

BUTTE COUNTY PLANNING COMMISSION MINUTES

JANUARY 13, 2005

I. PLEDGE OF ALLEGIANCE: The Meeting convened at 9:00 a.m. in the Board of Supervisors' Room. It was moved by Commissioner Evans, seconded by Commissioner Lambert, and unanimously carried for the meeting to be adjourned at 9:05 and reconvened at 9:15 in the Probation Conference Room at 42 County Center Drive. It was explained to the audience that there was another hearing booked for the Board Room and the problem was discovered within the 72 hour notice period. Maps to the new location were handed out and the Commissioners and the people in attendance walked down to the new location in a group and a staff member waited in the Board Room to direct anyone who was late.

II. ROLL CALL: PRESENT: Commissioners Lambert, Marin, Nelson, Evans and Chairman Leland

Roll Call was taken at 25 County Center Drive and again at 42 County Center Drive and all the Commissioners were present.

ALSO PRESENT: Carl Durling, Associate Planner
Mark Michelena, Associate Planner
Yvonne Christopher, Director Development Services
Felix Wannemacher, Deputy County Counsel
Doug Fogel, Environmental Health
Stu Edell, Land Development, Public Works

III. SELECTION – Selection of Chairman, Vice Chairman, and Second Vice Chairman for 2005

It was moved by Commissioner Lambert and seconded by Commissioner Nelson, to nominate and elect Commissioner Marin as Chairman and Commissioner Evans as Vice-Chairman.

Commissioner Evans said he was resigning his position on the Butte County Planning Commission effective immediately. He thanked the Commission and staff for their support.

The Commission thanked him for a great job.

It was then moved by Commissioner Lambert, seconded by Commissioner Nelson, and unanimously carried to nominate and elect Commissioner Marin Chairman for 2005. Commissioner Marin took over the position of Chairman for the remainder of the meeting.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and unanimously carried to nominate and elect Commissioner Nelson as Vice-Chairman for 2005.

It was moved by Commissioner Leland, seconded by Commissioner Nelson, and unanimously carried to nominate and elect Commissioner Lambert as Second-Vice Chairman for 2005.

IV. ACCEPTANCE OF AGENDA: Commission members and staff may request additions, deletions, or changes in the Agenda order.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and unanimously carried to accept the agenda as presented.

V. CONSENT Consent items are set for approval in one motion. These items are considered non-controversial. No presentations will be made, however, some questions may be asked.

The Chair will ask if any commissioner or member of the public wishes to pull a consent item for discussion. Brief questions may be asked on any item.

None

VI. BUSINESS FROM THE FLOOR ON ITEMS NOT ALREADY ON THE AGENDA:

Susan Strisower complemented the staff in the Building and Planning Divisions. She said she applied for a temporary mobile home permit, but that she would rather have a permanent second dwelling if possible. She asked about the new second dwelling ordinance and if it might be possible for her to get a permanent second dwelling. She also asked about the change in fees.

Ms. Christopher explained that the impact fees were the only fees getting ready to change. She gave the status of the second dwelling ordinance re-write and said that staff hoped to have the ordinance to the Commission by the second meeting in February.

VII. PUBLIC HEARINGS:

Dave Snow/Palomino Ridge Subdivision proposed **Negative Declaration** with mitigation measures regarding environmental impacts and **Tentative Subdivision Map** dividing three parcels containing 82.64 acres into 304 residential lots on property zoned A-R (Agricultural Residential). The property is located on the south side of Nelson Avenue and on the north side of Plumas Avenue, between 16th Street and 20th Street, in the Thermalito area of Oroville. APN 030-032-002; 030-033-001, 002 (CD) (TSM 03-04)

Mr. Durling handed out a letter from the Thermalito School District and a letter from Feather River Parks and Recreation.

Mr. Durling gave a brief summary of the project. He said this hearing was continued closed with a Motion of Intent to approve for the applicant to supply more information. He recommended that this hearing be continued off the agenda to allow the applicant more time.

