

BUTTE COUNTY PLANNING COMMISSION MINUTES

March 13, 2008

I. PLEDGE OF ALLEGIANCE

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

ABSENT: None

ALSO PRESENT:
County Counsel Felix Wannemacher, Deputy County Counsel
Development Services Tim Snellings, Director
Pete Calarco, Assistant Director
Charles Thistlethwaite, Division Manager
Stacey Jolliffe, Principal Planner
Steve Troester, Senior Planner
Carl Durling, Associate Planner
Chris Thomas, Associate Planner
Chris Tolley, Associate Planner
Tina Bonham, Commission Clerk
Environmental Health Doug Fogel, Program Manager
Public Works Eric Schroth, Civil Engineer, Associate

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

It was moved by Commissioner Nelson and seconded by Commissioner Lambert 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. State Law prohibits the Planning Commission from taking action on any item presented 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. MEXT08-0001 – staff recommended a continuance to March 27, 2008

Name: Robert Walsh (SLMC) **Project:** Map Extension for Diamond Oaks
Subdivision 05-07, Time Extension MEXT08-0001
Planner: Carl Durling **APN:** 055-300-098 **Zoning:** AR-1
Location: On the east side of Pentz Road, approximately 0.35 miles north of Lago Vista Way, south of the Town of Paradise.

Proposal: Request for a 5 year extension of an approved subdivision map to divide an 11.66-acre parcel into ten (10) parcels ranging in size from 1.0 to 1.6 acres. An on-site loop road, which connects to Pentz Road at two different locations, would provide access to all of the proposed parcels. Sewage disposal for future dwellings on the site would be provided by individual, on-site septic systems. Domestic water would be obtained from the Del Oro Water Company. The project site does not contain a listed toxic site.

It was moved by Commissioner Lambert and seconded by Commissioner Nelson to continue consent item MEXT08-0001 open to the March 27, 2008 Planning Commission meeting.

VI. 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.

A. [MUP07-0002](#) –staff recommended approval

Name: Verizon Wireless **Project:** Tentative Subdivision Map
Planner: Chris Tolley **APN:** 038-250-025 **Zoning:** A-40
Location: The parcel is located at 2003 Nelson Road, Oroville (west of the community of Nelson, at the intersection of Nelson Road and the Western Canal). (Sec. 30, Township 20N, Range 2E, M.D.B & M.)
Proposal: The applicant is requesting approval of a Minor Use Permit to collocate on an existing self-supported 194.2 foot tower (197.8 foot overall height) owned by American Tower Corporation. The collocation facilities will be centered at the 108 foot level. The property is zoned A-40 (Agricultural, forty acre minimum) and is designated OFC (Orchard and Field Crops) by the Butte County General Plan.

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

Mr. Chris Tolley gave a summary of the project with a power point presentation.

Chair Wilson opened the public hearing.

Ms. Rebeka Anderson, representing Verizon Wireless, was available for questions.

The Commission did not have any questions regarding the project.

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

It was moved by Commissioner Nelson, seconded by Commissioner Marin, and carried unanimously to adopt Resolution 08-12, approving MUP07-0013 and adopting the Negative Declaration for Verizon Wireless.

B. [TSM06-0013](#) – staff recommended approval

Name: Robert Van Zile **Project:** Tentative Subdivision Map

Planner: Steve Troester **APN:** 068-346-008 **Zoning:** AR

Location: The project site is located on the southeast corner of the intersection of Hilldale Ave. and Mountain View Drive, approximately ¾ mile northeast of the Oroville City limits.

Proposal: The tentative subdivision map application proposes to divide a 2.3-acre parcel into SEVEN (7) lots on a cul-de-sac off Mountain View Drive. Lot size varies from 6,510 to 17,324 SF. Water would be provided by SFWP, and sewer by LOAPUD. One existing house on site will be retained.

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

Mr. Steve Troester gave a summary of the project with a power point presentation and told the Commission there was an exception request to Condition 15.

Commissioner Leland asked what the status was regarding the capacity of Sewerage Commission-Oroville Region (SC-OR).

Mr. Doug Fogel said that the status has changed. An applicant is now required to provide a letter from SC-OR prior to recording the map since there is concern over future capacity.

