

**BUTTE COUNTY PLANNING COMMISSION MINUTES**  
**MARCH 24, 2005**

- I. PLEDGE OF ALLEGIANCE:** The Meeting convened at 9:00 a.m.
- II. ROLL CALL: PRESENT:** Commissioners Lambert, Wilson, Nelson, and Chairman Marin
- ABSENT:** Commissioner Leland
- ALSO PRESENT:** Yvonne Christopher, Director Development Services  
Mark Michelena, Associate Planner  
Felix Wannemacher, Deputy County Counsel  
Stu Edell, Land Development  
Doug Fogel, Environmental Health
- III. ACCEPTANCE OF AGENDA:** Commission members and staff may request additions, deletions, or changes in the Agenda order.

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

- IV. BUSINESS FROM THE FLOOR ON ITEMS NOT ALREADY ON THE AGENDA**  
(Presentations will be limited to five minutes. The Planning Commission is prohibited by State Law from taking action on any item presented if it is not listed on the Agenda)

NONE

- V. PUBLIC HEARINGS** The Chair will call for staff comments. The hearing will be opened to the public for proponents, opponents, comments, and rebuttals. The hearing will be closed to the public and discussion confined to the Commission. The Commission will then make a motion and vote on the item.

It is requested that public initiated presentations be limited to a maximum of 5 minutes so that all interested parties will have an opportunity to address the Commission. Following your presentation, please print your name and address on the speakers sheet so that the record will be accurate.

The recommendation of County staff is indicated below. It is only a recommendation and has not yet been considered by the Planning Commission. Copies of the Staff Report are available at the Planning Division Office

**Denise and Kevin Hicks, Minor Use Permit** to establish a large daycare facility for 14 children in the R-1 (Residential) zone on 2.63 acres. The property is located on the west side of West Rio Bonito Road, approximately 750 feet south of Milky Way, at 274 West Rio Bonito Road, Biggs. APN 022-170-049 (CD) (MUP 05-01)

Mr. Durling gave a brief summary of the project and showed a power point presentation to illustrate the agricultural buffer area. Mr. Durling also mentioned that the Agricultural Commissioner's office has requested a vegetative screening to be used in addition to the fencing requirements to protect the daycare play area from agricultural drift spray.

Commissioner Lambert asked for clarification on which side of the property the screening would be on.

Mr. Durling stated that the fence and vegetation screening would be on the west and north sides of the property.

Commissioner Nelson asked what type of crops were being raised on the agricultural property.

Mr. Durling replied that the property was fallow at this time and the field was usually planted with row crops.

Commissioner Nelson asked why the 300 foot agricultural buffer setback was not being required at this time.

Mr. Durling replied that the Agricultural Commissioner seemed satisfied with the current conditions and adding the vegetation screening would be sufficient protection from any drift spray.

Commissioner Nelson asked what is the definition of "screening".

Mr. Durling replied that it would be a chain link fence with vegetation screening, the screening would be determined by the Agricultural Commissioner.

Commissioner Nelson asked the distance between the fence and vegetation screening and the start of the agricultural parcel.

There was a brief discussion of the distance from the agricultural use, stone wall and the irrigation ditch, of the agricultural property and the play area for the daycare facility. Closest point would be 30-40' and the farthest distance would be approximately 100'.

There was also a brief discussion on what type of vegetation screening would be used. Mr. Durling stated that when the time came to create that screening, he would be consulting with the Agricultural Commissioner with the exact requirements for the vegetation material to be used.

Commissioner Nelson indicated concern that there was an adequate buffer and stated that he would like to speak with the Agricultural Commissioner and ask what he has in mind for this project.

Commissioner Lambert concurred with Commissioner Nelson and inquired what County Counsel had to say about the situation.

Mr. Wannemacher stated that he did not have all the facts in front of him, but since there was an existing home he would assume that there already has been a buffer placed on the agricultural parcel to not allow spraying within a certain distance of the home. He also stated that when the

building permit was applied for to convert the garage to a daycare facility, an agricultural buffer zone waiver form would have to be signed by the applicant.

Mr. Durling stated that the written communication is expressed in Condition #14. The verbal conversation was that Condition #14 would suffice in addition to the stone wall on the boundary line of the residential portion of the property and the agricultural uses and that the condition would extend the buffer zone.

The hearing was opened to the public.

There was no public present at this time.

The hearing was closed to the public and comments were confined to commission and staff.

Commissioner Lambert expressed concern with the agricultural buffer distance and the presence of children. The policy states 300 feet buffer zone, and she was concerned with the fact that there will be children within 30-40' of the "drift spray" and that there is apparently no concern regarding the distance.

Commissioner Nelson gave a brief commentary on the inconsistency of the 300 foot buffer zone and stated that he would like to have someone from the Agricultural Commissioner's office present to answer questions and explain the current situation.

