





Commissioner Leland asked about the enforceability of the restrictions. He gave an example that Butte County had an ordinance that stated no more than one unit per parcel. Then the state passed a law stating that any ordinance that allows one unit has to allow two units. This project is similarly vulnerable to preemption by state law and maybe even the Second Dwelling Ordinance as it exists now. He asked about the difference between having a deed restriction and a zoning ordinance. His other question is in whose favor is the restriction granted. He said that someone has to be the beneficiary of the restriction for it to be enforceable. If the County is the beneficiary couldn't the restriction be waived the same way the County would grant a Use Permit?

Mr. Durling answered that in terms of enforcement Butte County has an effective system now in place to check for those types of things. He gave an example of someone coming in ten years from now wanting to put an additional dwelling on this property. The application would be compared against existing records. Staff will pull the records for parcel maps, use permits, etc. to look and compare the proposal against those records. He said that many times staff has turned down those kinds of requests because they conflict with current records or staff will add restrictions before approving the request. Mr. Durling said the current system that is in place today is effective. In regards to the second question Mr. Durling said that the ordinances can be changed. In order to modify a parcel map the applicant would have to submit a new parcel map that would go back through the Planning Commission. The future Planning Commission could allow the modification. Mr. Durling said that he didn't believe there was any way to restrict a future Planning Commission.

Commissioner Lambert asked if this included the items agreed to in perpetuity.

Mr. Durling said that any change would require a new parcel map.

Mr. Felix Wannemacher talked about enforceability. He said that it is not just a condition, it is a mitigation measure. It is there to mitigate for impacts based on fire hazards in the area. To change the restrictions it would have to find that circumstances no longer exist. He referred to page 16 Condition 7 the text says "that no permanent second dwellings will be placed on these parcels until such time as it is determined by Butte County Fire Department, CDF, Public Works Department, and the Department of Development Services that these parcels are no longer located on a cul-de-sac road". He said it is also discussed in the environmental document under 4.7. He said the U zone doesn't currently allow multiple residents. He talked about other wording that could be used.

Commissioner Lambert asked whether state or local government controls the agricultural worker?

Mr. Wannemacher answered that the agricultural worker housing is generally controlled by the state. He talked about whether the state would step in and override the County's restrictions. He thought they would look at the restriction as based on health and safety reasons not as trying to limit the number of agricultural dwellings.

Commissioner Leland asked if there was a mechanism to check that. He asked if an applicant can come in and point out the state statute that preempts the local ordinance.

Mr. Wannemacher said that generally the statute says that where an agricultural use is allowed on the property that agricultural worker housing has to be allowed to the same extent. He said in this

case the County has put an additional restriction that is not based on limiting agricultural worker housing, it is based on safety. He said that he didn't look at the statute to see if the County could do that. Initially the application comes in and they could deny it for safety reasons. He doesn't know if the state would override it. Because there is an additional factor, he thinks the State may honor the County's restrictions, but he can't guarantee that.

Commissioner Leland asked what the mechanism is for protecting the open space. He didn't see a condition that says exactly how the open space is protected.

Mr. Durling said the report speaks about two or three possibilities. It is on the shoulders of the applicant to come in and assure staff that whatever mechanism they use is satisfactory to accomplish the mitigation.

Mr. Wannemacher said that the Flex Lot Ordinance discusses the mechanism. He read it out loud. "Open space conservation easement required. Areas not designated for development shall be reserved as open space pursuant to this section. Open space shall be guaranteed in perpetuity using one or more of the following control mechanisms. A. Dedication of a conservation or open space easement to the County, other public agency or a public interest land trust. B. Dedication of land and fee title to the County or other public agency. C. A development agreement with deed restrictions or other appropriate mechanisms. The above mechanisms may be used separately or in combination with transfer of development credits and density transfer covenants as provided for in subsection (i) of this section. Remainder lots in phased developments identified as being preserved for potential future development are exempted from this requirement." He said this gives them choices. His assumption is that until this is done the map cannot record.

Mr. Durling said that the document would be reviewed by Commission and staff to ensure that it is the mechanism they want to preserve the open space.

Commissioner Leland asked if that is something the Planning Commission should decide or if they should delegate it to staff.

The hearing was opened to the public.

Mr. Michael Evans of Evans Fun Works said that this is his first Flex Lot Provision project. This application began in 2003. They had their required pre-application meeting with staff. It was discussed during this time whether or not the Flexible Lot Provision would be the best vehicle to manage the variety of issues that dividing this property brought up. There are three existing dwellings that were permitted and constructed prior to this application. The fire department had issues with access into this site and those were mitigated with the construction of a concrete road. It meets grade requirements. He said they looked at a regular land division, the Flexible Lot provisions, and the requirements of open space management apparatus. Regarding open space he said that typically deed restrictions is least favorite. There are already a considerable number of deed restrictions on the property. He favors the land trust or public entity being the recipient of the open space granting. They have not pursued any of the avenues yet. He doesn't think the County wants the open space and that will leave them to find a land trust or public entity. He doesn't know which will be the best or which way they will go. He was open to discussing it with the Commission.

