

SISKIYOU COUNTY PLANNING COMMISSION
REGULAR MEETING
DECEMBER 20, 2017

The Siskiyou County Planning Commission meeting was called to order by Chair Melo at 9:00 a.m. in the Board of Supervisors' Chambers, Siskiyou County Courthouse, 311 Fourth Street, Yreka, California.

PRESENT: Commissioners Blair Hart, Danielle Lindler, Jeff Fowle, Dusty Veale, and Tony Melo

ABSENT: None

ALSO PRESENT: Christy Cummings Dawson, Deputy Director of Planning; Britt Dveris, Senior Planner; Pam Piemme, Associate Planner; Vurl Trytten, Executive Secretary; Dana Barton, Deputy County Counsel; and Jerry Lemos, Senior Health Officer

MINUTES:

MOTION: It was moved by Commissioner Fowle, seconded by Commissioner Lindler, to approve the minutes of October 18, 2017, as presented.

VOTED upon and the Chair declared the motion carried unanimously.

MOTION: It was moved by Commissioner Fowle, seconded by Commissioner Veale, to approve the minutes of November 15, 2017, as presented.

VOTED upon and the Chair declared the motion carried unanimously.

PRESENTATIONS FROM THE PUBLIC: None

CONFLICT OF INTEREST DECLARATIONS: None

PUBLIC HEARING PROTOCOL: Chair Melo reviewed the protocol for conducting the Planning Commission meetings.

RIGHTS OF APPEAL STATEMENT: Chair Melo advised that projects heard at this Planning Commission meeting may be subject to appeal within ten calendar days. He directed interested individuals to contact the County Clerk's Office for information. He advised that if you challenge the environmental review or the project proposal in court, you may be limited to raising only those issues raised at the public hearing or in written correspondence delivered to the Planning Department at, or prior to the public hearing. Chair Melo apprized the Commissioners and audience that appeals must be submitted to the County Clerk's Office together with the appeal fee of \$1250.

PUBLIC HEARINGS:**JUNCAL ZONE CHANGE AND TENTATIVE SUBDIVISION MAP (Z1603_TSM1601)**

Proposed zone change to rezone approximately 31.3 acres of a 126.5+/- acre site from Prime Agricultural (AG-1) to Non-Prime Agricultural, 40-acre minimum parcel size (AG-2-B-40); and a tentative subdivision map to subdivide 2 existing legal parcels into two parcels plus a designated remainder. The three proposed resultant parcels each have a residential dwelling served by existing on-site sewage disposal systems and water wells. A private dead-end road, to be upgraded and extended to approximately 3,200 feet in length, will provide access to the three parcels. The project site is located at 1965 and 1701 Hilt Road, in the community of Hilt, approximately 1/2 mile west of Interstate 5 on APNs 006-240-600 and -620; Township 48N, Range 7W, Portions of sections 14, 22, and 23, MDB&M (Latitude 42°00'00.0"N, Longitude 122°37'52.0"W).

**MITIGATED NEGATIVE DECLARATION
ZONE CHANGE****RECOMMENDING APPROVAL
RECOMMENDING APPROVAL****STAFF REPORT:**

The previously circulated Staff Report was reviewed by the Commission and a presentation of the project was provided by Senior Planner Dveris.

Mr. Dveris informed the Commission that the project was to rezone approximately 31 acres north of Hilt Road and west of I-5 from AG-1 to AG-2-B-40 and subdivide two existing parcels that total about 125 acres into two resultant parcels, one 40 acres, and the other 45 acres, plus a designated 40 acre remainder parcel. He said that the project property is bordered on the North by the State of Oregon and is located northwest of the community of Hornbrook. He showed the project location and the project zoning, pointing out the area of the rezone. He also described adjacent zoning and uses of the adjacent land within Siskiyou County California. He pointed out the proposed subdivision and showed the areas of the AG-1 zoning proposed to be changed to AG-2-B-40. He also showed the location of the residence and the second dwelling unit, and the topographic map of the project site.