Mr. Wannemacher explained several options of: a.) continue the item and ask for the Agricultural Commissioner to be present to address concerns and questions, or b.) determine that this project is inappropriate and vote to deny the project.

Commissioner Nelson stated that he would like to continue this item and call the Agricultural Commissioner's office and ask him to be present to address the Commissioners concerns and questions.

Commissioner Lambert stated that she was unclear what the 'Ag waiver form' does.

Mr. Wannemacher gave a brief explanation of the Agricultural Waiver Form. Stated that the applicant was not expanding any structures, just converting a portion of an existing structure and he was not sure if that would require an Ag Waiver Form.

Commissioner Nelson stated that the Commission would never approve this project if there was not already an existing residence on this property.

Mr. Wannemacher agreed with Commissioner Nelson.

Commissioner Nelson wanted to know why this project would be acceptable to the Agricultural Commissioner's office, when it would be denied if it were in another location.

Mr. Wannemacher said the question is legitimate, that since the house is there do you have to allow the additional use, when the additional use might bring additional children to the site and that might place them in jeopardy, to some extent. Most likely we have been simply looking at location of residential structures and not uses. Even in the implementing guidelines for the 300' buffer, it does not look closely at the uses on property, but it does look at the location of structures on the property.

Commissioner Wilson asked what is the purpose of the 300' setback.

Mr. Wannemacher explained that the purpose of the 300' setback is not to infringe on the agricultural property.

Commissioner Wilson stated that this would not infringe on the agricultural property in this particular case.

Mr. Wannemacher agreed and stated that the concerns of the other Commissioners were the impact of bringing additional children onto this property.

There was a brief discussion on how often there would be spraying on the agricultural property, based on the type of crops being grown.

Chairman Marin stated he had no problem with the project. There was an existing residential structure on the property and that without this permit the applicant would be allowed a daycare with 6 children.

Commissioner Lambert said if they do not approve this permit for 12-14 children that maybe there would not be a daycare for 6 children either.

Commissioner Nelson stated again that he would like Richard Price to be present to address their questions.

Mr. Durling stated that the farming spraying activity is restricted to no closer than 300' from the dwelling, and that the farmer is already impacted by no spraying within 300' of the existing house, and that the vegetation barrier would be in addition to the current restrictions. He said that today the farmer can not spray within 300' of the house.

Commissioner Nelson asked if there could be a condition on the project that there could not be agricultural operation within 300' of the existing residence.

Commissioner Lambert stated that she would not agree to that condition.

Chairman Marin said that Mr. Durling is stating that the condition is already on the agricultural property.

Commissioner Wilson stated that row crop spraying is performed from tractors and there would be virtually no drift spray, versus aerial spraying for orchard where there would be drift spray.

Mr. Wannemacher said it would not make sense to put that condition on here, because it would not be something that the applicant could meet. The applicant has no control over what the farmer does next door, and that would be a condition that the Agricultural Commission would have placed on the farmer.

Commissioner Lambert asked that this project be continued until the Agricultural Commissioner could be available to join the meeting. She suggested a break while someone tried to reach Richard Price at his office, and to go on to Item B.

Chairman Marin stated that they would recess the current item and go on to the next item, TPM 03-09.

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**Johnny and Dawn Person, request for an Extension of Time to File a Final Map,** APN 043-690-069, for a Tentative Parcel Map to divide an existing 2.2 (+/-) acre parcel into two (2) parcels of 1.1 acres each on property zoned SR-1 (Suburban Residential). The property is located on the east side of Rose Avenue, approximately 560 feet north of Oak Park Avenue, at 54 Rose Avenue, southwest of Chico. (SB) (TPM 03-09)

Originally Approved: January 23, 2003  
Two years to complete: January 23, 2005  
Grant Five year extension to: January 23, 2010

Mr. Betts gave a brief description of the project.

This request for time extension was reviewed by various County departments and the Public Works Department recommended that the majority of their conditions for project approval be revised to reflect new wording that would make the conditions easier to read and more understandable. In addition, Public Works requested three additional conditions of project approval, which are listed on page 1 and 2 of the staff report. The first condition would be a new Condition #7 which says 'install all necessary traffic safety signs, including stop signs'. This is a requirement that is being put on all parcel maps for the last 2-3 years. The second conditions would require 'all new drain inlets shall be labeled with the County approved drain marker'. The last condition would be that a 'construction storm water permit' be obtained from the Regional Water Quality Control Board, this condition is actually a state requirement, and this note is just a notification to any future land owners that the construction storm water permit would be required.

Chairman Marin asked for clarification on the time extension dates.

Mr. Betts responded that the project was approved on January 23, 2003, and expired on January 23, 2005.

Mr. Betts pointed out that the extension request was requested prior to the expiration date of the map.

There was a brief discussion on whose responsibility it would be to maintain the stop sign and, it was determined that the applicant would be.

