



County of Yolo

John Bencomo
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PLANNING AND PUBLIC WORKS DEPARTMENT

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YOLO COUNTY PLANNING COMMISSION

CHAIR: Jeb Burton
VICE-CHAIR: Richard Reed
MEMBERS: Leroy Bertolero; Jeff Merwin; Richard Reed; Keith Williams; Don Winters

MINUTES

January 28, 2010

ADMINISTRATIVE AGENDA

1. Chair Kimball called the meeting to order at 8:37 a.m.
2. Pledge of Allegiance was led by Commissioner Williams.

MEMBERS PRESENT: Bertolero, Burton, Kimball, Merwin, Reed, Williams, and Winters
MEMBERS ABSENT: None
STAFF PRESENT: David Morrison, Assistant Director of Planning
Eric Parfrey,
Donald Rust, Principal Planner
Stephanie Cormier, Associate Planner
Jeff Anderson, Assistant Planner
Philip Pogledich, Senior Deputy County Counsel
Heidi Tschudin, Contract Planner for Yolo County Parks
Aundrea Hardy, Office Support Specialist

3. ADOPTION OF MINUTES OF THE **DECEMBER 10, 2009** MEETING.

Commission Action

The Minutes of the **December 10, 2009** meeting were approved with no corrections.

MOTION: Bertolero SECOND: Merwin
AYES: Bertolero, Burton, Kimball, Merwin, Reed, Williams, and Winters
NOES: None
ABSTAIN: None
ABSENT: None

4. PUBLIC REQUESTS

The opportunity for members of the public to address the Planning Commission on any subjects relating to the Planning Commission, but not relative to items on the present agenda, was opened by the Chair. The Planning Commission reserves the right to impose a reasonable limit on time afforded to any individual speaker.

No one from the public came forward.

5. CORRESPONDENCE

5.1 2010 Commission Meeting Schedule

5.2 California County Planning Commissioners Association Newsletter

5.3 California Country Magazine

5.4 Letter regarding the abandonment of County Road 75A from Tuleyome

Chair Kimball acknowledged receipt of all correspondence sent with the packet and distributed at the beginning of the meeting.

Agenda Item 8.1 Election of Officers was discussed and the following actions were taken.

Commissioner Bertolero made a motion to nominate Vice-Chair Burton as Chair of the Planning Commission.

MOTION: Bertolero SECOND: Winters
AYES: Bertolero, Burton, Kimball, Merwin, Reed, Williams, and Winters
NOES: None
ABSTAIN: None
ABSENT: None

Chair Burton made a motion to nominate Commissioner Reed as Vice-Chair of the Planning Commission.

MOTION: Burton SECOND: Williams
AYES: Bertolero, Burton, Kimball, Merwin, Reed, Williams, and Winters
NOES: None
ABSTAIN: None
ABSENT: None

David Morrison, Assistant Director of Planning Services, thanked and complimented Commissioner Kimball for her valuable leadership as the Planning Commission Chair during 2009.

The Planning Commission members thanked Commissioner Kimball for all of her hard work and dedication.

project site. The detention basin is to drain into the Colusa Basin Drain with a low-lift pump. The other non-residential lot, 7.87 acres in size, consists of the levee for the adjoining Colusa Basin Drain. The Final Subdivision Map, Subdivision Improvement Agreement, and associated actions were approved by the Board of Supervisors on February 27, 2007. On September 9, 2008, accepted the public improvements for the River's Edge project and approved an affordable housing agreement. Minor changes to the project—primarily regarding development standards for the residential units and flood insurance requirement—were approved by the Board of Supervisors on April 7, 2009.

At the time of this appeal, the project is partly built, with 14 of the 63 residential units having been constructed. In addition, the subject site is currently designated by FEMA (Federal Emergency Management Agency) FIRMs (Flood Insurance Rate Maps) as being located outside of the 100-year floodplain.

The applicant is appealing the Department's determination that the construction of partial foundations for the remaining dwelling units is not adequate to grandfather building permits when new FEMA FIRMs go into effect on June 18, 2010, to re-designate the River's Edge project as being located within the 100-year floodplain.