Mr. Dveris explained that there are irregularly shaped areas of AG-1 zoning that the applicant claims is not prime agricultural soil pursuant to a soil survey. He said that the proposed zoning change would bring the project property into uniformity for uses and conditional uses. He said that the current use of the land is single family residential use that is already located on the property and is served by well and septic. Mr. Dveris further explained that there was a four (4) parcel subdivision in 1998 on contiguous property, which meant that this land subdivision had to be a Tentative Subdivision Map project rather than a Tentative Parcel Map project pursuant to the provisions of the Subdivision Map Act. He described that access to the property was from Hilt Road and Beehive Road, and said that the private road would be extended to 3200 feet in length to serve the new parcels. He said that the proposed lots A and B have a shared well located in Oregon. He added that fire protection was provided by the Hilt Volunteer Fire Department. He said that adjacent property owners had been notified and no comments had been received. He said that Cal Fire wanted turnarounds along Beehive Road. Commissioner Veale asked if Cal Fire wanted turnouts or turnarounds. Chair Melo commented that the fire engines need to be able to turn around. Commissioner Fowle further commented that turnarounds are typically in one location and turnouts would be in different locations along the

road. Commissioner Lindler commented that there might be a need for a timber harvest plan pursuant to forest practice rules should timber be harvested on the site.

Mr. Dveris said that Fish and Wildlife had commented and recommended a 25 foot no construction area on top of the banks of ephemeral drainages, and said that a stream bed alteration agreement may be required if drainages were affected. He said Environmental Health had no objections to the proposed project. Mr. Dveris said that the project was consistent with the General Plan and with the Zoning Code per design standards and regarding permitted uses in both zoning districts. Mr. Dveris explained that the Subdivision Map Act allows a remainder parcel not intended for sale, lease or financing. Mr. Dveris explained that the applicant does not propose development at this time, but the project could lead to development and for this reason it is subject to CEQA. He said that the impact was identified and is considered to be reduced with mitigation measures and a mitigated negative declaration was prepared. He said that copies of the Initial Study and Mitigated Negative Declaration were circulated to the State Clearing House and sent out for a 30 day public review. He said that no comments were received. He said that mitigation measures were developed along with a mitigation monitoring program and they needed to be adopted. He added that staff recommended that the Planning Commission recommend the project to the Board of Supervisors for approval, and further recommend that Board adopt the mitigated negative declaration, approve the mitigation measures, approve the mitigation monitoring program; approve the zone change request, pursuant to the findings and conditions of approval; and approve the Tentative Subdivision Map pursuant to the findings, notations and conditions of approval.

Planning Commission Questions:

Commissioner Veale asked if there were other residents along Beehive Road. Associate Planner Piemme responded that Beehive Road had been developed in the prior tentative parcel map project. She added that no comment was received from Public Works.

AGENCY INPUT: None

Chair Melo opened the Public Hearing.

PUBLIC INPUT:

Russell Juncal, project applicant, spoke in favor of the project and stated that he was present to answer any and all questions. He commended the staff and said that they had been helpful and courteous. He said that there were three other people on the road immediately as it came off of Hilt Road. He said that he would be maintaining the road and he had talked to Cal Fire. He said the road has both a turnaround and turnouts. He said that the property is served by an excellent well, and as an additional measure there are water tanks with 9,000 gallons of water that can provide water. He commented on the rezoning of the mapped AG-1 soils explaining that in the soil survey the soils were mapped based on a 2nd order scale and were miss-mapped. He said that they assumed a certain slope, but there was significantly more slope when working with the topographic map.

Commissioner Veale asked why the three parcels from two parcels. Mr. Juncal responded that the reason was that he has three children.

No opponents to the project were present.

There being no further input, the Chair closed the Public Hearing.

Discussion by Commission:

Commissioner Hart asked about groundwater implications with a well in OR, because California and Oregon groundwater regulations are different. Ms. Cummings Dawson responded that she had called Oregon, but could not get a phone call back from them.

Mr. Juncal returned to the microphone and informed the Commission that he had deeded water rights in Oregon, an easement and had established his water rights in Jackson County, Oregon. He added that the deeded water rights include application in California and the water is approved for importation into California from Oregon.

MOTION: Following discussion, it was moved by Commissioner Veale, seconded by Commissioner Fowle to adopt Resolution PC-2017-006, A Resolution of the Planning Commission of the County of Siskiyou, State of California, Recommending that the Board of Supervisors Adopt the Initial Study/Mitigated Negative Declaration (SCH No. 20107102066) and the Mitigation Monitoring Reporting Program, approve the Juncal Zone Change Request (Z-16-03) and approve the Juncal Tentative Subdivision Map (TSM-16-02).