Commissioner Leland said he agreed with Mr. Evans that the County will not want the open space either by conservation easement or deed in fee. He thinks it should be in a land trust.

Mr. Evans said the third option was a development agreement between property and County. He said it may be appropriate.

Chairman Nelson asked about land trusts and if that meant you still owned the property, but you didn't own the rights to the property. He asked if there was a fee.

Mr. Evans said they have a maintenance responsibility. They have to fund a management plan. He asked if anyone had any prior experience with Flex Lots.

Commissioner Leland said that he had not seen one before but that he was curious why go with the Flex Lots and why more people haven't used this.

Mr. Evans thinks that it is because it is more of a burden than the benefit is worth. He referred to the Yuba County PD. He said that they are doing the project this way because of the open space management plan to have the opportunity for flexibility, it puts two of the units on the larger parcel, it restricts further divisions, it acknowledges the existing road conditions, and not having to go back and rebuild things. It allows the owner to get conventional financing on his property which isn't available as the property is now. He said the applicant meets the flexibility and the zoning requirements. There is the opportunity to set up the mechanisms to restrict the property. There are reasonable requests for exceptions based upon the topography of the area and the fact that everything is existing. He thinks that the applicant can comply with the spirit of the Flex Lot Provisions. He thinks that there will be somebody to work with them on the conservation management plan or fall back to a development agreement. He is not in favor of the deed restrictions. An additional comment was that one of the exceptions that is asked for is to leave the concreted road/ramp. He asked to have the provisions acknowledged that the Public Works Department can approve a flexible road design. The exception cited that the request was due to the topography and the fact that everything already exists. He spoke about the provision of multiple units on a cul-de-sac. He believes there is in excess of 60 lots inside the entire Williams Road system. He referenced past projects that were approved that didn't have existing dwellings on them. He said these were new projects that were approved. Mr. Evans requested that the Commission give consideration to the existing topography, the existing dwellings, and grant the applicant's request to draw the line so that he can go get financing.

Commissioner Leland asked if this was preferable to a three parcel subdivision because of the reservation of the open space.

Mr. Evans said that the property is 42 acres so he is restricted to only 2 parcels. By going with the Flex Lot Provision he can do a 10/30 split instead of 20/20 split which better suits the lay out of the land.

Commissioner Leland referenced Condition 8 that talks about one of the conditions of recordation is evidence of participation in the existing Old Stage Road maintenance. He asked Mr. Evans what that meant to him.

Mr. Evans answered that his deed already has that restriction. It is not set up by parcel but by units and Mr. Royal is already paying a higher share because of his three dwellings. He can provide documents if needed. Both parcels will have to pay.

Commissioner Lambert has two major concerns. One is she wants to see the language and know that it can be enforced that there be no additional dwellings allowed. Second is that since this is one of the first Flex Lots she would like the Commission to see what the Open Space mechanism is instead of delegating it to staff. She said she could probably go along with the exception on the cul-de-sac since nothing is going to change.

Chairman Nelson asked Commissioner Lambert what more could be done except put as a condition a restriction.

Commissioner Lambert said that there are three options and she would like to see them.

Mr. Evans said he asked the Public Works Department to make it clear to the Commission that they can support the flexibility of the road requirements which is allowed in the Flex Lot Provisions. That the existing road as it is proposed is acceptable and that the language on Condition 15 be modified to acknowledge those existing conditions.

Mr. Will Bishop said he owns the parcel contiguous to the Royals. He referred to the map on the wall. He has several concerns that he believes are shared with other property owners in the area. He said that first of all there is an agricultural operation existing on this property, but he has no idea what it is. One of his concerns is truck traffic. The road was paid for by the homeowners. The Royals have 3 homes, but they only paid one share of the paving. Also, they are paying road maintenance fees. He said the Royals are paying for 3 shares, but that they are the only commercial property in that area. Since they are running a commercial business up there and there will be hard traffic (truck traffic) on the road he would like to see increased road maintenance fees. He also spoke of the cement road and it being esthetically displeasing. He explained where he could and could not see the white concrete road. He said that he moved out here to build his dream home with great views. He said that he didn't think it would be very difficult to mitigate the road with landscaping. He recommended that the hearing be continued so that he can put it all in writing and talk with the Royal family on these issues and also speak with Carl Durling. He asked Mr. Durling if the neighbors could have input on the mitigated negative declaration.

Mr. Durling said that the initial study has been circulated and there wouldn't be changes to that, but that wouldn't stop them from requesting additional conditions. He said they could have some input.

Mr. Bishop said that the beneficiary for no additional dwellings would be the neighbors. He again asked for time to put his concerns in writing. He asked if the applicant could split off 10 acres and sell it.

Chairman Nelson said that theoretically yes. There would have to be stipulations that would have to be met.