B. California Environmental Quality Act (CEQA) and Guidelines

The Planning Commission finds that the recommended Categorical Exemption is the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA) and Guidelines. This appeal concerns the legal interpretation of FEMA regulations and related provisions of the Yolo County Code. As such, it is not a "project" under CEQA. Even if it were, however, it can be seen with certainty that there is no possibility the interpretation of these provisions may have a significant effect on the environment, and the project is therefore exempt from CEQA under CEQA Guidelines Section 15061(b)(3).

C. Grandfathering

The Planning Commission agrees with the applicant's position that the relevant legal authorities—specifically, FEMA's regulatory definition of "start of construction" and parallel language appearing in Yolo County Code Section 8-3.245—deem the placement of partial foundations to be sufficient to constitute the "start of construction" for grandfathering purposes. The Planning Commission's reasons for reaching this conclusion are briefly as follows:

1. Both the FEMA regulation and Yolo County Code Section 8-3.245 state the "actual start" of construction begins when "any work beyond the stage of excavation" for a particular structure occurs. Certainly, it is reasonable to conclude that "any work" includes placing part of the concrete foundation of a structure. The plain meaning of the phrase "any work beyond the stage of excavation" broadly encompasses work on a portion of the foundation of a structure, as the applicant has argued.

2. FEMA staff were provided numerous opportunities to address the applicant's proposal and did not object to it or contend that it was insufficient to grandfather permits for the affected structures. In one communication, FEMA staff even appeared to concur with the applicant's interpretation of the FEMA regulation and Section 8-3.245. Presumably, as the lead federal agency charged with administering the NFIP and related regulations, FEMA would have made clear its objection to the applicant's interpretation if it had any such objection. It did not do so, and the Commission finds that its apparent support for the applicant's position is a strong factor in the Commission's interpretation of the relevant provisions, as described in Paragraph 1, above.

3. Various other factors support the Planning Commission's determination, even though they do not directly bear on the interpretation of the FEMA regulation or Section 8-3.245. First, the

Commission is persuaded that there are instances where building a dwelling unit foundation in phases is appropriate and does not jeopardize the integrity or safety of the resulting structure (though this issue ultimately is not decided as part of this appeal, as noted below). Second, the project at issue is already 25 percent completed and it is important to allow the rest of the project to be completed in a manner that takes into account the financial situation of the developer, the needs of the community, and various aesthetic considerations relating to architectural consistency within the neighborhood. Third, the original project was approved nearly a year before Yolo County was notified by FEMA in April of 2006 that new FIRMs would be issued for Yolo County, as part of a nation-wide review carried out after the Katrina Hurricane occurred in August of 2005. As there are few other ongoing projects similarly affected by the new FIRMs that also pre-date the FEMA remapping process, this decision does not create a broad precedent for avoiding the application of FEMA and County floodplain regulations to new construction after the new FIRM maps take effect on June 18, 2010.

Importantly, in deciding this appeal, the Planning Commission does not reach the issue of whether the construction of partial foundations is consistent with the California Building Code and other authorities governing matters of design, construction, and engineering. This issue was not properly before the Planning Commission as part of this appeal, and it remains subject to resolution by the County Planning and Public Works Department upon the provision of adequate construction drawings and related materials by the applicant. In fact, if this issue had been before the Planning Commission as part of this appeal, the Planning Commission could not have decided this appeal in favor of the applicant because adequate drawings and other items needed for the issuance of permits remained outstanding at the time of the final hearing on this appeal. The Planning Commission's decision is thus limited to the issue of "grandfathering" discussed above.

As a final matter, the Commission notes that county staff has agreed that the applicant may have up to 36 months to complete construction of the entire residential dwelling unit for each of the 49 lots that remain undeveloped. The applicant and staff agreed to this time frame during a meeting on May 29, 2009. The Planning and Public Works Department provided written confirmation that it would commit to the specific time frame, described above. With the applicant's consent, this issue was therefore not considered by the Commission as part of the appeal.

TIME SET AGENDA

- 7.1 **2009-044:** A road right-of-way abandonment request for County Road 75A, located in Brooks, and accessed off State Route 16 (affects APNs: 060-030-15 and 060-030-16). County Road 75A serves both Tribal trust land and fee title property, owned by the Yocha Dehe Wintun Nation. The right-of-way dead ends at the western high bank of Cache Creek. The project proposes abandonment of CR 75A in order to enhance Tribal security through privatization of the road. An Exemption has been prepared for this project. Applicant: Yocha Dehe Wintun Nation (S. Cormier).