VOTED upon and the Chair declared the motion carried on the following roll call vote:

AYES: Commissioners Hart, Lindler Fowle, Veale and Melo

NOES: None

ABSENT: None

ABSTAIN: None

SABANOVICH PARCEL MAP AMENDMENT TPM0502-1M

Request to amend an existing parcel map recorded in 2006 by removing a setback requirement that prohibits construction of any buildings within 75 feet of a reservoir located on the subject property and to eliminate the California Environmental Quality Act (CEQA) mitigation measure from which this requirement originated. Removing the setback requirement from the parcel map and CEQA document would allow the property owner to build a residence next to the reservoir, as has been proposed. The subject parcel (APN 023-051-620 & APN 024-242-260) comprises 123 acres of land located on Kellems Lane approximately six miles northwest of Etna in Section 6, T42N, R9W, Mount Diablo Base & Meridian (Latitude 41°31'29"N, Longitude 122°55'37"W).

**ADDENDUM TO MITIGATED NEGATIVE DECLARATION
AMENDMENT TO TENTATIVE PARCEL MAP**

**APPROVED
APPROVED**

The previously circulated Staff Report was reviewed by the Commission and a presentation of the project was provided by Senior Planner Britt Dveris.

STAFF REPORT:

Mr. Dveris presented the staff report explaining that the purpose of the project was to amend the parcel map. He said that the applicant had submitted an application for a building permit; but due to the location of the building, the applicant is seeking relief from the setback requirement. The building permit has not been issued and is pending. He said that the location of the property was in Scott Valley near Kellems Lane and showed the location of the property near Etna; the zoning of the property which is Rural Residential Agricultural 5 acre minimum (R-R-B-5); the adjacent zoning and the current uses. He informed the Commission that there is a man-made pond or reservoir on the property that extends into the adjacent property and the 123 acre legal parcel that includes area to the north. On a topographical map he showed the sliver of the reservoir that is on adjacent property and the proposed construction site. He also showed an aerial view of the proposed building site and the site plan submitted with the application that shows the location of the existing well and septic system. He said that though it is not quite clear regarding the past well and septic, records indicate that there was a site evaluation at the time the land was subdivided that indicated a suitable site for the septic system.

Mr. Dveris explained that there is a 75 foot setback requirement from the reservoir, and eliminating the setback would allow the applicants to build next to the pond. He said that the Tentative Parcel Map was recorded in 2006, and, at the time, Planning determined that the reservoir was a wetland and the setback would protect it and surrounding waterways.

Commissioner Veale asked for clarification of what made a reservoir different from a wetland or a pond. Mr. Dveris explained that a reservoir is an engineered feature with control structures for the purpose of regulating the water level; there is a levee that impounds the water, and it is artificial and not a natural water body.

Mr. Dveris explained that the Parcel Map was approved and recorded with the 75 foot setback requirement approved by the Planning Commission and showed the recorded map. There is an easement pursuant to the Parcel Map for the unsurveyed remainder for maintenance and repair. He said that Mr. Sabanovich has approval from adjacent property owners for a 30 foot access easement to Kellems Lane. He said that fire protection was provided by Scott Valley Fire and there is an easement that is granted to Scott Valley Fire for fire protection services. He said that no comments were received from the adjacent property owners, and no objection to the parcel map amendment was received from Environmental Health, though they said that the applicants may need a new site evaluation. Mr. Dveris said that he had gone out to the project site with representatives from California Fish and Wildlife and Mark Chaney, project representative. He informed the Commission that the determination by Fish and Wildlife was that removal of the setback requirement would not significantly impact wildlife resources and there would be no need for a streambed alteration agreement. He said that they determined that the reservoir is an artificial feature and the water source is a water ditch.

Staff found a provision that allows modification of a parcel map when the changes and circumstances at the site make the conditions that were applicable no longer necessary and set the project for public hearing. Mr. Dveris showed the regulatory authority.

