone with CFT or another Qualifying Entity. However, the AgTAC was not

concerned with being uniform.

Renee Puig-Hink, Joe Petersen, and Tom Doucette agreed.

Tom Doucette stated that it is easier for farmers to sign up with more options to get property into the program. Without a substitution process, property remains under the easement. There is a lot of talk and worry about this, but it doesn't seem to be a problem.

Stanton Lange said it's not wrong and the AgTAC needs to have a process to move easement, but if the AgTAC allows easements to be changed just because, why would the County even have an AgTAC?

Tom Doucette said that it is a process and property owners cannot arbitrarily move easements. It is subject to a judicial process. The option creates an opportunity for prospective property owners to enter into the program. Does adding "in perpetuity" back in create conflicts with what the AgTAC is trying to do in adding flexibility?

Joe Petersen stated that he doesn't remember specifically discussing this in regards to the easement. Can the AgTAC add "in perpetuity" somewhere?

Zoey Merrill stated that once an easement is recorded in County property records, by many respects, it would be in perpetuity. Adding it or alternative language to the ordinance doesn't create an issue for the County. Arguably, this would not be significant enough to go back to the Planning Commission, but she would review it for that. The easement would always be there once it has been recorded, unless it was relocated, but it would never be removed. From a practical standpoint, staff would clarify this with a note on the map.

John Beckman asked if staff could draft language and then show that to the AgTAC?

Zoey Merrill said that staff can, but from a practical standpoint the easement would be recorded on title rather than just be located at the Community Development Department, but there would also be a mark on the map and a note in Permits Plus. There would be a way to place a flag on the property and staff could work out the details. The language 'agricultural land conservation easement identified in perpetuity' doesn't inadvertently change because the easement would be records in County records in perpetuity.

John Beckman noted that this would be more work for staff and it doesn't change anything.

Joe Petersen referred to Section 9-1080.6(b) Disposition of Land, and recommended adding "perpetual" so that it reads "Agricultural land encumbered by *perpetual* agricultural mitigation conservation easements shall be identified in County records..."

Joe Petersen said that the goal was still perpetual and the AgTAC doesn't want to eliminate it. He needs to see the minutes when it was changed.

John Beckman stated nobody changed the AgTAC's goal. The AgTAC uses different language to achieve that goal.

Stanton Lange said that "in perpetuity" should be added back.

Joe Petersen said that it is a perpetual agricultural easement the AgTAC is working with, so it is not different from what was already noted in the document before.

John Beckman stated that adding a redundant word like perpetual into a legal document creates more confusion.

Stanton Lange indicated that he does not think it would create confusion.

Joe Petersen stated that it doesn't create a problem and that if the goal is to add perpetual agricultural easements then the language needs to be there.

Zoey Merrill asked if the easement states "in perpetuity," is the concern that the easements is in perpetuity and not that it is identified in County records? She asked if the goal is that the easement itself is in perpetuity except as permitted by a change in circumstance.

Joe Petersen and John Beckman both agreed.

Zoey Merrill stated that if the goal of the easement is in perpetuity and she can look at language in other places that may be more effective to identify easements in perpetuity, and this may not need Planning Commission review if it's a clarification or a scrivener's error.

John Beckman doesn't think staff made a mistake but if Zoey wants to update the language, the AgTAC can review it.

Stanton Lange said that he thought it would be a good idea.

Zoey said that there needed to be a vote to provide direction.

John Beckman made a motion to ask staff to bring back the newly worded language. Stanton Lange seconded the motion.

Motion failed on a vote of 4-2.

Yes – Joe Petersen, Stanton Lange, John Beckman, Renee Puig-Hink

No – Matt Arnaiz, Tom Doucette

Joe Petersen said he wants to move the ordinance forward to the Board of Supervisors.

John Beckman stated that it was not actually listed as an action item.

Megan Aguirre clarified that staff is asking the AgTAC if they want additional changes based on the DPC and DSC letters before the ordinance goes to the Board of Supervisors.