Stephanie Berg Cormier, Associate Planner, presented background information on the project and answered questions from the commission.

There was a discussion regarding the financial value of county road rights-of-way and the potential for monetary compensation from landowners who benefit from the abandonment. Direction was given to hold a formal discussion at a future meeting regarding legal and policy questions concerning road abandonment.

Chair Burton opened the public hearing.

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Jim Etters, Director of Land Management of Yocha Dehe Wintun Nation, made himself available to answer questions, and explained that they use County Road 75A as the main access to their housing and as the staging area for their orchards operations.

Jim Cassil, property owner to the east, said that he has owned his property since 2004, and he does not want to give up access to his land from that portion of County Road 75A. He clarified that he does have alternative access, but that he uses County Road 75A to cross Cache Creek when the water is low enough for certain vehicles.

Chair Burton asked Mr. Cassil if he had spoken to the tribe regarding resolving his access concerns

There was general discussion among the Commission regarding alternative access to the Cassil property. Chair Burton noted that there were some inconsistencies between various maps; therefore, further discussion ensued regarding the location of easements and property lines.

Phil Pogledich, Senior Deputy County Counsel, recommended continuation of the road abandonment request until the next regularly scheduled meeting, to allow the applicant’s engineering firm to issue a formal statement rectifying the inconsistency.

Chair Burton agreed with the continuation and recommended that the applicant and Mr. Cassil get together to see if they can come to a private agreement regarding access.

Dan Gallardo, Yolo County resident, explained that the roads in the neighborhood go down to the creek, and it is common knowledge that County Road 75A provides ranch access to the neighbors. He added that the Maps for the Tancred township have a lot of problems.

There was discussion among the Commission about liability to the county if someone were to drive off the end of County Road 75A into the creek.

Chair Burton closed the public hearing

Vice-Chair Reed made a motion to continue the item and the public hearing, with encouragement to the Yocha Dehe Wintun Nation and Mr. Cassil to meet and endeavor to come to an agreement on access. His motion also included a future policy discussion about road abandonment and the value of easements.

Chair Burton added a friendly amendment to request information regarding how road abandonments have been addressed in the past by Yolo County.

Commission Action

The Planning Commission:

1. **CONTINUED** the item to the next regularly scheduled Planning Commission meeting.

MOTION: Reed SECOND: Kimball
AYES: Bertolero, Burton, Kimball, Merwin, Reed, Williams, and Winters
NOES: None
ABSTAIN: None
ABSENT: None

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7.2 The applicant proposes aggregate mining and processing of approximately 30 million tons of aggregate on 313 acres. The subject property is located immediately adjoining and north of Cache Creek, adjoining and west of County Road 87, approximately one mile north of the town of Esparto (APNs: 048-220-022 and 048-220-015). The project requires the following approvals from Yolo County: Rezoning; Mining Permit; Reclamation Plan; 20 percent exceedance under Section 10.4-405 of the County Code; relinquishment of existing mining entitlements on APNs: 025-300-005, 025-300-032, and 025-350-009; Development Agreement; Demolition Permit; Streambank Stabilization Plan; and Flood Hazard Development Permit (FHDP). The site is zoned A-1 (Agricultural General) and A-P (Agricultural Preserve), and is designated in the General Plan as Agriculture and Open Space with a Mineral Resource Overlay.

The county has prepared a Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act (CEQA). The purpose of the workshop is to present an overview of the DEIR and its conclusions, and to receive oral comments on the DEIR. There will be no transcription made of the oral comments received at the workshop. Comments received will be summarized by staff for inclusion in the Final EIR. Those who wish to have their verbatim comments incorporated in the Final EIR must submit their comments in writing. Applicant: Granite Construction Company (H. Tschudin/K. Reeves).

Heidi Tschudin, Contract Planner for the Yolo County Parks Department, presented the project and answered questions from the commission.

Commissioner Bertolero pointed out an error regarding the soil type on the first page.

Commissioner Kimball asked questions regarding how agricultural mitigation will be implemented, including the timing and phasing for Mitigation Measure 4.3-1. Tschudin responded that the mitigation measure is written to allow room to negotiate the details regarding the timing of the mitigation.

Commissioner Kimball asked about Mitigation Measure 4.4-2a related to air quality. She questioned whether the requirements to cover the inactive piles and cover the trucks were standard for the industry and the area.