Mr. Dveris said that the project was consistent with the General Plan and with zoning and said that the zoning allows the proposed use. He said that it was Mitigation Measure 5 that has the setback requirement to reduce erosion impacts. He said that staff has prepared an addendum

to the Mitigated Negative Declaration that contains the Fish and Wildlife determination. He added that Planning is recommending the removal of the mitigation measure and the 75 foot setback on the recorded map. He informed the Commission that staff was recommending that the Planning Commission approve the project, amend the Tentative Parcel Map and approve the addendum to the mitigation measure to remove the 75 foot setback for the reservoir.

Questions for staff: Chair Melo Commented on the letter from Larry Alexander of Resource Management in Exhibit E regarding a site visit done back in March 2017, and that Mr. Alexander determined that pond is not a wetland, and asked what held up the project. Mr. Dveris explained that it was the first thing staff requested the applicant to do, and it was clear the applicant wanted to explore options other than a new tentative Parcel Map. He said that Public Works had found sufficient justification to amend the Tentative Parcel Map. Staff decided to choose the middle ground and amend the Tentative Parcel Map.

Chair Melo said that if a man-made reservoir or pond is constructed, then the adjacent properties cannot be called a wetland. Commissioner Fowle commented that the hole in the project was that the Army Corps of Engineers had no part in the project, and he was concerned that the Army Corps has not weighed in on the project as that could be a danger to the applicant. He explained that where the applicant wanted to build has been determined to be a wetland, and there is a potential risk for the applicant. He said it would be better to make sure that the Army Corps of Engineers has approved the project. Chair Melo commented that it was mentioned twice in the staff report that even though given the opportunity, the Army Corps of Engineers has not commented.

AGENCY INPUT: None

Chair Melo opened the Public Hearing.

PUBLIC INPUT:

Mark Chaney, from SHN Engineers and representative on the project, came forward to the microphone. He said that the comment about the Clean Water Act is important. He said that the reservoir is off-channel because it has intake and outtake structures and the water intake is from a ditch, so it clearly meets the definition as a regulated structure. He said that the levee is not large enough to be a dam; it's not a pond or a natural feature. He said the building site is on the road and the Geotechnical Engineer stated that there was no impact to the reservoir. He said that the reservoir is clearly an engineered reservoir and there is no regulated stream coming into it. He said that the vegetation, soils and underground flows do not meet any criteria of the Army Corps of Engineers, and the project does not meet the definition of waters of the U.S. under the Federal Code. He explained that the Federal Code states that artificially constructed structures, such as this reservoir on dry land are not considered other waters of the U.S. He said that the Army Corps has the ability to look at wetlands as other waters of the U.S., but for this property, the Army Corps has no jurisdiction. He informed the Commission that he had made a personal visit to the Army Corps, had called them, and sent letters, but there has been no response.

Commissioner Fowle asked Mr. Chaney if he was trying to reach a particular person. Mr. Chaney responded that he has two contacts at the Army Corps, but there has been no response from either person. Commissioner Fowle and Chair Melo asked if the fact that the Army Corps

did not respond have any bearing on whether they would take jurisdiction or not. Mr. Chaney responded that the level of effort and the steps taken unilaterally to determine if the Army Corps had jurisdiction, would have a bearing because they went through the Army Corps' criteria to determine there was no jurisdiction. He added that the fact that they met with Fish and Wildlife would also be factored in. He said that the process followed would make it difficult for the Army Corps to come back because of the multiple steps taken and that a reasonable effort was made to determine that there was no wetland. He said that it would be tough for the Army Corps to come back claiming jurisdiction. Commissioner Fowle confirmed with the applicants that they were comfortable moving forward.

There being no further input, the Chair closed the Public Hearing.

Discussion by Commission: None

MOTION: Following discussion, it was moved by Commissioner Fowle, seconded by Commissioner Veale to adopt Resolution PC-2017-007 attached hereto and incorporated by reference approving a parcel map amendment (TPM-05-02-1M) subject to the findings in Exhibit A and the notations and conditions of approval listed in Exhibit B-1

VOTED upon and the Chair declared the motion carried unanimously.