Commissioner Nelson asked what the exception request was for, whether it was curbs, gutters and sidewalks or just one of the improvement requirements. He asked if there are curbs, gutters and sidewalks in the area.

Mr. Schroth said the applicant is requesting an exception from building curb, gutters, and sidewalks on Hildale and Mountain View. There is another tentative subdivision just north of this project, which will have curbs, gutters, and sidewalks.

Commissioner Nelson asked if the area around this project is becoming more urban than rural.

Mr. Eric Schroth said yes.

Chair Wilson opened the public hearing.

Mr. Michael Evans said the exception request was under a previous design. There is a large irrigation utility vault that is located near the northwest portion of the project. The new design would leave the vault as is. He said that the applicant will withdraw the exception request if they have the assurance from Public Works that the new design will be accepted.

Mr. Schroth said that the design presented to the Commission is acceptable.

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

Mr. Charles Thistlethwaite said there is a minor correction to Condition 24. The word sewage needs to be replaced with the word water.

It was moved by Commissioner Nelson, seconded by Commissioner Leland, and carried unanimously to adopt Resolution 08-13, approving TSM06-0013 and adopting the Negative Declaration for Robert Van Zile changing Condition 24 to water instead of sewage.

D. Revised Order to Comply, New Era Mine- staff recommended adoption of the Revised Order to Comply

Name: Ronald and Betty Logan (Owners) and Floyd Leland Ogle and Frank Noland, North Continent Land & Timber, Inc. (Operators)

Project: Revised Order To Comply, New Era Mine

Planner: Chris Thomas **APN:** 041-080-027 **Zoning:** FR-40

Location: 4095 Dry Creek Road, approximately 2.5 miles north of its intersection with Messilla Valley Road.

Proposal: Hearing to consider the Revised Order To Comply in regards to the current mining operation at the New Era Mine, issued on February 11, 2008 to Ronald and Betty Logan, Owners, and Floyd Leland Ogle and Frank Noland (President and Vice President, North Continent Land & Timber, Inc.), Operators.

Please see attached Transcript of Proceedings from Paulson Reporting and Litigation Services dated March 13, 2008 for this item. The transcript reports from the beginning of the hearing (starting with staff summary) through the close of the public hearing. The following minutes commence where the transcript ends.

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

There was a ten-minute break.

Commissioner Lambert asked what the difference was between a mining permit and a use permit and what the method was for approving a mining permit. She asked if it had to do with the zoning of the area where the project is.

Mr. Thistlethwaite said the original zoning of the project, from 1982, was the A-2 zone. The A-2 zone allowed for a wide range of uses including some industrial. The record is inconclusive as to whether a use permit was required at that time. The project did fall under Chapter 13 of the Butte County Code which required a mining permit. He said it is his understanding that during that time the County did not process many mining permits. The number 81-135 does not mean that it was the 135th use permit applied for in 1981, the number represents that it was the 135 project applied for in 1981. For filing purposes the project was named UP81-135.

Commissioner Marin asked when the UP designation was put on the project since the permit is titled Mining Reclamation Permit.

Mr. Thistlethwaite said that the application was given the project number of UP 81-135. He told the Commission that staff had provided a decision tree to aid the Commission in making a determination.

Commissioner Nelson asked what the difference is between native material and concentrated material.

Mr. Thistlethwaite said that this is a key point in whether the Commission determines that the operation complies with the conditions of their Mining Permit. The permit states the applicant can move 20 cubic yards of material each day. The decision for the Commission is whether it is native or concentrated material. He said that concentrated material is what is taken off site to process.

Commissioner Nelson asked if the applicant needs to get a new permit.

Mr. Thistlethwaite said no. If the Commission makes the determination that the 20 cubic yards is native material, the applicant would need to amend their permit and reclamation plan regarding that condition. If the Commission makes the determination that the 20 cubic yards is concentrated material, then it would then have to determine if the operation complies with the reclamation plan or if there has been a substantial deviation from the approved reclamation plan.

Commissioner Leland said they should look at each issue and give their opinions. He said that in regards to whether the use was established, he believes that it is an established use. There is evidence of a small mining operation within the last 5 years.