Brian Bonino, applicant's representative, said he understood the need to continue the hearing. He said there are issues with Feather River Parks and Recreation on how to design the park and what is going to be included.

He said the pond is another issue. He said he would like to get approval of the Map and then start working on the park in more detail.

Steve Lucas, LAFCo, said his concern is related to the formation of a County Service Area (CSA). He said this project is within the Oroville Sphere of Influence. He said the forming of a CSA was not covered in the Initial Study. He said the forming of the CSA is a project under CEQA. He said where the CSA is not covered in the Initial Study, the document will not carry any weight with LAFCo when it comes time to form the CSA. He said he would prefer that the County include the forming of a CSA in the project description so that LAFCo can use the same CEQA document. He said regarding the public agency approval section of the Initial Study, it does not indicate that LAFCo will have the final approval of forming a CSA. He said the Notice of Intent, which he was not sure the County circulated, was not received by his office and he did not have the opportunity to offer comments on it prior to this meeting.

Chairman Marin asked Counsel if they were required to circulate a Notice of Intent to public agencies.

Mr. Durling explained that the County does not include the forming of the CSA in the description on the Initial Study because they do not know if the CSA will go first. He said it is not a part of the Initial Study process.

Mr. Lucas said that when the formation of the CSA goes to the Board, there will not be an environmental document to go with it.

Commissioner Nelson asked if Feather River Parks and Recreation is involved, why the Commission is dealing with a CSA.

Stu Edell said Land Development would deal with a CSA if the applicant wants public roads and street lighting. He gave a brief explanation.

Commissioner Leland said he thought Feather River Parks and Recreation is stating that they do not want the responsibility to maintain the park and that they want a CSA to handle it.

Mr. Durling said in his meeting with Feather River Parks and Rec., they use the same language i.e., landscaping, lighting, etc., but they are not going to include actual lighting or landscaping in the subdivision. He said if the CSA is formed it would be for landscaping and lighting just inside the park. He noted that maintenance on the wall would be handled by the individual property owners because the wall will be totally on private property.

Mr. Bonino said he would like to come back and will make the effort to answer all conditions and questions.

Mr. Wannemacher asked aside from the park, does the applicant intend to form a CSA for lighting and drainage.

Mr. Bonino said yes, that is his intention. He said they are going to do public roadways and public facilities and they will need to form a CSA. He said a portion of the park will be a pond and will need to be included in the CSA.

Mr. Wannemacher asked Mr. Bonino if he met with Feather River Parks and Recreation and did he explain that the CSA would be for maintenance only.

Mr. Durling said there were three meetings with Mr. Snow, Feather River Parks and Recreation, and staff. He said he is still uncomfortable with what will be the components of the CSA.

Chairman Marin said it would be helpful if Mr. Snow was present.

Commissioner Lambert asked about the letter regarding the pro rata fees from the School.

Mr. Durling said he was not sure the numbers were adequate. There was a brief discussion.

Commissioner Leland asked if the wall is on private land, how they will enforce the maintenance.

Mr. Durling said it would be handled under the Homeowner's Association.

Commissioner Leland said the maintenance could be enforced if there are CC&Rs recorded against every lot. He said he wants to make sure the conditions are feasible and the conflicts are resolved before approving this project.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and unanimously carried to continue this hearing closed to February 24, 2005.

Mr. Durling said he needs the information back from the applicant soon to make the February 24, 2005, hearing date.

The Commission decided if the information is not ready in six weeks the hearing can then be continued off the agenda.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and unanimously carried to re-open this hearing and continue it open to February 24, 2005.

There is a 10-day appeal period on all decisions with the Clerk of the Board.