Zoey Merrill said that the comments would be part of the packet and would go to the Board.

Joe Petersen asked the other AgTAC members if a motion to add the language would fail.

John Beckman said that he wants to see the language put together by County staff.

Renee Puig-Hink clarified that no action was approved.

Megan Aguirre confirmed this.

Renee Puig-Hink asked if the item could still be moved forward to the Board of Supervisors with the current language.

Megan Aguirre confirmed that this is what Zoey Merrill had stated.

Zoey Merrill further explained that the action and vote of the AgTAC would determine this. No action would move the ordinance to the Board of Supervisors with the letters in the administrative record. The Board would consider the information and may ask the AgTAC to weigh in.

Joe Petersen again made a motion to add "in perpetuity" back into the ordinance. Stanton Lange seconded the motion.

Motion failed on a vote of 3-3.

Yes – Renee Puig-Hink, Joe Petersen, Stanton Lange
No – John Beckman, Matt Arnaiz, Tom Doucette

Renee clarified that nothing changed as a result of the failed motion.

Megan Aguirre confirmed that the proposed ordinance amendments would be forwarded to the Board of Supervisors as forwarded by the Planning Commission, and that the DPC and DSC letters would be in the administrative record. Additionally, the letter to the Board of Supervisors would note the AgTAC discussion about the letters and that no change was made to the proposed ordinance as a result.

Renee Puig-Hink stated that this is how the item should proceed, since the AgTAC did not agree upon any further changes.

Joe Petersen requested to see the minutes where “in perpetuity” was removed.

Zoey Merrill suggested that staff look at every draft presented to the AgTAC.

3. In-Lieu Fee

Renee Puig-Hink asked for a report from staff on this item.

Megan Aguirre indicated that this was kept as an agenda item from past meetings that were canceled. Staff wanted to confirm that the AgTAC was still interested in requesting a report back about the fee history and also requesting a presentation from CFT about their fees.

Renee Puig-Hink asked the AgTAC if they still wanted a presentation to be made at the next meeting regarding fees, and the AgTAC agreed.

Megan Aguirre clarified that she would request that a CFT representative attend, but could present the information if a representative was not available.

IV. Public Comment Period

Renee Puig-Hink opened the public comment period of the meeting.

Avery Livengood, DSC, stated that since April 2020, she has observed the challenges for AgTAC to convene and understood the AgTAC’s desire to move forward with the proposed ordinance. However, DSC still has concerns, as laid out in the comment letter. DSC has regional authority over certain activities in the Delta and a portion of San Joaquin County. Project mitigation measures must be equally or more effective than the DSC’s Delta Plan mitigation measures for projects that result in loss of agricultural land, and property owners must contribute funds or an easement in perpetuity. On May 19, 2020, DSC sent a letter to staff explaining their concerns before the Planning Commission meeting. The DSC wants the language “in perpetuity” to remain, since the language would be clear and benefit future project proponents. She thanked the AgTAC for their time and stated that the meeting highlighted the need for future clarification.

Joe Petersen asked if the DSC is not excited about easements in the Delta.

Avery Livengood stated that the DSC promotes agricultural land preservation and availability, and has no problem with further protection of it. The concern is for project proponents as the DSC reviews many of the same projects as County staff, and developers would need to meet two different sets of requirements. She indicated that it is easier if the requirements match because the County can handle it on their end.

Avery Livengood also stated that the DSC would love to see more agriculture.

Zoey Merrill stated that this may be a discussion during the public comment period, which is not permitted by the Brown Act. Public comment is an opportunity for the public to comment on items that are not on the agenda. If the AgTAC wants to revisit item III.2., they would need to reopen it or come back for an agenda item.

V. Adjournment

Matt Arnaiz made a motion to adjourn the meeting. Renee Puig-Hink seconded the motion.

Motion passed with a vote of 6-0.

Meeting adjourned 11:41 a.m.

VI. Next meeting: February 25, 2021

Renee Puig-Hink,
Chairperson

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David W. Kwong,
Secretary