Mr. Wannemacher stated that the existing conditions were streamlined and versatile, and that there should be changes in the conditions where it states “Parcel/Final Map” be changed to “Parcel Map”; and these changes should be made throughout the conditions.

Mr. Betts stated that would be correct and that the Butte County Department of Forestry (CDF) requested two of their conditions be eliminated. These would require the payment of water tender fees and payment to the west Chico Fire Station fees, and should be deleted because the County has adopted development impact fees, and these fees are collected within those impact fees.

Mr. Betts stated that after publication for this Planning Commission meeting, the Planning Department was notified by the applicant that they wanted one of the conditions changed. Mr. Betts gave a brief summary of the changes requested by the applicant.

Mr. Betts said the Environmental Health Department had given him some possible conditions of project approval which would address this situation, which are listed below.

1. Development of Lot 2 will require connection to public water supply, unless pending water quality testing results indicate well water is satisfactory for domestic and irrigation purposes.
2. Prior to recordation of Parcel Map, the well on Lot 2 would be abandoned, unless pending water quality tests proved to be satisfactory for domestic and irrigation purposes.
3. Put a note on the Parcel Map that states “Development of Lot 1 will require connection to a public water supply”.

With these amendments staff would recommend approval of the project.

Commissioner Lambert asked if it was possible to have Cal Water for domestic use and keep the well for irrigation purposes and install a backflow valve.

Mr. Fogel said that definitely was a possibility to have Cal Water for domestic and the well for irrigation with the backflow valve. He said in this particular instance it is not being proposed. The California Water will be available at the street under the conditions of the map, however, for Lot 2, the current owner of the parcel, Dr. Leitner, wishes to maintain the well for total use on the property, so there should be no physical connection between the two systems.

Commissioner Lambert asked that if the water quality test comes back ‘not good’, then could the applicant use Cal Water for domestic use and maintain the well for irrigation use.

Mr. Fogel said that Dr. Leitner has given the Environmental Health Department a signed agreement stating that he would abandon the well in total if it does not pass the water quality test.

Commissioner Lambert asked if they could still use the well for irrigation purposes, because it would be very costly to irrigate an acre with Cal Water.

Commissioner Nelson asked if the Environmental Health Department would support the well for irrigation purposes.

Mr. Fogel stated that it is difficult to find standards on volatile organic chemicals as far as what's an adequate level for spray irrigation. Volatile organic chemicals (voc's) do off-gas when used for irrigation purposes. When would it be appropriate to use water with "voc's" for irrigation spray, and when would your neighbors start to say they do not want that type of spray in their neighborhood? Good question. He said if this well was positive for volatile organic chemicals, that Environmental Health would not want those chemicals sprayed into the air through irrigation.

The hearing was opened to the public.

Mrs. Leitner was present to speak, and stated that the number one option would be to use the well for domestic and irrigation purposes, and that number two option would be to use the well for irrigation purposes only.

Commissioner Lambert said that the report she had did not give them that option and that was why she brought up the question of using the well for irrigation and Cal Water for domestic use.

Mr. Fogel stated that there were two issues at hand, 1. drinking purposes, and 2. irrigation purposes, the backflow valve would not be necessary for irrigation purposes because there would be a physical break in the line.

Commissioner Wilson said that a backflow valve would be required by Cal Water, in order to have water service.

Commissioner Nelson said that if the well tested positive for voc's, then the applicant would have to deal with Environmental Health and that as it stands they would have to abandon the well.

Commissioner Lambert wanted to give the applicant the option of using the well for irrigation purposes and using Cal Water for domestic purposes.

Mrs. Leitner stated that they would like to have the option of using the well for irrigation if the well tested positive for voc's, and they would connect to Cal Water if that was required.

Commissioner Nelson said Environmental Health needed to clarify for the Commission what it is they are requiring from the applicant.

Mr. Fogel agreed and stated that the agreement is: either the well would be available for both uses or not available at all.

Chairman Marin asked Mr. Wannemacher on clarification of what they were addressing today.

Mr. Wannemacher stated that they are addressing a time extension with existing conditions from the previous map that required destruction of the well and connection to public water, and Environmental Health was willing to change that to some extent, and the discussion today was to what extent it was going to change.

Commissioner Nelson asked Mr. Fogel if they were going to insist that the well be abandoned, or were they willing to work with the Leitner's on the issue.

Mr. Fogel said "yes" they wish to have potable water in the well, and if it is potable then it would be suitable for all purposes. If it does not show to be potable water then it would not be adequate for irrigation purposes.

Chairman Marin asked what is the present use of the well at this time.

Mr. Fogel said presently it was being used for drinking and irrigation purposes on the property and has been used for the last 25 years.

Chairman Marin stated that if the well has been in use for that long then it will probably test okay.

Commissioner Lambert said we are dealing with an extension of time issue with some changes in conditions, and asked if there would be an opportunity in the future for the applicant to come back at all.