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Brent and Debbie Sobrero, 1. Request for an exception to the requirements of Butte County Code Section 20-133 to allow more than 20 parcels on a cul-de-sac road. **2.** Tentative Parcel Map/ Flexible Lot Provision request to divide a 40-acre parcel into two 20-acre parcels on property zoned "U" (Unclassified). The property is located on a private no-name road north of Clear Creek Cemetery Road, approximately one mile east of Clark Road, south of Paradise. APN 041-110-135 (MM) (TPM 04-07)

Mr. Michelena gave a brief summary of the project and stated that this hearing was continued for the applicant to complete their revised survey map, which was in the packets sent by the applicant's representative on December 22, 2004. He said the Commission can not modify the required 300-foot buffer.

Ms. Christopher said for clarification on the 300-foot buffer issue right now in the General Plan it states there is an agricultural buffer of 300 feet. She said the General Plan further states that the County can consider unusual circumstances once there are implementing guidelines, and these are currently being worked on with the Agricultural Commissioner and County Counsel. She said that if this project were to go forward, the Board could look at this and make a new implementing guideline on a case by case basis. She reminded the Commission that this property is adjacent to contracted agricultural land under the Williamson Act. She said the implementing guidelines that are being worked on would not help this application, and that staff would still be recommending the 300-foot buffer.

Commissioner Leland said the guidelines would help the Commission make decisions.

Commissioner Lambert said she understands that the Commission can not alter the 300-foot buffer requirement at this time, only the Board can change the buffer.

Ms. Christopher said that is correct because the Board is the policy maker.

Mr. Wannemacher said the Board has made two different decisions on two different appeals. He said the Commission should listen to each option and that it would then be helpful for them to make recommendations to the Board.

Commissioner Lambert discussed the adjacent agricultural parcel. She asked if the 300-foot buffer would be required if the property was not under contract, but in agricultural use.

Ms. Christopher said “yes.” She said under the General Plan we are supposed to be protecting agriculture and these parcels are designated Grazing and Open Land.

Commissioner Leland asked if the buffer is going to protect agricultural land use or the agricultural entitlement. He said if the CC&Rs determine that the land will never have an agricultural use on it, would this take it out of the scope of the 300-foot setback.

Ms. Christopher said the buffer is not to protect what is proposed on the applicant’s property, but the adjacent property. Brief discussion.

Mr. Michelena said the parcel to the north and west do not fall under the deed restriction, and are separate from the CC&Rs. He said the affected parcels fall to the south. He said the west parcel already has a residence.

The hearing was opened to the public.

Tom Edgar commented on the memo dated January 12, 2005, from staff. He said on the second page where it talks about Condition 7 it states under Timing: This measure shall be implemented during site development preparation and construction. He said what he has been hearing today is “prior to.”

Mr. Michelena said Mr. Edgar was correct and the Timing should say “prior to.”