Mr. Pete Calarco interjected for clarity. He explained that the Flex Lot Provision does not increase density. It does allow a different configuration. Because it was in a U zone over 20 acres Mr. Royal could use this option. He said that he thought he heard the question if I have 25 acres can I split my property. He said that the answer in this case would be no. The Flex Lot Provision would not be applicable.

Mr. Bishop said that the Royals can split 10 acres off of forty, but he can't split 10 acres off of 25.

Mr. Calarco said that is correct.

Mr. Durling said that the reason the Royals could do this is because they have over 40 acres. However, under the Second Dwelling Ordinance Mr. Bishop could put a second dwelling on his property, but not split it off and sell it.

Commissioner Leland said the Commission shouldn't be giving advisory opinions on parcel information. If he wants information there is a procedure he can follow to obtain it. Not at a public hearing because the Commission doesn't know all the information.

Mr. Bishop said he understood that he couldn't take the information to the bank. He finds it distressing that he went to all this trouble to put up a nice home to find himself living in a subdivision.

Chairman Nelson said that for the record the Commission is upset with the Second Dwelling Ordinance too. The State dropped it in their lap.

Mr. Bishop asked again if Mr. Royal can split 10 acres off and sell it.

Commissioner Leland said yes. He exceeds the 20 acre minimum lot size.

Mr. Bishop said the ten acre parcel is less than the minimum.

Commissioner Leland said that is what the Flex Lot Provision is used for. The theory is the density is the same.

Mr. Wannemacher said that it also restricts the 32 acres from adding additional dwellings. There is land being restricted inside of the 32 also. He asked how much.

Mr. Durling said that it would be 30-50% depending on the ability to develop the lot.

Mr. Bishop asked if it was being restricted as open space.

Mr. Wannemacher answered yes it would be open space.

Mr. Bishop said that was not such a big deal because they all have open space.

Mr. Wannemacher said that technically Mr. Royal could split into two twenty acre parcels and not have any restrictions.

Mr. Bishop asked if Mr. Royal did that could he also put two more dwellings on his property.

Mr. Wannemacher said that Mr. Royal could if he was not limited by the cul-de-sac.

Mr. Bishop asked if anyone knew what the agricultural operation was.

Commissioner Lambert said she assumed that there is some type of agricultural operation, but questioned whether anyone needed to know what type it is.

Mr. Durling said according to the agricultural worker dwelling application they have a cattle operation. He said the interesting thing about the agricultural worker ordinance is that the agricultural worker does not necessarily have to work on the property where the house is. Under state law the worker can work in many different areas and just live in the dwelling.

Mr. Bishop asked if he took his twenty five acres and ran cattle on it would that change his status so that he can do what Mr. Royal is doing.

Mr. Wannemacher said that you have to look at what the zone says and what the zone allows.

Mr. Bishop asked if he had a commercial agricultural operation if it would change his status.

Chairman Nelson told him that he needed to get a copy of the ordinance.

Mr. Bishop said he is distressed because he hoped that it would be a nice residential area and it isn't working out that way. He can't understand why one guy can do something and another guy can't.

Commissioner Lambert said that what they are trying to do is keep it the same except that there will be two parcels instead of one.

Chairman Nelson said that the concept is to just split without adding any residences.

Mr. Bishop said they had been ambushed before when the concrete road was built. He will put his concerns in writing and speak with Mr. Durling and Mr. Royal.

Commissioner Leland asked about the road maintenance agreement. He asked if there wasn't already an agreement in place.

Mr. Bishop said yes there is. He would like to see them pay for the road construction costs. He said they already pay three shares on the road maintenance, but only paid one share of the road construction.

Commissioner Leland said he wants to be clear that this is about the initial road construction not the road maintenance.

Mr. Bishop said that was correct. He didn't understand why if he is driving two vehicles up the road his share is the same as the person who is driving six vehicles. Especially if that person is going to have commercial vehicles driving up the road.

Commissioner Leland asked what the road maintenance agreement provides.

Mr. Bishop said that another neighbor would need to speak about what the road maintenance agreement provides.

Chairman Nelson asked if road maintenance means Old Stage Road. They referred to the map on the wall to pinpoint where the homeowners pay for road maintenance. He then asked about the concrete driveway on the map and asked Mr. Bishop if that was what he wanted to have vegetation around to help conceal the white concrete.

Mr. Durling also showed the Commission where on the map the road maintenance was paid for by the home owners.

