

BUTTE COUNTY PLANNING COMMISSION MINUTES

April 12, 2007

I. PLEDGE OF ALLEGIANCE

II. PRESENT: Commissioners Nelson, Marin, Wilson, Leland, and Chair Lambert

ABSENT: No one

ALSO PRESENT:
County Counsel
Development Services

Environmental Health
Public Works

Robert MacKenzie, Deputy County Counsel
Pete Calarco, Assistant Director
Dan Breedon, Principal Planner, Advanced Planning
Stacey Joliffe, Principal Planner, Current Planning
Mark Michelena, Senior Planner
Carl Durling, Associate Planner
Meredith Williams, Associate Planner
Chris Tolley, Associate Planner
Tina Bonham, Commission Clerk
Doug Fogel
Stu Edell and Eric Schroth

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

It was moved by Commissioner Nelson, seconded by Commissioner Wilson, 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. CONSENT AGENDA Consent items are set for approval in one motion. These items are considered non-controversial. No presentations will be made unless the item is pulled from the Consent Agenda for discussion. Any person may pull an item from the consent agenda.

A. MEXT07-0004 – staff recommends approval

Name: Eagle Meadows

Project: Map Extension for TPM 03-04

Planner: Chris Tolley

APN: 030-032-002 **Zoning:** AR

Location: The project site is south of Nelson Avenue and between 16th Street and 20th Street, in the community of Thermalito.

Proposal: The applicant is requesting an extension of time to record an approved Tentative Subdivision Map (TSM 03-04), originally approved on February 24, 2005.

It was moved by Commissioner Leland, seconded by Commissioner Marin, and unanimously carried to adopt Resolution PC 07-17 approving MEXT07-0004 for Eagle Meadows.

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

Mr. Edell said the Subdivision Map Act states that if an applicant makes request, the Commission has to approve or conditionally approve the Certificate of Compliance.

Commissioner Nelson asked what would happen if the applicant does not obtain access to the property.

Mr. Edell said the applicant would be unable to develop on it.

Chair Lambert opened the public hearing.

Mr. Rick Hall addressed the Commission. He said the parcel was created in 1902 and then later separated. He wants Public Works to show that the parcel does have legal access to Round Valley Road.

Commissioner Leland said he thought the deed did show an easement.

Mr. Edell said the 1902 deed does not necessarily show an easement. He said that Round Valley Road is a private road and the applicant will have to show documentation that he can use the road.

Ms. Williams said she believes what the applicant wants to address is the conditions of the Certificate of Compliance not the Legal Lot Determination process.

Chair Lambert closed the public hearing and confined comments to Commission and staff.

It was moved by Commissioner Leland, seconded by Commissioner Marin, and unanimously carried to adopt Resolution PC 07-18 approving DET07-0001 for Rick Hall as proposed by staff.

B. UP 06-10 – staff recommends approval
Name: D.R. Technicians **Project:** Use Permit
Planner: Mark Michelena **APN:** 007-420-064 **Zoning:** M-1
Location: On Hedstrom Way (4354 Hedstrom Way), north of the Hedstrom Way - Highway 99 intersection - north Chico.
Proposal: To establish a manufactured home dealership with 12 display homes and an office.

Mr. Michelena gave a brief summary of the project with changes to the conditions. Adding new Condition 11 and renumbering subsequent conditions.

Commissioner Nelson asked about the curb and gutter exception request.

Mr. Michelena said the applicant is requesting an exception, but that staff is recommending denial except for 50-foot setback criteria along Highway 99.

Commissioner Nelson asked if the requirement is for the full length down Hedstrom Way. He also wanted to know why a sidewalk is part of the requirement.

Mr. Michelena said the requirements are something Public Works needs to answer.

Chair Lambert asked where in the Conditions is the implementation of an Agricultural setback. She said that she wants to address that item later in the meeting. She then asked Mr. Eric Schroth from Public Works to address the exception requests.

Mr. Schroth said the curb, gutter, and sidewalk requirements address safety issues. He said there isn't anything regarding topography that would warrant granting an exception.

Commissioner Nelson asked if the Planning Commission had granted the exception to the mini storage facility where there are no curb, gutters, and sidewalks.

Mr. Schroth said the requirement is there, but the developer did not do what was required and has now sold the property.

Commissioner Leland asked how the new owner would have known about the conditions.

Commissioner Nelson asked if it was all one parcel and would the new owner now be responsible for the improvements.