Mr. Edgar quoted Mr. Michelena as stating that at the October or November hearing the Commission made a finding with regards to the General Plan. He said this Commission has never made that finding in his presence. He said this project has been going on with his involvement since July. He said there has never been a time prior to the phone call he got yesterday where anyone told him the 300-foot setback is set in stone. He noted the letter he sent dated July 29, 2004, regarding the hearing of July 22, 2004. He said at that time Chairman Leland said he did not think the 300-foot policy has been implemented. He believed that Commissioners Lambert and Evans said that they have had a lot of flexibility and variations. He said at the last hearing it was specifically requested that the Sobrero family spend more money and time out in the field drawing in where they would like to have houses and come back and show the Commission where they can find specific circumstances to not require the 300-foot buffer. He said that County Counsel and the Director were present and no one told them it was a waste of time because we are going to enforce the 300-foot buffer. He said this does not change the fact that the guidelines that the Commission received from the Board of Supervisors are in Program 2.2 and in the Agricultural Element of the General Plan. He said it clearly states that the County will implement the Agricultural Element when and if they fix the map that goes with the General Plan. He said that the materials that Mr. Wannemacher provided us clearly said you have a report that says only 11 percent of all the area in the General Plan map actually qualified for Open and Grazing in 1995. He said he can cite a lot of land that is no longer being used for Open and Grazing. He said if it was only 11 percent accurate in 1995, it is a lot less accurate today. He said they are setting themselves up for a lawsuit and he has the material to do that. He said he has provided the Commission with materials that he received from the Agricultural Commissioner that in effect states that there is no rational basis for a 300-foot setback on any basis. He said it is his position that looking at Program 2.2, it does not say that the Commission will have discretion when and if they have guidelines, it says "the desired standard shall be 300 feet, but may be adjusted to address unusual circumstances." He said it is his position again that the Agricultural Element is not enforceable simply because the words in the Element say there is a condition precedent before it becomes applicable, and the condition precedent is "when and if we fix the map." He said the Commission does have the authority to establish policy, which is subject to the Board of Supervisors. He said in the letter he sent dated January 11, 2005, he was responding to the words of Mr. Michelena that said the Commission had discretion to look at unusual circumstances. He stated in that letter on the west side of the property they could agree to a compromise of 150 feet rather than 300 feet. The land to the west has a house on it and is not being used for agriculture. On the north, with regards to Parcel 1, they could live with a 250-foot setback. He said on Parcel 3 they could live with the 300-foot setback as well as on the south side. He said within the interior boundary lines of Parcel 1 and Parcel 2; it is not currently being used for agriculture, has not been used for agriculture, and has a deed restriction on it that says the property is not going to be used agriculturally. He said on the Zoning Ordinance alone, there is a setback. He said, furthermore, he has proposed CC&Rs that would apply only to Parcel 1 and Parcel 2 that cites there is a nuisance on other agricultural property. In conclusion, he said that if the Commission holds to the 300-foot setback, he will take this up with the Board of Supervisors and he will tell the Board that they can not defend this by the language in the General Plan. Mr. Edgar next discussed the condition for indemnification and his reasons against it. He said he will not comply with the indemnification condition and if he wants to appeal today's decision he will. He said the indemnification clause as proposed by County Counsel is in clear violation of the simple language in Government Code 66474.9. He said the County can not prevent him from sending a letter to appeal and they can not prevent him from sending a letter directly to each and every Supervisor, and they

can not prevent Debbie Sobrero, who happens to live in Paradise, from talking to the Chairman of the Board and asking him why she is being forced into an expensive lawsuit.

Mr. Wannemacher asked if his objection to the condition arises only if the project is not approved.

Mr. Edgar said the condition states that if for any reason someone appeals the decision to the Board of Supervisors other than Debbie Sobrero, the applicant must first indemnify the County from its own misconduct, and regardless of whether that is right or wrong, it is in clear violation of 66474.9 a. He said they are not going to comply with this condition.

Commissioner Leland asked for an example of the difference between what is prohibited in Section A and what is allowed in Section B.

Mr. Edgar said in Section A – it is illegal to require the applicant to indemnify the County from any action, decision, etc. In Section B – once a final decision has been made, then the County can require the applicant to indemnify subject to a long list of terms of conditions and restrictions. He said the condition can only be imposed after a project is approved.

Commissioner Leland said as he reads the law, it can be imposed as a condition of approval. There was a brief discussion between Mr. Edgar and Commissioner Leland.

Mr. Edgar said the applicant has the right to appeal to the Board and the County can not say the applicant has to indemnify the County from its own misconduct.

Mr. Wannemacher said that the indemnification condition is there to put the applicant on notice that there will be a need for indemnification if an approved project is appealed by other than the applicant. The condition requires that the applicant enter into an indemnification agreement that specifies the terms of indemnification. He also said the Mitigated Negative Declaration means that you have accepted the mitigation measures.

Mr. Edgar said the wording in 66474.9 is different from what the wording is in the condition from Counsel. He said he can live with the language in 66474.9.

Chairman Marin said they are very close to coming to a solution and that he felt the 300-foot setback was arbitrary.

Mr. Michelena said as a staff person, he follows the policies and procedures of the General Plan. He felt the Board would have to decide this matter.

Lori Lundy, L & L Surveying, gave a history of the project so far and what Ms. Sobrero has gone through.