Commissioner Marin and Commissioner Lambert agree.

Ms. Stacey Jolliffe said that one additional difference between the 20 cubic yards of native versus concentrated soil is the CEQA determination. If it is determined that the permit is for native material, then there would be a CEQA review on the amended permit. If the determination that the permit is concentrated material, then the CEQA review would be limited to changes to the reclamation plan. This would be a significant difference between the two determinations.

Chair Wilson said he does not have an issue with 20 cubic yards being determined as concentrate.

Commissioner Nelson asked if amending the reclamation plan and looking at the project as it is now. He said that they have already started the documentation which can be used in an amended reclamation plan.

Mr. Thistlethwaite said the question in regards to compliance with the reclamation plan is: does the current operation represent a substantial deviation from the original reclamation plan approved in 1982?

Commissioner Nelson said that his answer would be yes, there is a substantial deviation. He wants to know what amending the reclamation plan will do in regards to the deviation.

Mr. Thistlethwaite said there would need to be an analysis of what the changes were and what type of amendments are needed to update the reclamation plan.

Commissioner Lambert said that there should be a new mining permit and reclamation plan. This would clarify the many questions and concerns that are not addressed in the current permit and reclamation plan such as what constitutes 20 cubic yards of material. She said that staff had said earlier that this process would not take any longer than amending the permit and reclamation plan.

Mr. Thistlethwaite said that there is an entitlement granted by the County, and since the Commission has said that it is an established use, it would be an amended permit and reclamation plan.

Commissioner Leland said that the Commission had established the use and entitlement. He said he feels bound by the language in the 1982 permit. However, he reads it as stating 20 cubic yards of disturbed soil. He asked what the definition of mining is.

Mr. Thistlethwaite said that SMARA defines mining as material moved offsite.

Commissioner Leland said he believes from the testimony and documentation that this was approved as a small operation. The County only required a mitigated negative declaration instead of an environment impact report. He referenced the original request that was 80 cubic yards and that it was not approved until the applicant lowered it to 20 cubic yards. The permit, reclamation plan and other documents are inconsistent. His conclusion is that it was 20 cubic yards of displaced soil, which means they have vastly deviated from the permit.

Commissioner Marin agrees with Commissioner Leland, but also agrees with Chair Wilson that a large amount of soil has to be moved to get 20 cubic yards of product. He doesn't want to shut down the operation so that people lose jobs, but he believes Mr. Logan knew about the condition of only moving 20 cubic yards of material per day.

Commissioner Nelson asked if the Planning Commission were to go with the native material and amend the permit and the reclamation plan, would the operation have to cut back to 20 cubic yards of disturbed soil per day.

Mr. Thistlethwaite said that staff's recommendation is that they would continue to operate under the original permit and reclamation plan.

Commissioner Lambert asked if that was 20 cubic yards of native or concentrate materials moved per day.

Mr. Thistlethwaite said that needed to be determined by the Planning Commission.

Commissioner Leland said that as long as the applicant is making steps to getting right with the County they should be allowed to continue to operate. The operators are good employers, they stabilized the soil in emergency conditions, they fixed up the road, and he thinks they are responsible operators. He said that with the increased activity the only impact he sees is the increase in traffic. He does not believe that the hydrology and wildlife are impacted by an increase in the rate of extraction.

Commissioner Nelson talked about looking at the 20 cubic yards as concentrated material and that the reclamation plan needs to be amended. He said the operator should be allowed to continue, but also make it right with the County.

Commissioner Leland said if the Commission looks at it as concentrated material the operator is in compliance with the use permit. They have the entitlement which matches the reclamation plan and doesn't believe the Commission would be able to require the operator to amend the reclamation plan if the Commission determines it is concentrated soil.

Commissioner Lambert asked if Commissioner Leland thought the applicant is complying with the conditions of approval.

Commissioner Leland said no. The applicant did not file an annual report or the financial assurances that are part of the conditions of the use permit. He asked if the County could require a new financial assurance.

Mr. Thistlethwaite said the applicant did pay the required \$3,000.00 financial assurance. They have been cooperative in obtaining an updated estimate. At this time, they are estimating \$267,000.00 as a financial assurance. The law requires that the County review the financial assurances on an annual basis and that the financial assurance is in place while the mining is occurring. If the operation changes significantly, it can be reviewed more often.