Mr. Schroth said yes it is all one parcel and that the requirements are still in place.

Chair Lambert opened the public hearing.

Mr. Phil Kuykendall, the representative for Clayton Homes, addressed the Commission. He said they have been trying to get this project going since 2004. He said the previous owner leased the property to them and did not disclose the requirements. He referenced a letter from the previous owner stating that if curbs, gutters, and sidewalks were going to be required they would be put in after the first half of the parcel was developed. He said the sidewalks that are being required go nowhere. He said there will be fences along that line. He expressed frustration on the amount of money already spent on the project and the money it will take to be compliant with the curb, gutter, and sidewalks requirement.

Commissioner Wilson asked if the applicant had bought the land.

The representative said they have leased it.

Ms. Mary Helen Hughes addressed the Commission. She is concerned about where the trailers will be placed, the lighting of the area, if there will be loud speakers, and asked if trees can be planted to help further block the project.

Commissioner Leland asked if there was an intercom.

Mr. Michelena said there is a condition that does not allow the use of an intercom.

Commissioner Wilson asked if the 25 foot setback is a no use area or can trucks drive in it.

Mr. Michelena said that no structures can be placed in the setback.

Ms. Hughes asked if 25 feet is big enough for both trees and traffic.

The representative said that next to the residential area the setback is 30 feet on the site plan and will be graveled.

Chair Lambert closed the public hearing and confined comments to Commission and staff.

Chair Lambert asked how the Commission should handle the property owner not complying with requirements.

Commissioner Nelson said that would have to be dealt with between the owner and the applicant.

Commissioner Leland referenced a letter in Exhibit E deferring time frame of requirements for two years.

Mr. Edell said the mini storage that was built first did not require a Use Permit. The deferment was allowed by the Director of Public Works.

Mr. MacKenzie said the statute of limitation is two years. He said when improvements or requirements are deferred for two years it limits the County's ability to enforce them.

Chair Lambert said that the options today are to approve the project with conditions and let the applicant deal with the prior owner, or to deny the Use Permit.

Commissioner Nelson said he agreed with curbs and gutters, but not sidewalks.

Mr. MacKenzie said there is an option to have the applicant post a bond to defer requirements and conditions.

Chair Lambert asked for an explanation on how bonds work under these circumstances.

Mr. Edell gave a description of how bonds would work for this project.

Chair Lambert wanted clarification of the setback issue she had previously mentioned.

Mr. Pete Calarco referenced Program 2.3 of the Agricultural Element. He said there is about 220 feet with Highway 99 and the 50 foot setback.

Chair Lambert said she wants to see the setback included somewhere in the findings or the conditions.

Ms. Jolliffe said setback could be addressed in the Environmental document.

It was moved by Commissioner Leland, seconded by Commissioner Marin, and unanimously carried to adopt Resolution PC 07-19 approving UP 06-10 for D.R Technicians and adopting the Mitigated Negative Declaration with the following changes, revise the Initial Study page six 4.2 Impact Discussion paragraph two delete the clause that says "staff has set forth a condition of approval to implement" and replace it with the language "the existing Highway 99 provides", adding a new Condition of approval 11, renumbering subsequent Conditions, adding language that "no public address system will be used in connection with the property" and modifying Condition 15 that the improvements required on Hedstrom Way can be deferred for up to two years provided the applicant posts a bond to the County in the amount to be specified by the Public Works Department .

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

Break for 20 minutes at 10:40 a.m.

C. GRD 06-01 - staff recommends approval

Name: Signalized Intersection **Project:** Grading

Planner: Carl Durling **APN:** 017-090-138 **Zoning:** FR-5

Location: The parcels are located in Butte Creek Canyon on the northwest side of Centerville Rd, approximately two miles northeast of the Honey-Run Rd and Centerville Rd intersection, and 1600 ft northeast of Cable Bridge Drive.

Proposal: A grading permit to provide road access to two dwellings.

Mr. Carl Durling gave a summary of the project.

Commissioner Nelson asked if the house site and setback was going to be addressed.

Mr. Calarco said that analysis of the parcel shows that a 300 foot setback can be met.

Chair Lambert asked why the applicant isn't required to comply with Ordinance at time of application.

Mr. Calarco said applicant must comply with applicable Ordinance at time of obtaining building permit.

Chair Lambert asked if any homes were on the parcel.