Chairman Marin asked about the different maps submitted by Mr. Edgar.

Mr. Edgar explained that he used geological survey maps and plotted in the stream.

Ms. Lundy said she received a letter yesterday from Mr. Edgar stating that the County was holding

to the 300-foot buffer setback. She said Debbie has tried to appease the Planning Department, and the last hurdle was the setback. She asked what else Ms. Sobrero can do to get an approval.

Mr. Michelena apologized about the January 4, 2005, memo because he did misrepresent that the Planning Commission could set policy. He said the Board has to set policy.

Commissioner Nelson asked about approving all the changes to the conditions except the setback and moving this hearing to the Board.

Commissioner Leland said the Board is the only one that is going to make the decision on the setback. He asked about delaying this decision and waiting for the implementing guidelines.

At Commissioner Leland's request Mr. Wannemacher explained the Permit Streamlining Act. He noted that there is no final environmental document for the Commission to certify because it was signed under protest and that it is considered as not being signed at all. He said there is no environmental document on this project and the Commission can not make a final decision.

Chairman Marin asked if the project is approved today, who is going to care that there is no environmental document.

Mr. Wannemacher said he has not seen anyone opposed to the project. However, he said that a recent California Attorney General's opinion stated that a Director of Development Services could appeal and the County has a provision that allows members of the Board to bring the matter before them.

Commissioner Leland said in answer to "who will care", the next time the County goes to impose this condition, the Commission would be setting a precedent.

Commissioner Lambert questioned the map the applicant prepared stating that the four house sites seem to be in the sewage disposal area.

Mr. Fogel said it is ok and has already been taken into consideration.

Commissioner Nelson said on Parcels 1 and 2, the house location will not work.

Commissioner Lambert asked if there was a physical reason the houses could not be located in another area and meet the 300-foot requirement, or if this was a matter of the applicant's desire.

Ms. Sobrero said on Parcel 1 the green area is one of the lowest parts of the property and gets the runoff from storm water and on Parcel 2 it starts to slope in the green area. She said the CC&Rs restrict homes from being built on top of a hill.

Ms. Christopher responded to some of the comments made by Mr. Edgar. She said that no one is claiming that staff has been perfect in this process. She said something happened at the last hearing that has been mis-communicated here today. She said that a statement was made that the first time the applicant heard about the 300-foot setback being set in stone was yesterday. She said the applicant signed an Initial Study, under protest, but with much discussion since the beginning of

August where it was stated in the document you shall have a 300-foot buffer. She said the applicant knew the County's position regarding the 300-foot buffer. She said also, at the last hearing, the conflict was between the two different maps showing two different 300-foot setback areas and the Commission's concern was that they did not know if there was enough area even for a house, where the area actually was, and the Commission asked that L & L Surveying be brought back out to the site to re-determine specifically and absolutely where the 300-foot boundary fell on each of the parcels. She said the direction was not to go out and show the 300-foot setback and then come back and show where the applicant wants to build their houses. She said the Commission stated many times that they did not want the houses built in the 300-foot setback area. It was made clear what the applicant needed to do to clarify the building site. She said there have been endless discussions on the 300-foot buffer and where the houses will be built. She said the maps were to be clarified. She believed the Commission and the applicant are at an impasse. She said they do not have an Initial Study. She said the County can require an Environmental Impact Report or forward this on appeal of a denial if the applicant refuses to sign the Initial Study.

Mr. Edgar said he and his client object to the language in the Initial Study that states that they will agree to waive their rights. He said the Initial Study says the applicant will be bound by the 300-foot setback. He asked that the Commission make a decision so this can be appealed to the Board of Supervisors.

Mr. Michelena explained what would happen if the Board finds unusual circumstances. He said this would come back to staff to change the Initial Study and probably re-circulate the document.

Commissioner Nelson said he did not have a problem making a motion to move this forward with an approval based on the map and letting them argue the setbacks with the Board. He said staff is saying unless the applicant signs the Initial Study, they are stuck with a non-project.