Commissioner Leland said that it appears that the annual reporting (recognizing the operators are in the process of providing prior reports) and the financial assurances are the only two items that do not comply.

Mr. Thomas said that the financial assurance does have to be based off of the reclamation plan. In violation 2, it is staff's opinion that the operation has significantly deviated in such a way that the approved reclamation plan is affected.

Commissioner Leland asked if the Commission makes the findings that the permit allows the larger scale, how would the reclamation plan be deficient.

Commissioner Leland asked why staff does not believe the applicant is complying with the reclamation plan.

Mr. Thistlethwaite said that the County has not done annual reviews, annual inspections or followed up on the financial assurances. Those are the reasons given to the Commission by staff that it does not meet the specific criteria in section 3502 of SMARA.

Mr. Thomas, for clarification, read section 3502d of SMARA to the Commission.

Commissioner Leland went over item 3 on page 16 of the staff report that said that the current operation has substantially deviated from the operation permitted by UP81-135. Because it is the same acreage and depth, his opinion is that there has not been a substantial deviation. In regards to substantial extension of the termination of the mining operation, he said that his answer would be no if they were entitled to 20 cubic yards of concentrate. He said he does not see a basis for requiring an amended reclamation plan.

Chair Wilson said that there is no suggestion in the recommendation for dust control.

Ms. Jolliffe said that since staff was only looking at compliance with the old permit, not issuance of a new permit, dust control was not recommended.

Commissioner Nelson said it is his opinion to go with native material, allowing the operation a time frame to become compliant while still allowing it to operate.

Commissioner Leland said that would require environmental review, which would determine the need for a mitigated negative declaration or an environmental impact report. It would also clarify the 20 cubic yard issue. He asked Commissioner Lambert what she remembers about the original use permit when it came before the Planning Commission in 1982.

Commissioner Lambert said it was a small mom and pop mining operation.

Commissioner Nelson asked if staff needs a motion of intent.

Mr. Felix Wannemacher said that the Commission needs to determine whether violations occurred and to make findings to support the determination.

Commissioner Leland suggested going over each violation and instructing staff with a motion of intent. He said in regards to Violation 1 he believes there is adequate proof that more than 20 cubic yards of material is moved each day and that the permit was for a small mining operation.

The other Commissioners agreed.

Commissioner Marin said the scale of the operation has changed.

Commissioner Leland asked if the Commission should do an informal vote on each violation.

Mr. Thistlethwaite said that would be helpful for staff.

Commissioner Leland proposed a tentative vote to find if when the permit says 20 cubic yards it is referring to total disturbed soil.

Commissioners Marin, Lambert, Nelson agreed it did. Chair Wilson did not.

Commissioner Leland asked if the Commission agreed that the scale of operation had exceeded the permit.

Commissioners Marin, Lambert and Nelson agreed. Chair Wilson did not.

Ms. Jolliffe said that if the operation has changed the rate of extraction, that could be considered a deviation.

Mr. Thomas asked if the current reclamation plan would work with today's standards.

Ms. Jolliffe said the SMARA regulations in the 1980's would be substantially different.

Commissioner Nelson said that there would be a larger impact to traffic and water quality due to a higher rate of extraction.

Ms. Jolliffe said that rate of extraction does have environmental impacts on time sensitive items such as traffic and water run off.

Commissioner Nelson asked County Counsel how to make a motion of intent.

Mr. Wannemacher explained that findings have to be made before making a motion of intent.

Commissioner Nelson said he believes there is a consensus of the Commission that an amended permit and reclamation plan is needed. He was not prepared to walk through the detailed findings.

It was moved by Commissioner Nelson, seconded by Commissioner Leland, and carried unanimously to continue item closed until April 10, 2008.

VII. 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
- C. Update of Board of Supervisors' Actions
- D. Legislative Case Law Update
- E. Planning Commission Concerns

VIII. CLOSED SESSION

IX. MINUTES - None

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

XI. ADJOURNMENT

Meeting was adjourned at 6:05 pm.

Chair Harrell Wilson