Ms. Tschudin responded that she will verify these requirements, and if modifications are necessary, they will be made in the Final Environmental Impact Report (FEIR).

Chair Burton indicated that it was very hard to find the DEIR on the county website and that there should be a link from the Planning Commission agenda and staff report to the DEIR.

Ms. Tschudin responded that she would pass this onto the Parks Department and work with them to try to improve the website.

Commissioner Merwin commented that because greenhouse gases (GHG) are an issue, we should let the applicant maximize the use of the existing processing plant before looking at a new one. He pointed out that Alternative 4 lets the new site stay undeveloped for a longer period, which has benefits related to GHG emissions and biology. The DEIR should better explain that.

Ms. Tschudin responded that the alternatives analysis recognizes Alternative 4 as environmentally superior and that when the project comes forward for final action, the county has the ability to adopt that alternative.

Commissioner Merwin asked whether other producers were interested in mining more at their existing facilities.

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Ms. Tschudin responded that there is an effort underway to explore an update of the Cache Creek Area Plan (CCAP) to allow for mining of new tonnage. That effort would be subject to a separate environmental review process.

Commissioner Bertolero commented that the applicant should not have to mitigate for "agriculture" in the riverwash area.

Ms. Tschudin responded that the riverwash acreage was not included in the mitigation requirement.

Chair Burton opened the public hearing.

Ben Adamo, Granite Construction, advised the commission that they would submit comment letters and made himself available to answer questions. He indicated that Alternative 4 is acceptable to them

Janet Levers, Yolo County resident, provided some history regarding what citizens were told about mining in the active channel. She asked if citizens were going to be given the right to vote to reverse their 1996 decision not to mine in the channel, and to her, expanding the CCAP undermines the promise made to citizens at the time the ordinance was adopted.

Ms. Tschudin clarified that the only activity proposed in the creek channel is implementation of the Test 3 improvements consistent with the Cache Creek Management Plan (CCRMP). There is no mining proposed in the creek. Commercial mining in the creek has been prohibited since 1997.

Chair Burton closed the public hearing.

Commissioner Winters had no questions or comments.

Commissioner Merwin made his comments in support earlier.

Commissioner Williams said that he had some of the same comments in support of Alternative 4.

Commissioner Kimball commented that she too supports Alternative 4. Regarding Mitigation Measure 4.2-1 she would like to see the berms more natural in appearance in the future, and she provided descriptions of alternative berm designs. She commented on the agriculture and habitat mitigation measures and recommended that mitigation happen as sequentially as possible, rather than all up front. She reiterated that she would like the staff to review the air quality mitigations in light of local requirements. In addition, she commented that requiring Granite Construction to take full responsibility for the maintenance of the road was unfair, as other large agricultural vehicles and other traffic travel on that road.

Commissioner Reed expressed concern over the consumption of total resource, increasing the rate of mining, and accounting for the cumulative impacts of all mines. He said he understood there are references to other Environmental Impact Reports, so he is trying to get an understanding of the total resource loss at Cache Creek.

Commissioner Bertolero stated that he attended the Esparto Advisory Committee meeting, and the project was one of their agenda items. When it was heard, there was a little discussion, but there was no action taken. Most committee members had not seen the Environmental Review Report, so they did not make a formal recommendation. However, there were no red flags from the community or the members present. As for the agricultural land mitigation and the Swainson Hawk mitigation, he doesn't feel it is fair to require them to have to double mitigation on each acre. Also, as far as the restoration timing, it is possible they can have credits or debits out of their account each year from the county; therefore, as sites are restored they can receive a credit on their account or as they access a new site,

their account can be debited. In closing, he expressed his support for Alternative 4, suggesting that the applicant should convey the rock from the new site to the existing plant for processing. This way two plants would not be required.

Chair Burton closed commissioner comments and closed agenda item 7.2.

Commission Action

The Planning Commission:

1. **RECEIVED** a staff report regarding the Draft Environmental Impact Report (DEIR) for the Granite Esparto Mining and Reclamation Project; and
2. **PROVIDED** an opportunity for the public to comment on the adequacy of the DEIR.

REGULAR AGENDA

8 DISCUSSION ITEMS

None.