Mr. Wannemacher said if they wished to give the applicant time to come back in the future then they could grant a time extension for a limited time, for example one year, and the applicant could come back at that time. In reality they should condition the project so it is clear what actions should be taken or leave it as it was for an extension.

Commissioner Lambert summarized the changes and stated that since Environmental Health was not willing to allow the well to be used if positive for voc's, then there is no reason to delay the time extension.

Mr. Fogel stated that if the sampling was pursued diligently they would have the water quality results within a month.

Mr. Wannemacher stated that this really could not be continued, because if the applicant had not asked for a time extension then the map would have already expired, and that today was day 60 of the 60 day extension because of the time extension request.

Commissioner Wilson said that the issue was already locked in due to the letter from Dr. Leitner stating that the well would be abandoned if the water was not suitable for drinking purposes.

Chairman Marin closed the public portion of the hearing and confined comments to the Commission and staff.

Mr. Betts made a clarification of the conditions: Conditions #18 and #19 under Environmental Health Department would remain the same, under approval of the new conditions already mentioned. Then #20 and #21 would be revised to a new #20 and #21, which has already been read to the Commission, and they would add a new condition #21 which would state that development of Lot 1 would require connection to a public water service.

Chairman Marin asked Mr. Betts to please read the new conditions again.

Mr. Betts read the changes: Conditions #18 and #19 would stay the same, Condition #20 would state: Prior to recordation of the Parcel Map, place a note on the additional map sheet that states "Development of lot 2 will require connection to a public water supply", unless pending water quality test results indicate the well water is satisfactory for domestic and irrigation purposes. Condition #21 would state: Prior to recordation of the Parcel Map, abandon the well on Parcel 2 under County permit, unless pending water quality test results indicate the well is satisfactory for both domestic and irrigation purposes. Add a new Condition #22 that would state: Prior to recordation of the Parcel Map, place a note on the additional map that states, "Development of lot 1 will require connection to a public water supply". And then renumber the remaining conditions consecutively.

It was moved by Commissioner Lambert, seconded by Commissioner Nelson and unanimously carried for approval of this request for a five (5) year time extension for Johnny and Dawn Person, TPM 03-09, subject to the findings and conditions listed below; revise Condition #20 to read: Prior to recordation of the Parcel Map, place a note on the additional map sheet that states "Development of lot 2 will require connection to a public water supply, unless pending water quality test results indicate the well water is satisfactory for domestic and irrigation purposes". Revise Condition #21 to read: Prior to recordation of the Parcel Map, abandon the well on Parcel 2 under County permit, unless pending water quality test results indicate the well is satisfactory for both domestic and irrigation purposes. Add a new Condition #22 to read: Prior to recordation of the Parcel Map, place a note on the additional map that states, "Development of lot 1 will require connection to a public water supply"; delete the words "Final" throughout the conditions; and renumber the remaining conditions:

## **NEW CONDITIONS OF PROJECT APPROVAL**

### Planning Division:

1. Place a note on a separate document which is to be recorded concurrently with the map or on an additional map sheet that states: "Prior to building permit issuance for a new residential dwelling unit(s), the applicant shall pay all applicable development fees at the rate in effect at the time of acceptance of the application. Such fees, may include, but not be limited to: Sheriff Fee, Park Fee, School Fee, Drainage Fee, Permit and Plan Checking Fees, Water and Sewer Service Fees, and Fire Protection Fees."
2. Prior to recordation of the Parcel Map, pay to the Department of Development Services any outstanding project-related processing fees.

Butte County Department of Public Works

3. Prior to or concurrently with the recordation of the Parcel Map, provide a fully executed road maintenance agreement for all non-publicly maintained access roads on the County approved form. A note shall be placed on a separate document which is to be recorded concurrently with the map or on an additional map sheet of the Parcel Map stating: "In accordance with Civil Code Section 845, maintenance of the road as shown hereon shall be shared by those properties with a legal interest in it."
4. All access rights shall be reserved by deed per County Ordinance, offered for dedication, and depicted on the Parcel Map. For each private access within the map boundary, place the following note on the Parcel Map: "Rosecreek Court, a non-exclusive easement for ingress, egress, road and public services purposes, to be reserved in deeds and is hereby offered for dedication to the County of Butte."
5. Prior to or concurrently with the recordation of the Parcel Map, Deed to Butte County in fee simple 30 feet of right-of-way from the centerline of Rose Avenue along the entire property frontage. The right-of-way shall be sufficient for the installation of Improvement Standard No. S-5 at all street intersections.
6. Prior to recordation of the Parcel Map, provide street name signs per requirements of the Department of Public Works. Street names shall be reviewed by the County Address Coordinator and one name for each new street shall be recommended to the Board of Supervisors for approval prior to recordation of the Parcel Map. A minimum of five alternate names for each new street shall be submitted.
7. Prior to final road inspection, install all necessary traffic safety signs including stop signs. A note shall be placed on a separate document which is to be recorded concurrently with the map or on an additional map sheet of the Parcel Map stating: "No public entity shall be responsible for the maintenance of the traffic safety signs including stop signs. In accordance with Civil Code Section 845, maintenance of the traffic safety signs shall be shared by those properties with a legal interest in them."
8. Prior to the recordation of the Parcel Map, obtain an encroachment permit and construct a standard S-18B road approach in accordance with County Improvement Standards. Adequate sight distance at the intersection of access road and Rose Avenue shall be provided.
9. Provide a cul-de-sac designed and constructed as specified in the County Improvement Standards. The Parcel Map shall show the cul-de-sac.
10. Prior to recordation of the Parcel Map, provide approved access to each parcel from a County maintained road or from a state highway. Improve parcel frontage to RS-3C and access road to parcel being divided to RS-3C. Submit road and drainage plans to the Department of Public Works for plan checking and approval prior to construction.
11. Show on the additional map sheet of the Parcel Map a 50 ft. building setback from the centerline of Rosecreek Court based on Butte County Code Section 20-40.1.