Cindy Caswell said she hope that the Commission recognized her face. She had 400 acres on the Old Stage Road and owns property adjacent to the Royal's. She wants to support Mr. Bishop's comments and concerns. She said she wants to see consistency. She said she felt that her project was scrutinized to the point that they were going to make her have control of the 4 wheeler dust and other ludicrous things. She said she wanted to give a little history and that it was uncomfortable for her to be there because of her friendship with Mr. Royal. She said Mr. Royal had developed in two other areas. She talked of the road and how they had attorneys involved trying to stop the driveway. She said that they told the County that more than 1000 yards of soil was moved, but the County said that the cut wasn't that big. Ms. Caswell spoke of inconsistencies that frustrate everyone. She told the Commission she understands there are to be no changes to existing conditions, but that three years ago she came in concerned over the two homes being built in another area and whether that would set precedence to build those homes then split the property. She said she was told no that wouldn't happen. She said that she is now seeing this happen. She has forty acres adjacent to his property. She is seeing three homes and a lot division and she wants to know what is going to stop a second dwelling. She thinks that Mr. Royal is going to stay here. She thinks that one of the homes is going to be sold.

Tessa Van Der Meijden said she was in charge of making sure the road was paved in 2003. She understands the demand for a subdivision happened in 2003. Mr. Royal promised he was not going to subdivide and that he should be allowed to pay only one portion of the road. She said in 2003 they asked Mr. Royal to pay three shares for the paving, but he said no. She said she would like to see him pay at least one more share of the road if not two because he is using the road more and she feels that Mr. Royal has been lying to her.

Commissioner Leland asked how much each share of the road construction cost.

Ms. Van Der Meijden said \$5450.00.

Kathleen Theodore said she owns the land adjacent to the Royals on the side the concrete road faces. She said the revised Tentative Parcel Map is inaccurate. The road is on her property. She said she believes surveys will be done to correct this. She pointed it out to Carl. She believes that they

looked at a fence line. She had to give the Royals a 60 foot easement. When she received a copy of the map it showed the road on his property instead of hers.

Mr. Durling pointed to the map on the wall and explained to the Commission where the road is now. He said he spoke with her then talked with Michael Evans to show it where it is on the map now or they will have to reach an agreement with Ms. Theodore.

Mr. Larry Royal indicated he wanted to address the Commission.

Chairman Nelson asked Mr. Royal to answer the questions about what the commercial use is on the property.

Mr. Royal said they are in Earthworm manufacturing of soil amendments. He doesn't know where the cattle thing came in. Their main operation is agricultural in development of soil. The area where he lives is heavy clay soil. The actual operation is located at 704 Neal Road at the corner of Highway 99 and Neal Road. There is no commercial operation except some administrative and storage functions. He is not running commercial vehicles in and out unless he brings some of his soil amendments home for his own use. It is his residence. His sons work with him. He said that there have been some misunderstandings. Number one: skating through and being able to do this simply is not true. It took him four years to get building permits. He thought the property had a legal easement, but found out that when it was created in 1967 by a corporate grant deed from a local title company they failed to perfect the easement. After further research he found two easements on the deed itself. One was through the Quarry Canyon Road which was changed when the Quarry Canyon Subdivision went in. That easement was then eliminated from them. The second easement was off of Old Stage Road. The difficulty was that the easement that ran along the property line made you drop off into a canyon. It was physically impossible. He said if you knew the topography of the land you would understand why Michael Evans recommended the Flex Lot Plan. He said when he purchased the property he was assured that he had the ability to access his property legally. Because the people in Quarry Canyon wanted to charge him \$90,000.00 dollars for an easement they went before Public Works and talked with a supervisor who said that was blackmail. There have been some real difficulties in getting this project done. As for the grading when putting in the driveway, he hired a contractor and did everything that was necessary only to be served a cease and desist for violation until he showed a permit. He said he and the engineer had to go over all the calculations again to show that he was exempt from the permit. That incident cost him \$8600.00 in down time just for the dozer and the contractor. It hasn't been an easy situation. He said he has lived in that area for thirty years. As far as being a developer he wishes he was a developer since they make good money. All he has done is bought a piece of property, built a house, and sold it. He said if that is being a developer then there are a lot of developers in the room. He said he believes that there are some people who are making protests who have more property and have made more divisions and have sold off more property than he has. His concern is because they have 42.5 acres and three houses there is no lender that would give them a mortgage. They had some heavy building costs. He went to a local bank and got a short term loan. The rates were favorable then, but aren't so favorable now. He said that he is there because he is just trying to make a living, live in a home, and be a good neighbor. He is trying to do the prudent thing for his family, but doesn't want to do anything to harm someone else. That is why they are so open to all the restrictions.

Chairman Nelson asked if Mr. Royal could do anything with the road cut to make it less obnoxious to the neighbors.

Mr. Royal said it was built out of concrete due to the slope because it was a Fire Department requirement. It is 505 feet of concrete. He said that they had no other option.

Commissioner Leland said the request to the Commission is to require some kind of vegetation on the down hill slope so that the visual impact is reduced.

Mr. Royal said there is vegetation all around it. There is lots of scrub oak, manzanita, etc. It is naturally landscaped. He said the only other thing is the actual concrete itself, but he can't plant anything on it.

Commissioner Leland said there was an allegation that Mr. Royal said he wouldn't subdivide. He asked Mr. Royal if he would like to comment on that.