Mr. Wannemacher said if the applicant's intent from the beginning was to not accept the conditions, they should not have signed the Initial Study.

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There was a break from 11:15 to 11:30

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Commissioner Nelson agreed that they were at an impasse. He said he is willing to move forward with a motion to incorporate all of the new conditions and send this to the Board if the applicant wants to appeal the setback requirements. He said staff is telling him that if the applicant does not sign the Initial Study, then the project should be denied.

Commissioner Leland said there are two options; 1. Treat the signature under protest as no signature and deny. or 2. Retract the "under protest" and go forward with an approval and the condition for the setback can be appealed.

Mr. Edgar said the problem he has with that suggestion is that County Counsel was present on July 22, 2004, with planning staff also present and there was a very full discussion of that specific issue, on the record, followed up by a letter that he sent on July 29, 2004, that stated they have discussed

this and it said that he feels strongly that it is improper to have, on the record, a document that says before we will circulate it, the applicant must waive their rights. He said he is intending to have the Sobrero family sign under protest. He said Commissioner Leland was chairman at the time and as Chairman said that signing under protest was fine, everyone else said that was fine, and even County Counsel said that was fine.

Commissioner Leland read from Mr. Edgar's letter of July 29, 2004, paragraph 3.8.2.1. which states "The required signature on a draft Initial Environmental Study was merely for acknowledging receipt of the document, the required signature from the applicant did not signify approval and would not preclude the right of an applicant to submit appeals and protests concerning a draft Initial Study. In particular, the Sobrero family could execute the draft of the Initial Study and proposed mitigated negative declaration for TPM 04-07 (Sobrero) under protest (when it is ready for signature), and the document could still be circulated for public comment." Commissioner Leland said he did not recall saying that the applicant could sign the Initial Study under protest.

Mr. Wannemacher said there is a definition of what a Mitigated Negative Declaration is in Public Resources Code Section 21064.5. He said the code states that "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." He explained that where there are impacts they can mitigate them or do an EIR. He said to have a Mitigated Negative Declaration you have to have made revisions in the project or agreed do them.

Mr. Edgar said the language that they are opposed to is tacked onto the signature line that says we waive our rights to appeal. He said the document is based upon what we consider is an incorrect interpretation of the Agricultural Element. He discussed what would happen if the Board changed the setback requirement in the Initial Study. He asked that the Commission make a motion that the changes talked about and agreed to be accepted, access means road and waterlines, so there is a clear record. He said whatever County Counsel wants to do on the indemnification, do whatever he needs to do. He said to the extent they want to deny the project because of an impasse on the issue of the 300-foot buffer, then deny the project, and we will appeal to the Board of Supervisors.

Mr. Wannemacher said the Commission can not approve a project without an environmental document. He noted that the Commission does not have to adopt the changes agreed upon because they will be reflected in what is presented to the Board.

Commissioner Leland asked if this project is denied, appealed to the Board, and the Board agrees with the applicant, will they need to re-circulate the Initial Study.

Mr. Wannemacher said that could happen and the project could be sent back to the Planning Commission.

Commissioner Leland discussed changing the indemnification condition to say upon final approval.

Mr. Wannemacher said if the project is denied, the condition does not apply. There was a brief discussion on how the condition works. He said if the Planning Commission denies this project, the applicant would be appealing the denial, and not the conditions.

Mr. Edgar said it would be helpful to approve the revised conditions now and not to have to revisit the issue.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and carried to deny Tentative Parcel Map 04-07, Sobrero, on the grounds that there is not an adequate Mitigated Negative Declaration per Public Resources Code 21064.5 as defined above, because the applicant does not agree to the mitigations and signed the Initial Study under protest, and find that contrary to the description of the July 22, 2004, meeting in paragraph 3.8.2.2 of Mr. Edgar's letter of July 29, 2004, the Planning Commission did not authorize the signature under protest, but instead indicated that the signature would not impair raising the issue at a later hearing.