12. Prior to recordation of the Parcel Map, a plan for a permanent solution for drainage shall be submitted to and approved by the Department of Public Works. The drainage plans shall detail existing drainage conditions and shall specify how drainage waters shall be detained or retained on-site and/ or conveyed to the nearest natural or publicly maintained drainage channel or facility and shall provide that there shall be no increase in the peak flow runoff to said channel or facility.
13. Prior to final improvement inspection by the Department of Public Works, all new drain inlets shall be labeled with the county approved drain marker per County Standard S-40.
14. Prior to grading, a Construction Storm Water Permit will be required by the State Water Resources Control Board if the project results in a disturbance (including clearing, excavation, filling, and grading) of one or more acres. The Permit must be obtained from the State Water Resources Control Board prior to construction. Place a note on an additional map sheet that states: "The development of this Parcel Map requires a construction storm water permit. Construction activities that result in a land disturbance of less than one acre, but which are part of a larger common plan of development, also require a permit. Development of individual lots may require an additional permit(s)."
15. Show all easements of record on the Parcel Map.
16. Prior to or concurrently with the recordation of the Parcel Map, pay in full any and all delinquent, current and estimated taxes and assessments as specified in Article 8 of Chapter 4 of Division 2 of Title 7, of the California Government Code commencing with Section 66492.
17. Pay the recording fees in effect at the time the Parcel Map and related documents are recorded.

#### Environmental Health Department

18. Identify on the additional map sheet a 50' leachfield free setback for each existing well.
19. Prior to recordation of the Parcel Map provide a letter or other documentation from California Water stating that they are willing and able to supply domestic water to lots 1 and 2.
20. Prior to recordation of the Parcel Map, place a note on the additional map sheet that states "Development of lot 2 will require connection to a public water supply", unless pending water quality test results indicate the well water is satisfactory for domestic and irrigation purposes.
21. Prior to recordation of the Parcel Map, abandon the well on Parcel 2 under County permit, unless pending water quality test results indicate the well is satisfactory for both domestic and irrigation purposes.
22. Prior to recordation of the Parcel Map, place a note on the additional map sheet that states,

“Development of lot 1 will require connection to a public water supply”.

California Department of Forestry

23. Place a note on a separate document which is to be recorded concurrently with the map or on an additional map sheet stating that: “Building identification and/or addresses shall be installed in conformance with Public Resources Code 4290 and shall be posted at the beginning of building construction and maintained continuously thereafter.”
24. Place a note on a separate document which is to be recorded concurrently with the map or an additional map sheet stating that: “Fire suppression sprinkler systems shall be installed in all new residential structures in accordance with the National Fire Protection Association Standard for the installation sprinkler systems in one and two family dwellings and mobile homes, NFPA Standard 13D, unless a pressurized community water system, with hydrants that meet Fire Department specifications, serves the parcels.”
25. Place a note in a separate document which is to be recorded concurrently with the map or an additional map sheet stating that: “Provide an all weather access to all structures. The access shall have a minimum 10 foot width and 15 foot vertical clearance, and be able to accommodate a 40,000 pound fire apparatus.”

County Counsel

26. If this entire matter or any finding, action or condition of this matter is appealed to the Board of Supervisors, the applicant, or any other subdivider other than the applicant, agrees to indemnify the County of Butte from liability or loss related to the approval of this project and agrees to sign an indemnification agreement in a form approved by County Counsel before the Board's appeal hearing. If the application is not appealed, this condition is deemed satisfied.

**II. NOTATION**

A. Minor changes may be approved administratively by the Directors of Development Services, Environmental Health, or Public Works upon receipt of a substantiated written request by the applicant, or their respective designee. Prior to such approval, verification shall be made by each Department or Division that the modification is consistent with the application, fees paid and environmental determination as conditionally approved. Changes deemed to be major or significant in nature shall require a formal application for amendment.