Mr. Royal said that Michael brought it to his attention that they had already started to subdivide when the neighbor said that he told them he wouldn't subdivide.

Chairman Nelson told the audience they needed to address any questions to the Commission. If the audience wants a dialog they need to go outside and talk.

Mr. Royal said he appreciates that there is flexible lot division. He didn't realized how horrendously difficult it would be to do. Had he known then what he knows now he probably wouldn't have gone in this direction.

Ms. Van Der Meijden said in reference to the agricultural permit. She would like to know when the permits for the houses were approved. She would also like to know when the business was created.

Chairman Nelson said Mr. Royal was the only one to answer those questions. He then asked Mr. Royal why he had an agricultural dwelling.

Mr. Royal said that when he purchased the property they came into the County and asked them can we do what we want to do on this property. They said yes, but you need to do it this way. He started marching through it, but then they started meeting resistance. That is the reason it took four years to get the permits. One person said you can do it this way and then another person would tell him that no you can't do it that way. He then had to go through a supervisor to show staff what the ordinances allow. He built under the ordinances.

Chairman Nelson asked if he established an agricultural dwelling so that he could have another dwelling.

Mr. Royal said that all three dwellings were built at the same time. It wasn't a piece meal situation. It was approved. It went through all the checks and balances, Environmental Health, Public Works, Fire Department, etc.

Commissioner Lambert asked Mr. Royal if all were built at same time.

Mr. Royal said yes.

Commissioner Lambert said none of it was for agricultural worker housing.

Mr. Royal said that one was for agricultural worker.

Commissioner Lambert asked what is the agricultural operation.

Mr. Royal said it is an earthworm soil factory. They produce soil amendments currently. He said the agricultural provision doesn't require that the agricultural operation be on the property. He said he is abiding by the ordinances and the laws. If people don't like the ordinances and the laws then they need to change them.

Commissioner Wilson asked Mr. Royal when he built.

Mr. Royal said 2001 is when they were finished. As far as an agricultural operation there is no specifics. If his income is derived from agricultural it doesn't matter.

Chairman Nelson asked Mr. Royal if he had to provide documentation of that.

Mr. Royal said yes.

Chairman Nelson again told the audience they would have to come up to the microphone to address the Commission so that they could be on record.

Mr. Bishop said he was confused because the houses were built four years before the worm farm.

Chairman Nelson explained that Mr. Royal provided the required documentation to get his permit. He asked if anyone else wanted to address the Commission. He also said that he would want to speak with Public Works about the road. He asked if Public Works had any problems going with the flexible lot design and down grade their standards.

Mr. Eric Schroth said they have only recently become aware that an exception has been requested. He would like the opportunity to go out and look at the existing conditions and confer with CDF that the current conditions still meet their standards. He would ask for a continuance so that they could go out and observe.

Chairman Nelson said you are asking for an Old Stage Road standard and they are asking for something like gravel.

Mr. Schroth said in regards to Old Stage Road the conditions would require a twenty feet wide gravel road where needed. He doesn't know the conditions out there, but he imagines there would be minimal improvements if any. They would primarily be looking at a point from Old Stage Road to the cul-de-sac for the improvements. He said the code requires twenty feet wide 4 inches of aggregate base paving where required which is generally when a grade exceeds 15%. His understanding is that what they have is a road that is narrower than twenty feet in some areas and a

concrete surface. Public Works would need to look at those conditions before issuing any opinion on whether they were acceptable.

Commissioner Lambert asked if he had a problem with it being concrete.

Mr. Schroth said that concrete is an acceptable paving surface, but since they don't know if it has been cracked or where the drainage goes, those things would need to be looked at.

Commissioner Wilson asked if the concrete was done after the home was built.

Mr. Schroth said that from what he understood there was a residence up there and it was constructed as a driveway and CDF controls construction of driveways. Now that the property is being split it comes under Public Works requirements.

Commissioner Lambert asked how much time Public Works needed for the continuance.

Mr. Schroth said they could review it in the next several days.

Chairman Nelson asked if they continued it to the next meeting could they get the report out.

Commissioner Lambert reminded Chairman Nelson that Commissioner Leland will be absent at the next meeting.

Chairman Nelson asked if the applicant had a problem with a continuance so that Public Works could do their research.

Commissioner Lambert said that the neighbors had also asked for a continuance.

Chairman Nelson said that the neighbors and Mr. Royal needed to talk and try and work some things out before the next meeting.

Commissioner Lambert asked if staff needed time to amend the map.

Mr. Durling said the map is finished and the road is where it is supposed to show.

Chairman Nelson asked if there was going to be a revision because their map shows the road on the wrong property.

Mr. Durling said that staff is requiring Mr. Royal to put the road on his property. The applicant has to show that or an agreed upon easement that goes off the property.

Chairman Nelson explained that Mr. Durling said that Mr. Royal has to have the road on his property or show an easement.