AYES: Commissioners Lambert, Nelson, and Leland

NOES: Chairman Marin

ABSENT: No one

ABSTAINED: No one

There is a 10-day appeal period on all decisions with the Clerk of the Board

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Wilma Moore and Sharon Eason – Notice of intention to record a Notice of Violation for property locate don the east side of Deer Creek Highway (State Highway 32), approximately 850 feet north of Platt Mountain Road, Forest Ranch. The property consists of two 5 acre parcels and a 29.2 acre parcel in the A-R (Agricultural Residential) General Plan designation, and zoned TM-5 (Timber Mountain – 5 acre parcels). The affected properties were subdivided by deed after March 4, 1972 in violation of the Subdivision Map Act and Butte County Code. APNs 056-410-020, 056-410-021, and 056-410-022. (CD)

Mr. Durling gave a brief summary of the project. He said this is the first time a Notice of Intent to record a Notice of Violation has come before the Commission. He noted that the Notice of Violation was not done at the time of the Certificate of Compliance and explained how to correct the problems with the grant deeds. He said none of the parties have taken the steps to resolve the issues and staff was left following through with a Notice of Violation to be filed on all three parcels; if the filing is approved a Notice of Violation will be recorded.

Commissioner Nelson asked if the Violation puts up a red flag and the parcels can not be sold.

Mr. Durling said that is correct.

Commissioner Leland said the filing was authorized in 2002 for the violation, and asked why it is being done now.

Mr. Wannemacher said they have to go through a specific process to allow people to come before the Commission. He said staff has not been able to work out the issues.

Mr. Leland asked about doing a Tentative Parcel Map.

Mr. Durling said a Tentative Parcel Map needs to be applied for on all three parcels. There was a brief discussion on the two 5-acre parcels and the deer herd issues.

Commissioner Leland noted the problem was not complying with the Subdivision Map act because of two deeds to one person, one with the intent to sell.

Mr. Durling said the problem is going back and correcting the mistake.

Commissioner Leland said it is clear that there is a violation and we have to decide to record the Notice of Violation.

Mr. Wannemacher explained the procedure to take the violation off once it is recorded.

The hearing was opened to the public.

Teri Latour, representing Mrs. Moore, said she did not see why in 1991 a Certificate of Compliance was approved with a recommendation to file the Notice of Violation.

Commissioner Leland said it was a Conditional Certificate of Compliance that was approved.

Ms. Latour said in 2004 she thought there was an option to merge the two five-acre parcels.

Mr. Durling said the problem is coming under the General Plan today under the deer head study restriction of a minimum of 20-acre parcels. He said in the past this would have been dealt with differently than from today.

Lorri Lundy, L & L Surveying, said Curt Rhyne who purchased the larger parcel of 29.2 acres, was told he needed to do a parcel map. She said when they applied to do the parcel map it came up that he could not do a parcel map, but would have to deal with Ms. Moore and Ms. Eason on including their 5-acre parcels. She asked for direction. She asked that the County not do a Notice of Violation on the 29.2-acre parcel to give them more time to try to work with Sharon Eason.

Commissioner Nelson asked if the violation included the 29.2-acre parcel.

Mr. Wannemacher said the 29.2 acre parcel is not a legal parcel.

Ms. Lundy said she needs something in writing that states what has to be done to get rid of the violation.

Ms. Christopher said she can give Ms. Lundy the options in writing that she wants.

Ms. Latour asked about the option in 2004 and it sounds like that is not now viable.

Mr. Wannemacher said the two five-acre parcels were part of a larger parcel including the 29.2 acre parcel.

Ms. Latour said Ms. Eason wants to cooperate.

Mr. Wannemacher said Attachment D, Condition 2 says “create the parcel in conformance with Chapter 20 of the Butte County Code and the Subdivision Map Act for purposes of sale, lease, or finance.” He said this was an illegal subdivision. He said creating the parcel means starting with the last legal parcel and going through the process of creating a smaller parcel. He said under Attachment G, the second page from Neil McCabe, it states that the essential question is whether or not the giving of two gift deeds to the same individual on the same day required the filing of a parcel map. He said it does not say to take each individual parcel and do a separate map. He said the opinion means the process had to be created by parcel map.