9. DIRECTOR'S REPORT

A report by the Assistant Director on the recent Board of Supervisor's meetings on items relevant to the Planning Commission and an update of the Planning and Public Works Department activities for the month. No discussion by other commission members will occur except for clarifying questions. The commission or an individual commissioner can request that an item be placed on a future agenda for discussion.

David Morrison brought the commission up to date on the following:

9.1 Personnel and Budget:

- a. In 2005, the county issued approximately 350 new residential Building Permits. Last year, that number had dropped to 35 new permits issued. There was a similar steep decline in the number of new Zoning /Planning applications. The Development Services Division relies on fees for eighty percent of their funding. This has a significant affect on the division's budget, and has caused a decrease in total employee positions from twenty to eleven. As with much of the county, the division will have no other option but to do less with fewer people.

9.2 Board of Supervisors:

- a. At the January 26, 2010 meeting, the Board of Supervisors approved the Bogle Winery application with a 4-0 vote.
- b. The Parking Ordinance was also approved on January 26, 2010.

9.3 Around the County

- a. The county continues to work with the applicants on the Dunnigan Specific Plan, with the anticipation that a formal application will be submitted in early to mid-April.
- b. The plans for the Cache Creek Casino expansion are being reviewed by staff with a Notice of Preparation and a response.
- c. The work done by Caltrans on Main Street in Esparto is moving along.
- d. Planning staff has been meeting with Sacramento Area Council of Governments (SACOG) staff to look at future housing and growth projections. These are particularly important with regards to SACOG's update of the Metropolitan Transportation Plan and the affordable housing allocation for the 2013 Housing Element Update. He provided further information regarding the subject.
- e. The Commission asked questions and briefly discussed the postponed Habitat Ordinance.

10. COMMISSION REPORTS

Reports by commission members on information they have received and meetings they have attended which would be of interest to the commission or the public. No discussion by other commission members will occur except for clarifying questions.

- A. Commissioner Winters had nothing to report.
- B. Commissioner Merwin attended the January 26, 2010 Board of Supervisors meeting, the Yolo County Farm Bureau meeting and their annual dinner. He also attended a meeting with Granite Construction at their Capay site, which included Commissioners Bertolero and Williams, and had several phone calls from neighbors regarding the Bogle Winery project and the potential lack of maintenance for Hamilton Road, heard by the Board of Supervisors.
- C. Commissioner Williams reported that he attended the Granite Construction Company tour, went to a Colusa Basin Watershed Assessment meeting, and attended advisory committee meetings in Yolo-Zamora and Dunnigan. He has been in contact with a Charter School System, so he informed them of a potential site in Knights Landing.
- D. Commissioner Kimball stated that she attended a tour with Granite Construction Company, was interviewed for the Sacramento Business Journal for a story on Bogle Winery, and was recently elected president to the Land Trust Board. She added that the Land Trust has a new Executive Director, Michelle Clark, and shared some of their current goals and projects.
- E. Vice-Chair Reed reported a tour that he attended at the Granite Construction tour.
- F. Commissioner Bertolero reported that he toured the Granite Construction site, and attended several citizen advisory committees, including: Esparto, Knights Landing, Capay, Dunnigan, Clarksburg, and Madison.
- G. Chair Burton said he met with the West Sacramento Chamber of Commerce.

11. FUTURE AGENDA ITEMS

The opportunity for commission members to request that an item be placed on a future agenda for discussion. No discussion by other commission members will occur except for clarifying questions.

11.1 Planning Commission meeting schedule for the year.

11.2 Overview of the updates on the zoning code.

11.3 County Road 75A abandonment.

11.4 Commission request for discussion of road abandonment and road easements.

11.5 Results Radio.

11.6 Proposed cell tower in El Macero.

12. ADJOURNMENT

The Regular Meeting of the Yolo County Planning Commission was adjourned at 10:47 a.m. The next regularly scheduled meeting of the Yolo County Planning Commission is March 11, 2010, in the Board of Supervisors' Chambers.

Any person who is dissatisfied with the decisions of this Planning Commission may appeal to the Board of Supervisors by filing with the Clerk of the Board within fifteen days from the date of the action. A written notice of appeal specifying the grounds and an appeal fee immediately payable to the Clerk of the Board must be submitted at the time of filing. The Board of Supervisors may sustain, modify, or overrule this decision.

Respectfully submitted by,

David Morrison, Assistant Director
Yolo County Planning and Public Works Department