Ms. Theodore said there currently is an easement on her property. It is deeded and she has the deeds with her. She said that the lot line is incorrect and that it needs to be completely surveyed. There is

approximately 800 feet that she deeded to Mr. Royal for ingress and egress only. She owns the road and he maintains it.

Commissioner Leland asked if on the easement is where the road is located.

Commissioner Wilson said the map shows it as an easement.

Mr. Durling referred to the map and explained what Mr. Theodore believes is incorrect. He then went on to explain that the applicant has to show that the road is on their property or when they do the survey they will have to show it as a legal easement.

Chairman Nelson asked if that meant they would need another revised map.

Mr. Durling said at some point in the final map process that area will be corrected.

Commissioner Wilson said his map showed a sixty foot right of way.

Chairman Nelson said that in the next few weeks the Commission would need a revised map. He asked Michael Evans how long it would take him to get information to Public Works.

Mr. Evans said two weeks or a month will work for them. He said the easement stuff has been corrected it just doesn't show on the current slide.

Commissioner Wilson said that the slide showed the driveway on the wrong property.

Mr. Evans said yes and it can be corrected easily. He said the biggest issues will be explaining to everyone about the flex lot provisions, look through the deeds on the road issues, discuss what kind of open space mechanisms, and discuss whether or not there are appropriate mitigations for visual impacts. There are two visual impacts one of which is the color of the concrete and the other is that there is an area where the soil is very light colored.

Mr. Durling said that staff would suggest thirty days so that it gives everyone time to talk.

It was moved by Commissioner Leland, seconded by Commissioner Wilson, and unanimously carried to accept the request for continuance until June 8, 2006.

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**Name: Wyletti Timber Management**  
**Owner: Harry Merlo**

**Project: Grading Permit (GRD 05-01)**  
**APN: 047-230-039, 056-020-125,**  
**056-030-017, 056-030-018,**  
**056-030-028, 056-060-017**

**Planner: Dan Breedon**

**Zoning: U**

**Location:** Approximately 1.5 miles east on Richardson Springs Road from the intersection of Richardson Springs Road and Cohasset Road, adjacent to the Richardson Springs Resort, 5.5 miles northeast of the City of Chico

**Proposal:** The applicant requests Planning Commission approval of a grading permit

pursuant to Butte County Code Section 13-3 for a grading operation that involves construction and/or upgrading approximately 10 miles of permanent rocky and native soil road in order to provide access to the interior of the landowner's property for recreational, ranching, and fire protection purposes. This work will include the removal of existing brush, scrub oak, and gray pine from the roadway, the grading/removal of cobble from the road surface, the cutting and filling of soil along the road grade, and the placement of culverts at watercourse crossings. The applicant estimates that less than 10,000 cubic yards of graded material would be moved, with cuts at no more than a 1:1 slope and fills at no more than a 1.5:1 slope. The process will include the use of excavators, backhoes, graders, dump trucks, bulldozers and a water truck. Hours of the grading operation would be 6:00 am to 6:00 pm, with 2-6 employees involved. Because the site's soil dries and becomes difficult to work with during summer months, planned grading operations would take place in the fall, winter, and spring when moisture conditions are correct for operations and risk of wildland fire hazard is least. A well would be developed on the property to provide a water supply for dust abatement. Roads located on the Merlo property would be constructed of native materials. Rock armoring would be placed around culverts, which may take place during summer months. The north road, where it crosses over APN: 047-230-130 and connects with Cohasset Road, would be paved per an easement agreement with this landowner.

Mr. Dan Breedon gave a brief summary of the project. He said he received two comments from the public regarding this project. The issues that were brought up were impacts to the conditions of Richardson Springs Road. He referred to Condition 8 on the grading permit where it recommends that the applicant assess Richardson Springs Road and make any traffic repairs if the trips exceeded ten per day. They don't expect it to generate that many trips. If it does the applicant has been instructed to contact Development Services to pay for a study that will measure the before and after condition of Richardson Springs Road. The road isn't in good shape now. There are some informal arrangements for maintenance on the road, but this will formalize the arrangement.

Commissioner Leland asked if it was ten round trips.

Mr. Breedon said it is five trips in and five leaving. He said the second issue is access from Cohasset Road and the potential for public access to Richardson Springs Road. Richardson Springs Road is gated where it meets Cohasset Road and has helped land owners with trespassers. They would like to maintain the road as a private gated road. Part of the proposed road network will connect with Cohasset to the northwest, but that will be gated. The proposed road network is not a public network. It is controlled by the property owner. Mr. Breedon said he thought one of the concerns was also future projects associated with this property. There is concern that this is preparation for a larger project such as a subdivision. He said that Development Services does not have any project at this time, but if one was to come in the future that would be subject to County and Commission review. Another issue is the fire danger posed by grading activities during dry periods. He said there is a high fire danger in this area. He did speak with California Department of Forestry (CDF) and they recommended restricting grading activities during the declared fire season which is usually June 15 through November 15. The applicant was contacted about additional restriction and he is agreeable to it. Fourth issue was water quality and erosion and runoff. The grading permit is subject to condition 6 which requires a storm water pollution prevention plan to be prepared to conform to the National Pollutant Discharge Elimination System (NPDES).