Ms. Jolliffe said that no homes have been built, but there are pads on the parcel.

Commissioner Leland asked if proposed building site would have to be moved.

Mr. Durling said yes, but the applicant has to stay out of drainage area.

Commissioner Nelson asked if anything could be done with how the driveway was engineered.

Ms. Jolliffe said that staff looked at environmental impacts through the Initial Study and looked to mitigate the impacts. Aesthetics was difficult to address since there was not a baseline to look to. She said there are a few options to deal with it such as more grading, but that would impact some oak trees. Another solution is to put back the grading, but that leaves the right of cutting the original two driveways on the approved map.

Commissioner Nelson asked if the applicant can use the existing easement.

Ms. Jolliffe said that is a question that will need to be asked of other personnel or engineer.

Chair Lambert asked about conditions on map that required an erosion control plan.

Ms. Jolliffe said the notes on the recorded parcel map were not complied with at time of encroachment permit.

Chair Lambert asked whether, if the Commission approves this permit, will that give the impression that the Commission is condoning violations and what is the Commission accomplishing if they deny the permit.

Commissioner Leland said that Commission is not a punitive body. The Commission should look at what should have been required and implement those conditions.

Chair Lambert said she found an item that says what to do if an applicant obtains a Use Permit and doesn't follow conditions, but she can't find what the repercussions are for those who do the work without a permit.

Mr. Calarco said when a violation is identified a stop work order is issued. This was done on this project. The applicant did stop work and applied for a permit.

Mr. MacKenzie said the Commission's role is to identify impacts and take steps to mitigate the impacts adequately under CEQA.

Commissioner Leland asked County Counsel to define what the basis is for approving or denying the permit itself. He understands there is CEQA criteria and project criteria and wants to know what the project criteria is.

Mr. MacKenzie said it is a discretionary permit and can be denied. He said that he believes that the Commission needs to look at CEQA and mitigating impacts or deny permit based on inability to mitigate impacts.

Commissioner Leland read out from the Butte County Code and talked of possibly requiring an Environmental Impact Report.

Mr. MacKenzie reiterated that the Commission needs to look at CEQA impacts and mitigating those.

Commissioner Leland said his understanding is that an Environmental Impact Report is required if mitigation measures can not be identified to offset impacts.

Chair Lambert opened the public hearing.

Mr. Jim Maan addressed the Commission. He listed everyone he has available to answer questions. He said that the plan was turned into Public Works and he was not told that he would need a permit. He believes that one driveway has fewer impacts to the environment than two driveways. He informed the Commission of several instances of vandalism on the property and to the equipment. He asked that the Commission approve the permit.

Mr. Dan Allen addressed the Commission. He said he is an urban developer and this is his first time at rural development. He has a long family history in the Butte County area. He said that he has asked neighbors for other possible access, but has been told no.

Commissioner Nelson asked about the PG&E easement.

Mr. Allen said the easement runs along the top of the property and goes through another property before coming out on a public road. He explained to the Commission that the slope is steep to protect two large oak trees.

Chair Lambert asked about the 200 acre adjoining project and asked if there was access to Centerville Road from that property.

Mr. Allen said yes and explained where the access was.

Commissioner Marin asked when Mr. Allen had consulted with an engineer.

Mr. Allen said it was in April of 2005.

Commissioner Marin asked how much property fronted the road.

Mr. Allen said 800 feet. He said the cut is not highly visible.

Commissioner Marin asked if the cut was the engineer's decision.

Mr. Allen said no, he made the decision.

Lunch break for 55 minutes at 12:15.

Chair Lambert said she had put together some parcel maps that show the area. She said that copies can be made available if requested.

Ms. Teresa Kludt asked the Commission to deny the project or at least require an Environmental Impact Report. She believes the grading that was done has created a negative impact to a pond across the street. She had questions on which agencies were involved such as Fish and Game and North East Information Center.

Mr. Bruce Hicks said he doesn't believe it sets a good example to approve the project, that there may be traffic issues with the driveway where it is now, and that landscaping will not adequately address erosion control.

Chair Lambert asked Mr. Hicks if the original two driveways would have greater sight distance.

Mr. Hicks did not know.

Mr. Patrick Bernido went over pictures that were brought in. He said that many people had enjoyed the pond and the wildlife it supported, but now it is a red pond.

Chair Lambert asked how long the pond had been red.

Mr. Bernido said it has been about a year.

