

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

March 9, 2017

Commission Members

P John Hess, District I
P Bob Malley, District II
A Eddie Crandall, District III
A Matt Levesque, District IV
P Daniel Suenram, District V

Staff Members

P Robert Massarelli, CDD Director
P Michalyn DelValle, Principal Planner
P Shanda Harry, Deputy County Counsel
P Danae Bowen, Office Assistant III

9:04 a.m. CALL TO ORDER

Pledge of Allegiance was led by Bob Malley.

Comm. Suenram moved, 2nd by Comm. Hess John to approve the minutes from January 26, 2017.

9:05a.m. CITIZEN'S INPUT – None

9:05 a.m. Public Hearing on consideration of a General Plan Conformity Report (GPC 17-02). The project applicant is LAKE COUNTY WATERSHED PROTECTION DISTRICT proposing to modify the primary spillway on Highland Creek Dam to allow more water storage recharge in spring and fall months and to supplement spring flow to create an improved spawning and rearing condition for the Clear Lake Hitch in Adobe Creek. The project is located at 3600 E. Highland Springs Road, Kelseyville and further described as 007-043-01. (Peggy Barthel)

Peggy Barthel, Resource Planner, provided background information on the project application. She said based on comments from the California Department of Fish and Wildlife, staff realized that there are possibly some significant edits that will need to be made to the CEQA document, so staff is asking for a continuance of this item, so that more biological surveys can be prepared and update the CEQA document. She said she did not know how long it will take, so staff will recirculate the project when they are ready.

9:08 a.m. Opened Public Hearing

Judith Mitchell, owner of property east of the dam, said Highland Creek flows all the way through her property. She said her concern is that there was a rainstorm in 1988, that produced 13 inches of rain overnight and she was told by Water Resources that the water level in the reservoir, came up to within five-feet of breaching the dam with everything wide open. Her concern is if the water level is seven feet higher, that could have breached the dam, and her property would be ruined. She wanted to make sure that the safety of the spillway situation will be looked into.

Comm. Malley said he will see that staff gets her name to for discussion.

Mike Shaver, Robinson Rancheria Environmental Director, said that they would like to participate in commenting on the project before it is finalized. He said the tribe supports any improvements that they may be doing.

Sarah Ryan, Big Valley Band of Pomo Indians Environmental Director, said that they were in favor of a later discharge of water into Adobe Creek and they are in favor of this project as long as it does not have any other environmental impacts.

9:13 a.m. Closed Public Hearing

Comm. Malley confirmed that this item will be continued at a later date.

9:16 a.m. Public Hearing on consideration of an Administrative Appeal (AA 16-02) for Categorical Exemption (CE 16-64). The project applicant is DIANA CHIEN-LEVALLEY proposing the removal of existing boating facilities and the construction of a five-foot by two-hundred foot walkway, a fifteen and one-half foot by twenty-nine foot covered boat lift and a twenty-four foot by twenty-four foot sitting pavilion, floating dock, and twenty-one new pilings. The project is located at 6460 Soda Bay Drive, Kelseyville and further described as APN 044-030-01 (Keith Gronendyke)

Keith Gronendyke, Associate Planner, provided background information and a power point presentation of the project application.

Phil Moy, Water resources Director, said that he submitted a Memo on March 6, 2017, outlining concerns raised by the California Department of Fish and Wildlife about the potential impacts to the Clear Lake Hitch, not only with this project, but with other potential projects in the area. He said Water Resources did not agree with staff's determination for a Categorical Exemption and Water Resources did not issue a permit for this proposed project.

Comm. Malley asked if this project was to move forward, would Water Resources require a CEQA Initial Study.

Mr. Moy said yes, and there is a broader import to this. He said the letter that was sent from Fish and Wildlife applies not only private projects around the lake, but any other projects the County may wish to undertake. He said their concern is to basically ignore this request from Fish and Wildlife; as this could adversely impact Water Resources relationship with the Fish and Wildlife Department.

Mr. Gronendyke said the previous Director of Water Resources, Scott DeLeon was the person most involved in this project, and the Categorical Exemption was approved in October 2016 by Mr. DeLeon. He said staff relied on that interpretation.

Comm. Hess asked if the Water Resources Department felt that the issues regarding the Clear Lake Hitch can be adequately addressed and mitigated in the course of the CEQA process.

Mr. Moy said an initial study would take into account the potential impacts or the project to Clear Lake Hitch spawning and it could possibly be mitigated through a different construction season or other mitigation measures that might be deemed effective by the Fish and Wildlife Department.