Conformance will address erosion issues. Fifth issue was impacts to oak trees. Staff attached mitigation number two reflected as condition four. The condition requires a submittal of an oak tree plan to ensure for native oak tree retention and protection. In addition the applicant has laid out the road network to minimize the impacts on native oak trees. Last there is concern about the forty acre deer range. He believes that there will be minimal impact to the local deer herd. He believes the applicant contacted Fish and Game. Mr. Breedon has not followed up on that. He said that staff circulated the project to Fish and Game and has not received any comments back. He referred to the Initial Study attached to the agenda with four mitigation measures that reduce environmental impacts to a less than significant level. The Initial Study and Mitigated Negative Declaration was circulated for a thirty day public review period that was published in the Chico Enterprise Record. No comment beyond the two letters he discussed. He and Public Works are recommending the approval of the grading permit. He is recommending approval of the Mitigated Negative Declaration with all findings, mitigation measures, and conditions.

Commissioner Lambert said she doesn't recall doing a lot of grading permits. She asked what the actual findings the Commission was supposed to be making. She asked if it was similar to the Use Permit.

Mr. Breedon said yes it was.

Commissioner Wilson asked if there were any other roads on the property.

Mr. Breedon said he didn't think so, but probably should ask the applicant.

Commissioner Lambert asked about the last listed assessor parcel number and whether this was the parcel on which they needed to get an easement.

Mr. Breedon said correct. The applicant is purchasing an easement on the parcel.

The hearing was opened to the public.

Mike Buendia spoke on behalf of Wyletti Timber Management. He said they have worked closely with and kept the lines of communication open with the other landowners just to make sure that everyone is in agreement. He said they are all in agreement. There are some roads on the property, but they are so bad you can't access a lot of the property.

Chairman Nelson asked if this is for timber management purposes or a predevelopment project.

Mr. Buendia said no. The road is for access to the property itself for the owners and the Fire Department.

Commissioner Lambert asked if they had the easement on the other property yet.

Mr. Buendia said they were currently working on that.

Mr. Wannemacher asked if it was true that the road went off the property down to the south as well.

Mr. Buendia said he has not walked the property himself. The person who did is in a meeting and could not be there. He can get the answer.

Commissioner Lambert asked if they need to address where the road goes off the property.

Chairman Nelson said one property line doesn't line up with another property line and that those lines are probably on his property or he is going to have some problems.

Mr. Breedon said the only easement proposed is to the north. They could add a condition that no work be done off his own property.

Ms. Lori Ernst said she is a neighbor. She was involved in one of the letters that Mr. Breedon received. About six neighbors got together and wrote the letter. She said that they have been in open communication with the Merlo's and Wyletti Timber Management. She said it has been a very good experience. She said she called Fish and Game and was told that they get so many proposals that he can't respond to every one of them. His concerns were more or less addressed in the letter she helped to write.

Mr. Jeff Reed represents the conference center and Richardson Springs and the 35 families that live up there. He said most of his concerns had been addressed such as road maintenance. He would like to see locked gates on the north end.

Chairman Nelson asked Mr. Reed where his property was in relation to the project.

Mr. Reed said he is at the very end.

Mr. Martin Wilson says he owns sixty acres and he hasn't had any communication. He said he has been out of the loop. He is to the east of the property. He asked if there were prescriptive easements. He asked for copies of the map. He doesn't have any negative comments about it. He said people are dumping up there all time. Where his road comes up he has had two people come up and dump on his property. He wants to know how they will block access from the Cohasset Stage Road. Will they gate that part? He asked what surveying has been done.

Chairman Nelson said they probably got a copy of the parcel map from the County.

Mr. Wilson asked if they would use any of the existing road.

Mr. Wannemacher asked Mr. Wilson to show him on the map what he is talking about.

Commissioner Lambert asked if they should take a recess to look at maps.

Chairman Nelson said that he believes Mr. Wannemacher and Mr. Wilson are trying to find out if there is any tie in to an existing road on the topographic map.

Mr. Breedon said he didn't know what bearing that had on the grading permit.

Chairman Nelson asked Mr. Buendia to address the existing road on the parcel map. He asked if they planned on using that road at all.

Mr. Buendia said no they don't plan on using that existing road. Any existing road they are leaving it as is.

Chairman Nelson asked why the grading permit was laid out like it is.

Mr. Buendia said that since he hadn't yet walked the property he couldn't answer.

Mr. Breedon said the lay out of the road was attributed to many factors. One was topography and making a minimum number of cuts and fills. There are many archeological sites in the area and an extensive archeological study was done and they wanted to avoid any of those sites. They also wanted avoid as many oak trees as possible.