Mr. Tom Henry is a CEQA and Land Use attorney for the applicant. He said that CEQA guidelines are clear on how to handle a project when it is has been largely completed. He said that CEQA guidelines 15125 state you look at the project as it is at the time the notice of preparation is published. He also stated there are fewer impacts with one driveway than with two.

Commissioner Leland talked about the large amount of dirt from the grading that will have to be removed at some point from the property.

Commissioner Nelson said the applicant has admitted that he did the project wrong.

Mr. Henry said the applicant admitted he didn't get a Grading Permit, but he has worked all along with Butte County.

Commissioner Marin asked when Mr. Henry was hired.

Mr. Henry said he was hired a few months ago.

Commissioner Leland asked if Mr. Henry thought CEQA guidelines state that the Commission could not look at how the pond turned red and that the Commission could only mitigate impacts going forward.

Mr. Henry said that was his interpretation.

Commissioner Nelson said that you can't deny access to the property, but can make the applicant do the project correctly.

Chair Lambert asked County Counsel if the Commission denied the permit if that would be construed as denying access to the property.

Mr. MacKenzie said that Commissioner Nelson is correct on the property access, but he will have to research what the actual baseline is that the Commission can use to mitigate impacts.

Chair Lambert asked if the Map could be used as the baseline.

Mr. MacKenzie said the project is the grading permit not the parcel map. He said the CEQA baseline is important and needs to be determined.

Commissioner Nelson said he wants a landscape engineer to look at the grading and give an opinion on how to mitigate.

Ms. Linda Cruces said she doesn't believe that Mr. Allen has done anything intentionally wrong. She said that the pond is beautiful, but can look like a swamp at times. She thinks Mr. Allen should be allowed his permit.

Ms. Anna Martin said she thinks the grading is ugly and wants the Commission to ask for more environmental information. She also believes that traffic would be a problem and possible collisions could occur.

Mr. Tony Cimino said he is a general contractor and owns property adjacent to the applicant. He explained why he doesn't believe a landscape engineer can help with such a steep cut. He said the cut was started at the top of the hill instead of at the bottom. He also said that he was never approached by anyone regarding an easement request. He said he would have worked with the owner to provide an easement. He also said that the pond has never been red before.

Commissioner Nelson asked if his offer to grant an easement is still available.

Mr. Cimino said yes.

Ms. Cal Ling is concerned about the disregard to nature and the neighbors. She would like to see an Environmental Impact Report. She expressed frustration that it is easier to pay fines than to do the project correctly.

Mr. John Gamel said the owners will have issues with water. He said there are pipes already laid out on the 200 acre parcel.

Ms. Carolyn Barkett is concerned with development in the canyon.

Mr. Luke Smith from Hanover Environmental represents Mr. Allen as their current Stormwater Compliance Consultant. He said he has been to the project site many times after a rain and doesn't see any problems. He said there are no pipes in the ground on the 200 acre parcel. He said the site is stable, but the project needs to be finished to alleviate any further problems.

Commissioner Marin asked if Mr. Smith is considering the red pond when he says that all the problems will be alleviated once the project is completed.

Mr. Smith said that he had not considered the pond.

Commissioner Leland said that the Commission did not know what caused the red pond.

Commissioner Marin is concerned that the pond sustained life before and hopes the effects can be reversed.

Mr. Wes Gilbert, the project engineer, said he was available for any questions from the Commission.

Commissioner Leland asked Mr. Gilbert to compare the current cut up the hillside with a switchback.

Mr. Gilbert said that the switchback would have to deal with turning radiuses and would have caused a bigger scar on the landscape.

Commissioner Marin asked if this was the highest spot.

Mr. Gilbert said there is one spot higher and one lower. This site was picked because it had less vegetation and to avoid oak trees.

Chair Lambert asked if Mr. Gilbert was involved during the map process.

Mr. Gilbert said no. He also said the gravel surface will be paved once they can go back to work.

Chair Lambert asked how long the driveway is.

Mr. Gilbert said 300-400 feet.

Commissioner Leland asked where the dirt will go.

Mr. Gilbert said it will be used for building pads.

Commissioner Marin asked why, with 800 feet of frontage property, the applicant didn't try to do less of a cut.

Mr. Gilbert said there is a creek that runs through the property that caused problems.

Chair Lambert asked if a new revised map is needed.

Mr. Edell said no.

Ms. Jolliffe said there may be a concern if Mr. Allen plans to change the location of the building pad on the parcel.