Mr. James Byrne asked if he would be able to comment. Deputy County Counsel Barton suggested that the Chair could re-open the "Unscheduled Appearances" agenda item to allow Mr. Byrne to comment. Chair Melo re-opened Item 4 "Unscheduled Appearances" on the Agenda and called Mr. Byrne to the microphone. Chair Melo informed Mr. Byrne that he had 5 minutes in which to comment

Mr. Byrne came forward to the microphone and stated that he was responding to a complaint, code enforcement action and citations. Mr. Byrne read an open letter to the Commission.

MISCELLANEOUS:

1. **FUTURE MEETINGS** - The next regular meeting of the Planning Commission is scheduled for Wednesday, January 17, 2017.
2. **CORRESPONDENCE:** None
3. **STAFF AND COMMISSION COMMENTS**

Ms. Cummings Dawson reviewed the two Technical Advisory Committees formed by the Planning Commission. She said that the Notice of Vacancy for the two Technical Advisory Committees has been published in the Siskiyou Daily News with a response date of January 8, 2018. She said that Planning should have a list of interested people for appointment to the Technical Advisory Committees at the Commission's January meeting.

In response to a question from Commissioner Hart, Ms. Barton stated that the County has the authority to rezone property, and cautioned not to speculate on a specific project or proposal.

Commissioner Hart asked Mr. Chaney to return to the microphone and asked him about the Army Corps' jurisdiction over wetlands particularly over ditches not under the Clean Water Act. Mr. Chaney responded that the Army Corps has been inconsistent on how they handle this situation with wide variance between various staff member and districts on how they do that. Mr. Chaney mentioned several projects with different situations and the determinations by the Army Corps of Engineers. He said that with regard to ditches, the Army Corps has not regulated them in terms of calling them other waters of the U.S. He gave examples and described the interaction with the Army Corps. He explained that there are definitions in the Code of Federal Regulations and some of the ditches are not regulated. He said that wetlands and meadow complex are areas that are conducive to wetland designations. He added that the Army Corps is trying to go back to those areas that used to be wetlands and are trying to call them wetlands again and claiming a historic use. Mr. Chaney said that his point is that in pushing back on the Army Corps, you need to provide as much science as you can and ask questions. Mr. Chaney admitted that the Army Corps had been inconsistent in their determinations from jurisdiction to jurisdiction.

Mr. Dveris responded to a prior question from the Commission regarding Williamson Act contracted lands and property owners ceasing cultivation activities on land under contract. He said that there are provisions in the Williamson Act for Open Space, and one could qualify under these even if not using the land for agriculture. He added that getting out of a Williamson Act Contract required a Notice of Nonrenewal. Commissioner Fowle asked how they could qualify under open space provisions with no agriculture at all.

Commissioner Fowle commented that people had approached him asking about the proposed truck stop west of I-5 in the area of Weed, and wanted to know if it was in the incorporated area of Weed or in the County. Commissioner Lindler explained where the project is located, and that ingress and egress is a problem as they are using a private road. Ms. Cummings Dawson said that she believes the project is in the City of Weed.

Commissioner Fowle said that he had constituents who were concerned about staff's interpretation of the county code under allowable uses for AG-1 and AG-2 especially regarding accessory uses incidental to agriculture, and when the county code requires a conditional use permit for sheds, storage, and repair servicing of equipment. He asked how the decision is made by staff and when a use permit is required. Ms. Cummings Dawson responded that staff would have to research this question to find out why this is happening and what is in the code. Commissioner Fowle said that constituents have gone in and were getting building permits without a use permit, but now they are being told that they have to get a use permit. He added that with the two Technical Advisory Committees, this is a question that needs clarification.

Commissioner Veale asked if the matter with Mr. Cowley had been resolved. Mr. Dveris responded that he understood that there would be a variance required.

A brief discussion was held regarding carbon easements in timberland and land zoned TP. Ms. Barton advised that it was best not to speculate.

Commissioner Fowle asked about a property that had towing and auto repair and remarked that there had been an exponential growth and that the number of cars was multiplying and extended down the street on both sides. Ms. Cummings Dawson responded that she believes that there are some code enforcement matters on that property.

In response to a question from Commissioner Fowle regarding the unscheduled appearance gentleman who spoke before the Commission, Ms. Cumming Dawson explained that the matter is being worked on.

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,



Christy Cummings Dawson
Secretary

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