There is a 15-day appeal period on all decisions with the Clerk of the Board

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Chairman Marin stated that they would return to MUP 05-01.

**Denise and Kevin Hicks, Minor Use Permit** to establish a large daycare facility for 14 children in the R-1 (Residential) zone on 2.63 acres. The property is located on

the west side of West Rio Bonito Road, approximately 750 feet south of Milky Way, at 274 West Rio Bonito Road, Biggs. APN 022-170-049 (CD) (MUP 05-01)

Mr. Durling gave a brief summary of the project as the Agricultural Commissioner, Richard Price, was present at this time.

Commissioner Nelson stated his concern with the 300' buffer setback.

Mr. Price said the issue of the buffer was already established on the agricultural property, the residence was already in existence, and they are not looking at a parcel split, or establishing new residences, or new sites.

Commissioner Nelson said we are looking at a more serious drift problem.

Mr. Price agreed, however they had already mitigated the drift problem on the agricultural side of the situation. There was reference to a similar project that had been denied by the Planning Commission, appealed to the Board of Supervisors, and the project was approved. So, it establishes a history of this same type of project.

Commissioner Nelson asked for more detail regarding the agricultural buffer that is already in place.

Mr. Price stated there was an existing buffer already in place on the agricultural parcel at the time of application.

Commissioner Nelson referred to the fact that when the agricultural parcel was planted in row crops, you would not have drift spray.

Mr. Price stated that there would be fumigation from time to time, and if there was a conversion from row crop to orchard then there would be an issue with drift spray. He said that since there was already an existing mitigation on the agricultural parcel, they were willing to approve the project subject to the findings and conditions of approval.

Commissioner Lambert stated that the issue is with residences in the agricultural buffer, and not the uses.

Mr. Price agreed, and said that you could not do so due to the fact that uses vary and change, and that residential has already intruded into the agricultural areas and would continue to do so.

Commissioner Nelson said that if they were to deny the project, and it was appealed the Board of Supervisors would most likely approve the use any way.

Mr. Price agreed and said he did not agree with the use, because it could impact more people than it otherwise might, if there was not a large daycare facility on the residential parcel.

Commissioner Lambert stated that the agricultural buffer was originally designed to protect the farmer, and now they were putting the buffer on the farmer to protect the use of the residence.

Mr. Fogel stated that in the Sobrero case enforcement of the setback would be to place the house in a certain position, in this case, what is the enforcement means of the setback, and is it dependant on the type of chemical that is being used on the fields.

Mr. Price said “yes” it is dependant on the type of material used and weather circumstances. The pesticide regulations are CEQA equivalent, so they are time, site, weather, and label specific. He said at the time of application his office will make the judgment call on what the application parameters would be. When the grower comes in to get his permit for spraying, it would be an imposition due to the daycare next door. The grower will have to give an exact 24 hour notice to the tenant and if the Agricultural Commissioner deems it to be a significant issue, a department representative will be on-site when the spraying application is made, and that is how their office would mitigate the issue.

Chairman Marin said that they make rulings on property that they have not seen, and possibly they would vote differently if they were to make site visits. Like in the Sobrero case, the Commission probably would have voted differently if they had made a site visit and were shown where the houses were to be placed on the property.

Commissioner Nelson said that they could not go out and do their own thing, and that there is specific criteria that they have to go by. He said he was not comfortable voting against the Sobrero application, but they had to follow the policy, and they can not go against policy.

There was a brief discussion on site visits and how it might affect their decisions, or point of view.

Mr. Durling said that the responsibility of staff was to present evidence that is available to the Commission, whether it is good or bad, and that is why he made an aerial photo for good visualizations of the issue.

Mr. Price said that from his point of view daycare and intensive agricultural are not good neighbors.

Mr. Wannemacher said that they can go out to the site, but that they should disclose it when they come back to the meeting, to let people know that you were out there and what you saw.

Commissioner Nelson referred to the fact that the Planning Commission members actually had business cards, and they could use them when they go to a site for people who asked questions.

Mr. Price said that a member of his staff would be available to go out to any site and give them the ‘ground truth’ about what would occur on-site, and they have the ability to enter since they are the permitting agency for the agricultural spraying.

Commissioner Nelson said the Board of Supervisors appears to have established their position and that since a member of the agricultural staff would be on-site for the chemical application, that he would feel more comfortable about approving this project.

Commissioner Lambert said that the applicant could have 6 children regardless if the project was approved or not, but she would not support this project.

Commissioner Nelson said if they were to deny the project, then the Board of Supervisors would just approve it anyway.

Commissioner Lambert responded that maybe the Board of Supervisors would get more awareness that agriculture and children do not mix.

Commissioner Nelson said he would reluctantly support the project because the Agricultural Commissioner has mitigated the issues.