Chair Lambert asked if they plan on putting in a second dwelling.

Mr. Allen said there would be one house on each parcel. He said the excess dirt would be used on the 200 acre project.

Commissioner Nelson asked if the PG&E easement could be used.

Mr. Edell said no. He said it is important to find out where the applicant will move the building pad.

Mr. MacKenzie said it needs to be determined what the baseline is that can be used for CEQA.

Mr. Calarco said that staff would have a discussion with applicant regarding the moving of materials off-site. Depending on how much material there is the applicant may need a mining permit.

Mr. Allen said they were moving the dirt to get rid of it. If it is a problem the dirt won't be moved.

Commissioner Marin asked if Mr. Allen would be willing to pay for an independent biologist to test the pond.

Mr. Allen said yes as long as he could approve the biologist.

Chair Lambert closed the public hearing and confined comments to Commission and staff.

Commissioner Nelson said that maybe the project should start all over again.

Commissioner Leland doesn't agree. He said he doesn't believe the applicant tried to hide anything.

Commissioner Marin doesn't believe the project needs to be started over, but he does want to see a biological report.

Chair Lambert asked staff how long it would take to bring the item back with biological report.

Ms. Jolliffe said approximately 3 months.

Chair Lambert asked when the Commission should make the determination that an Environmental Impact Report is needed.

Commissioner Leland said the CEQA baseline has to be established before making that determination.

It was moved by Commissioner Wilson, seconded by Commissioner Nelson, and denied by the following vote:

Ayes: Commissioner Wilson and Commissioner Nelson

Noes: Commissioner Marin, Commissioner Leland, and Chair Lambert

Abstain: None

Absent: None

to deny GRD 06-01 Signalized Intersection.

It was moved by Commissioner Marin, seconded by Commissioner Leland, and unanimously carried to direct staff to have a study prepared evaluating how the project affected the adjacent pond and to continue open GRD 06-01 Signalized Intersection LLC until July 12, 2007.

Break for 10 minutes at 2:55 p.m.

Commissioner Wilson asked if, in the future, a grading ordinance could be changed to read that the baseline would go back prior to grading.

Mr. Calarco said that staff could take that recommendation to Board of Supervisors.

Commissioner Leland said the baseline is a CEQA issue that is mandated by state law.

Mr. Calarco said that staff is working on a Grading Ordinance and will see if there is any way to clarify certain components.

Commissioner Wilson said he doesn't want people rewarded for not following the rules.

Commissioner Leland said that possibly punitive items can be put into the Ordinance.

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

A. Directors' Report

B. General Plan/Zoning Ordinance Update

Mr. Dan Breedon gave the Commission handouts. He talked about the Special Planning Commission Study session that will be held the next day. He said that May 8, 2007 is when information will go to the Board of Supervisors. Saturday the staff is starting a huge public campaign to get input on the General Plan 2030 update.

C. Update of Board of Supervisors' Actions

The Board of Supervisors is allowing Mineral Resources a 24/7 operation, but Public Works is looking at having the truck route to the north. The Ball appeal is being heard on May 8, 2007.

- D. Legislative Case Law update
- E. Planning Commission Concerns

Ms. Jolliffe reminded the Commission of the General Plan 2030 Study Session at 1:30 p.m. on April 13, 2007 and that the April 26, 2007 meeting is cancelled.

IX. CLOSED SESSION

X. MINUTES - February 22, 2007

It was moved by Commissioner Wilson, seconded by Commissioner Marin, and carried to approve by the following vote

Ayes: Commissioner Marin, Wilson, Nelson, and Chair Lambert

Noes: None

Abstain: Commissioner Leland

the March 8, 2007 minutes with the following corrections: page 3 line 26 change to read delete the first “be”, page 3 line 48 change to read “Chair Lambert asked Mike Evans if he knew the width of the road.”, page 4 line 5 change to Chair Lambert asked Mr. Evans to explain why ALUC has such a requirement.”, and change page 4 line 16 to read “Chair Lambert asked for County Counsel’s opinion regarding if a new revised map should be attached., page 5 line 1 change “project” to “grading”, page 5 line 28 add at end of sentence “if an applicant wants to get his project through more quickly”, page 6 line 42 add the word “to” before “the bottleneck”.

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

XII. ADJOURNMENT

The meeting was adjourned at 3:30 pm.

Chair Lambert