Chairman Nelson asked again if there were plans to split the property at a later time.

Mr. Buendia said that right now there are no further plans.

Commissioner Lambert asked if any of it would be open to the public.

Mr. Buendia shook his head no.

Mr. Wilson asked about the burning.

Chairman Nelson told Mr. Wilson that if he has a concern about burning to go ahead and say so and then they can address it.

Mr. Wilson said that he should probably not take any more of the Commissions time and talk with the applicant.

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

Commissioner Lambert said she wants to add a condition that the road has to stay on the property or they need to get an easement.

Mr. Breedon read off the new condition to state "All road building shall be confined to the applicants property except where shown by legal easement leaving the property."

It was moved by Commissioner Lambert, seconded by Commissioner Leland, and unanimously carried to adopt resolution PC 06-22 to approve the Grading Permit (GRD 05-01) for Wyletti Timber Management subject to the findings and conditions and adding a new condition number 11 that reads as follows: "All road building shall be confined to the applicants property except where shown by legal easement leaving the property."

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.*

Mr. Pete Calarco spoke about the General Plan Update and that they were moving forward with it.

Mr. Breedon said that they would be going to the Board of Supervisors on May 23, 2006.

**VII. MINUTES:** None

**VIII. PLANNING COMMISSION CONCERNS:**

Commissioner Lambert asked for copies of the tapes for the last two meetings. She also brought up the concern of agricultural worker dwellings and the Second Dwelling Ordinance. She requested this be agenzized for second dwellings, agricultural workers, and cul-de-sacs.

Commissioner Leland talked about the cul-de-sac ordinance and whether the Commission was going to accept the second access as an exception to the cul-de-sac ordinance. They have granted exceptions in the past.

Commissioner Wilson asked what they were going to do when there is an existing cul-de-sac that already has 40-50 parcels on it so how would 51 hurt.

Commissioner Leland said that if you believe it is a safety issue then you wouldn't allow it.

Commissioner Wilson answered that if you looked at it on a percentage basis it would only be a certain percentage more dangerous.

Commissioner Lambert said that this is the kind of discussion they need to have. Does the Commission really want the limitation on the cul-de-sac at all.

Commissioner Leland said maybe it should be more flexible. It should be eliminated as a separate criteria, but part of a general fire safety analysis.

Commissioner Wilson called it a Flexible Cul-de-sac Ordinance.

Commissioner Leland said that one of the things to look at would be what kind of access does it have. He thinks that it was intended to give some teeth to the consideration because if it is just a vague consideration it just gets blown by, but if it is a hard fast rule to have no more houses if there is over twenty then you have to abide by it.

Chairman Nelson said maybe they should look at the length of the cul-de-sac also. He asked what is the concept behind the twenty lots. Is it an escape provision? He said that they were told to go by twenty parcels and that is what they have been doing, but wouldn't there be a difference in a 200 foot cul-de-sac than a 2 mile cul-de-sac.

Commissioner Lambert said you have to look at parcels and that you have to look at the fact that twenty parcels could be forty dwellings. She said it needs to be put on the agenda.

Commissioner Wilson said on new development you could only have twenty parcels whereas an existing cul-de-sac may already have fifty.

Commissioner Leland asked if they should propose a workshop.

Mr. Calarco said they are both great issues to discuss. He said he believes a good next step would be an information item of what we have available and then following that with an in-depth format.

Commissioner Lambert asked how twenty parcels was arrived at.

Mr. Calarco said that it was based off zoning situations.

Commissioner Lambert said that the bottom line is getting people out safely in case of emergency.

Commissioner Wilson said that it only takes two cars to have an accident and block the road.

Mr. Wannemacher said that the reason it deals with parcels probably has to do with the subdivision ordinance.

Commissioner Lambert talked about the Second Dwelling Ordinance. It doubles everything as far as the number of vehicles and people.

Commissioner Leland said if you applied the same criteria you would have to go by ten parcels not twenty.

Chairman Nelson asked if anyone was keeping track of all the problems created by the Second Dwelling Ordinance.

Commissioner Lambert said those people today were in the wrong meeting. They needed to go to the Board.

Chairman Nelson said that they need to point out the planning problems created by the Second Dwelling Ordinance. That this was going to come up more and more.

Commissioner Lambert said that the Commission hears this, but the Board doesn't get to hear this type of dialog.

Chairman Nelson said that the people today weren't here to dump on the Royals they were concerned about having ten other Royals that are going to want to put another unit on their parcel.

Commissioner Wilson asked how he could have three houses on one parcel.

Commissioner Leland said it was two residences and one agricultural worker dwelling.

Chairman Nelson asked staff to have a workshop.

Mr. Calarco said yes they could prepare a workshop.

Commissioner Leland said that he would not be at the next meeting.

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

*None*

**X. ADJOURNMENT**

*There being no further business, the Planning Commission adjourned at 12:10 p.m.*

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**Chairman Nelson**

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