Chairman Marin asked Commissioner Wilson if he had any feedback before they entertain a motion.

Commissioner Lambert also stated that it bothers her that the applicant did not show up for the hearing.

Commissioner Wilson said that he was familiar with the area, as he grew up in an agricultural area, and that agriculture is a whole lot cleaner now than it was 40-50 years ago. In addition, the fertilizers and chemical used today are more restricted, and highly controlled. He would support the project at this time.

Chairman Marin said he would also support the project. People work in the fields harvesting these crops, and then people buy them and eat them; so he would support the project.

Mr. Price said there is a concern in the valley regarding these kinds of situations, and there is proposed legislation that would require one (1) mile notification of aerial applications within one (1) mile of any public facility including daycares. He said that any application within a one (1) mile radius would require a 24 hour notice, so, there would actually be more restriction on the farmer, not less.

Chairman Marin agreed with Commissioner Nelson that he would reluctantly support the project.

It was moved by Commissioner Wilson, and seconded by Commissioner Nelson , and carried to approve the Minor Use Permit for Denise and Kevin Hicks for a large daycare facility subject to the findings and conditions listed below.

AYES: Commissioner Nelson, Wilson and Chairman Marin

NOES: Commissioner Lambert

ABSENT: Commissioner Leland

ABSTAINED: No one

I. Find that this project is exempt from the provisions of the California Environmental Quality Act under Section 15274(a), which states that the California Environmental Quality Act does not apply to establishment or operation of a large family day care home, which provides in-home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code. The payment of fees pursuant to Fish and Game Code Section 711.4 and 14 CCR 753.5 are not required.

II. Approve Minor Use Permit MUP 05-01 for Kevin and Denise Hicks for a large family day

care facility for up to 12 (14) children, on APN 022-170-049, based on the following findings, and the conditions found in Exhibit “A”:

- A. That the proposed location, size, design, and operating characteristics of the proposed use is in accordance with the purpose of the zone in which the site is located, the Butte County general plan, and the development policies and standards of the county;
- B. The location, size, design, and operating characteristics of the proposed use will be compatible with, and will not adversely affect, or be materially detrimental to adjacent uses, residents, buildings, structures, or natural resources, with consideration given to:
  - 1. Harmony in scale, bulk, coverage, and density:  
*The project is in harmony with scale, bulk, coverage, and density because the large family day care facility will not create a need for any new structures.*
  - 2. The availability of public facilities, services, and utilities:  
*The large day care facility will not create a need for new public facilities, services, and utilities because telephone and electrical services already extend to the project parcel. The Butte County Fire Department requires compliance with State Fire Marshall requirements for large day care facilities.*
  - 3. The harmful effect, if any, upon desirable neighborhood character:  
*The proposed large day care facility will not change the traditional architectural style that is of a character consistent with a rural residential neighborhood. The R-1 zone permits large family day care facilities. The large family day care facility has the potential for a small increase in noise levels due to children playing outside and a small increase in vehicle traffic and vehicle noise.*
  - 4. The generation of traffic and the capacity and physical character of surrounding streets:  
*The proposed large family day care facility will not significantly increase vehicle traffic in the area, nor will it create any significant vehicle circulation impacts.*
  - 5. The suitability of the site for the type and intensity of use or development which is proposed:  
*The site has adequate area for off-site parking spaces for the residents of the dwelling and for employees of the large family day care facility. There is also adequate area for an off-street loading area.*

6. Any other relevant impact of the proposed use:

*The Planning Division has circulated the proposed large family day care facility application to County agencies and has received no evidence that the use will cause any other relevant impact.*

- C. The proposed location, size, design, and operating characteristics of the proposed use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
- D. The proposed use will comply with each of the applicable provisions of the Chapter 24, Section 24-265, of the Butte County Code for Day Care Facilities.
- E. The project is consistent with the Medium Density Residential General Plan land use designation.
- F. There are no Large Day Care facilities 500 feet driving distance from the proposed large family day care facility as required by Butte County Code Section 24-265(e)(2).

### **Conditions of Approval:**

#### Planning Division

1. The facility is a single family residence that shall be the principal residence of the provider and the large family day care facility shall be clearly incidental and secondary to the use of the property for residential purposes.
2. The large family day care facility structure shall not contain kitchen facilities except for the existing kitchen facilities within the dwelling, and all food preparation/cooking shall occur in the primary dwelling unit.
3. Minimum off-street parking shall be provided pursuant to the following standards:
  - (a) Two (2) off-street parking spaces for the residents of the dwelling.
  - (b) One (1) off-street parking space for each employee/volunteer. The two (2) required residential spaces may not be used for employees/volunteers.
  - (c) Two (2) off-street parking space/loading area.
4. One sign, not to exceed 3 square feet, is allowed. This sign shall not be placed in the front yard building setback (25 feet from front property line).
5. The large family day care home shall be licensed by the California Department of Social Services, Community Care Licensing.