Commissioner Nelson suggested postponing the Notice of Violation and doing a parcel map.

Mr. Durling said the parcel map would have to be for all three parcels.

Ms. Latour asked about filing a Notice of Violation against the two five-acre parcels only.

Mr. Durling explained that the 29.2-acre parcel is also illegal. Ms. Christopher noted that all three parcels were created illegally.

Ms. Latour said the option is to go forward with all three parcels.

It was moved by Commissioner Leland, seconded by Commissioner Lambert, and unanimously carried to authorize the recordation of a Notice of Violation against Moore and Eason as follows:

I. Revoke the following two Conditional Certificates of Compliance:

- A. Conditional Certificate of Compliance (DET 91-98) for APN 056-410-021 issued on August 14, 1991; and
- B. Conditional Certificate of Compliance (DET 03-02) for APN 056-410-020 issued on October 18, 2002.

II. Determine that:

- A. The parcels described in the attached NOTICE OF INTENTION TO RECORD A NOTICE OF VIOLATION were created in violation of Chapter 20 of the Butte County Code, and the State Subdivision Map Act.
- B. The development of the existing two 5-acre parcels would be inconsistent with the provisions of the Butte County General Plan Conservation Element that is designed to protect Critical Winter Deer Herd migratory routes.

- C. The development of the existing two 5-acre parcels would be inconsistent with the Wildlife Habitat protection standard of the Agricultural Residential Land Use Element of the General Plan.
- D. The development of the existing two 5-acre parcels would be inconsistent with the Open Space Element of the General Plan for regulation of residential development in the foothills to facilitate the survival and migration of deer herds.

III. Instruct Staff to:

- A. Prepare a NOTICE OF VIOLATION for the three properties.
- B. Record the NOTICE OF VIOLATION with the Butte County Recorder for each property.

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VIII. GENERAL BUSINESS *This section of the agenda is to be utilized by the Planning Commission and Director of Development Services on items of interest, general discussion, or items for which staff has been directed to do research and bring back to the Commission. Items A, B, & C may not always be addressed at every hearing, but will always be listed as part of the agenda.*

A. Directors' Report

Ms. Christopher said she has the list from Human Resources and there are two valid Planning Manager candidates. She said she opened the Assistant Planner position and there are 4 candidates. She discussed the incredible number of openings in the department.

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Ms. Christopher said the second dwelling ordinance is being worked on as is the nonconforming ordinance and she hopes to have it to the Commission no later than the second meeting in February.

* * *

Ms. Christopher discussed the response from the Department of Conservation regarding the LCA audit. She said Duck Clubs are now designated as non-prime land.

- B. General Plan/Zoning Ordinance Update
- C. Legislative Case Law update
- D. Planning Commission Concerns

Commissioner Lambert proposed putting together a Resolution of Appreciation for Mike Evans and the Commission agreed.

IX. MINUTES – December 9, 2004

The Commission had the following corrections: Page 3, L14 delete “Pass a Motion of intent to” and make “approve” to “Approve”; Page 11, L36, after “to” add “the”; Page 12, L32, change “was” to “were”; Page 20, L20, delete from line 21 through L14 of Page 26 as being in the minutes twice; Page 27, L16 add a “?” to the end., L 20, after “that” add “if”.

It was moved by Commissioner Lambert, seconded by Commissioner Leland, and unanimously carried to approve the minutes as corrected.

X. COMMUNICATIONS: *Communications received and referred. (Copies of all communications are available in the Planning Division Office.)*

1. Letter from Christopher Seibert.

The letter was accepted for information.

XI. ADJOURNMENT

There being no further business, the Planning Commission adjourned at 1:01 p.m.

Chairman Marin

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