6. Prior to issuance of the Minor Use Permit, applicant shall obtain any necessary building permits required by code, including conversion of the garage.
7. The capacity of the large family day care facility may be increased administratively to 14 children when the Butte County Code is amended to conform to the State statute.
8. The project site shall be developed in accordance with the approved project site plan and the conditions contained herein. Said site plan is on file in the Planning Division, is identified as "Attachment B" and date-stamped September 24, 2004, and is incorporated herein by this reference. The fenced area for the children must be provided prior to the start of day care activities.
9. Applicant must also comply with all other applicable State and local statutes, ordinances, and regulations.
10. All outstanding application processing fees shall be paid prior to issuance of the Minor Use Permit.

#### Public Works

11. Traffic shall not be allowed to back out of driveways onto West Rio Bonito Road.
12. Prior to the issuance of building permits, obtain an encroachment permit for all new or existing driveway approaches and construct them to County standards, as specified in County Improvement Standards
13. Prior to the issuance of building permits, a plan for a permanent solution for drainage shall be submitted to and approved by the Department of Public Works. The drainage plans shall specify how drainage waters shall be detained on site and or conveyed to the nearest natural or publicly maintained drainage channel or facility and shall provide that there shall be no increase in the peak flow runoff to said channel or facility.

#### Agricultural Commissioner

14. Provide a vegetative buffer around the exterior fenced area used by children during outdoor activities.

#### Fire Department/CDF

15. Prior to the start of the large family day care facility use provide plans and specifications to the Butte County Fire Chief to determine compliance with fire and life safety standards of Titles 19 and 24, California Code of Regulations.

#### County Counsel

16. If this entire matter or any finding, action or condition of this matter is appealed to the Board of Supervisors, the applicant or any other developer/operator other than the applicant agrees

to indemnify the County of Butte from liability or loss related to the approval of this project and agrees to sign an indemnification agreement in a form approved by County Counsel before the Board's appeal hearing. If the application is not appealed, this condition is deemed satisfied.

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

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**VI. 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

Yvonne Christopher was not present to give the Director's Report. The Commission passed this item at this time.

B. General Plan/Zoning Ordinance Update

Mr. Wannemacher stated that all three Zoning ordinances went before the Board of Supervisors on Tuesday, March 22, 2005 and the Board adopted all three ordinances. They made no changes to the nonconforming parcel ordinance; they made changes to both the sign ordinance and the second dwelling unit ordinance. The change for the sign ordinance was to require a use permit for any pole sign that was on a commercial property adjoining a residential property. On second dwelling units they accepted the ordinance as presented originally with two modifications, namely they did not require any maximum size of the second dwelling unit, and they included some language related to drainage, and they did not distinguish between urban and rural.

Commissioner Nelson said that in other words they were encouraging sprawl.

Mr. Wannemacher said you will be having second dwellings everywhere except for the areas that were excluded and those areas were Williamson Act Contracts, certain airport zones, agricultural zones, water shed protection, and North Chico Specific Plan. No double the acreage would be required, and they would like staff to look at whether second dwelling units should be allowed in agricultural zones.

The General Plan announcement is going to the paper that it will be discussed at the Board of Supervisors Meeting on April 12, 2005, in terms of making it available, and should be available on March 29, 2005.

Commissioner Nelson asked if the second dwelling ordinance was final and when would it go into effect.

Mr. Wannemacher said it would go into effect after 30 days.

There was a brief discussion on allowing second dwellings in agricultural areas, and the impact fees that would be imposed on second dwellings at time of building permit application.

C. Legislative Case Law update

None

D. Planning Commission Concerns

Commissioner Lambert brought up the subject of the Conference at the end of April. Lynn was to bring information on the availability of funds for the conference, but was not present to speak. Commissioner Lambert did have a telephone conversation with Lynn and there was money in the budget for the conference, and that registration is due on April 1, 2005. Commissioner Lambert did have information to share with the other Commission members if they were interested. A brief discussion followed on the conference.

## **VII. MINUTES - March 10, 2005**

Commissioner Lambert said that she had a few corrections; page 2, line 34, add 'out' after build; page 16, line 31, after meeting delete 'on'; page 17, line 13, add 'Agricultural Commissioner' after Mr. Price.

Mr. Wannemacher had a few corrections: on page 16, line 20, change where by to one word 'whereby'; line 35 change 'to bring' to 'about bringing'; line 37 change 'have' to 'has' and 'to not' to 'not to'; line 42 change 'the' to 'a' and add 'it is' after 'even if' and change 'need' to 'needs'

Chairman Marin asked for any further corrections or deletions to the minutes.

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

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

None

## **IX. ADJOURNMENT**

*There being no further business, the Planning Commission adjourned at 10:20 a.m.*

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**Chairman Marin**

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