Comm. Malley asked staff if they believed that the categorical exemption decision, which was made in November, is the correct decision or should it be reevaluated to require an Initial Study.

Mr. Gronendyke said what staff was recommending previously, is a Categorical Exemption #2 and that it would still apply.

Mr. Moy said considering the size difference between the proposed structure and the existing structure, he does not personally view this as a simple reconstruction and it looks like there is a significant increase in size. He said Water Resources would prefer to have further consultation with the Planning Department before a Categorical Exemption is approved.

Mr. Gronendyke confirmed that there will be twenty-one new pilings driven in to Clear Lake.

Comm. Malley asked if the exemption was approved in November 2016 and the State was notified right away that we had given the approval.

Mr. Gronendyke said that CEQA guidelines do not actually require categorical exemptions to be posted, but the County posts them anyway. He said as an alternative the Planning Commission can uphold the appeal and require the applicant to conduct an Initial Study. He said there are separate motions for granting the appeal and requiring an Initial Study included in the staff report.

Ms. DelValle said the State was not notified of the exemption.

Comm. Malley said looking at this from the outside, he is seeing that the State is coming to the table after the fact, but they found out about it after the fact. He said we are talking about something that was approved four months ago and asked if we were here today to discuss and decide whether they made the right decision in November for the CEQA.

Shanda Harry, Deputy County Counsel, said this is an appeal based on what was done in November. She said what has happened in the interim is there is a new Water Resources Director who has a different take on the situation on whether a categorical exemption was appropriate, so we are actually dealing with what happened in November. She added that the letter from the Department of Fish and Wildlife came to the office on October 27, 2016 for the November action.

Comm. Malley said the decision was made by Scott DeLeon, who recommended that this project be granted a categorical exemption.

Comm. Hess said Mr. Moy made reference to possible impacts on other projects and related issues, and could he describe some of those concerns or issues that might be identified.

Mr. Moy said the concerns from the Department are; if this letter is ignored, which does not only pertain to this project, but to other potential projects within the County, it could strain relationships with the Department of Fish and Wildlife and how they view the permitting and initial investigation process with other proposed Water Resource projects.

9:35 a.m. Opened Public Hearing

Lauri Dohring, property owner of five high end rental homes and President of the Bell Haven Homeowners Association, said she wants to bring the dock up to the same high end standards as her rental homes. She submitted a booklet to the Commissioners with information on what is occurring between Ms. Chien-LeValley and herself. She reviewed information that was submitted: Dock permits, insurance claim, exposed fiberglass, a Judge's decision pertaining to a lawsuit brought by Chein LeValley against herself and her offers to buyout Ms. Chien Le-Valley. She said that the Bell Haven Homeowner's Association's request to replace the existing dock is legitimate and should be approved.

Diane Chien-LeValley, project appellant and owner of Kingfisher, one of the six cottages in Bell Haven Resort and a member of the Bell Haven Homeowners Association, addressed the current dock facilities. She said she is here to appeal the Categorical Exemption for the following reasons: The proposed dock is 250 feet in total length, which exceeds the Shoreline Ordinance by 150 feet and exceeds the current dock, which is 170 feet by 80 feet. She said this project includes 21 new pilings to be driven into the lake, which would require a variance from the Shoreline Ordinance and this project is not qualified for a Category 2 Exemption from CEQA. Ms. Chien-LeValley passed out documents for the Planning Commissions review. She said Ms. Dohring is trying to

improve the common area and dock and the total special assessment was \$791,493 and her portion of that was \$113,000.

Steve Wunderich, Architect Designer for the dock, said that he has worked for the Dohring's for fifteen years. He said they have redesigned the cabins, cottages and main house and now are in the process of redesigning the dock and have had many meetings with County Staff discussing this project proposal. He pointed out that this was all approved by Scott DeLeon and they have followed the process that the County has set forth. He said the current dock is falling apart and it is unsafe. He said they have obtained all of the permits and urged the Commission to allow the Dohrings to proceed with the development of the dock.

Ms. Dohring submitted a petition to the Commission, of persons who are in support of the dock being built.

Evonne Landwehr, Realtor, spoke to the value of this property and said that the County needs more of this type of property to bring people to Lake County. She said this proposed dock fits in with the rest of the improvements that Ms. Dohring has already completed and she is planning on using this property for events. She asked that the Planning Commission deny the appeal.

Sarah Ryan, Environmental Director of Big Valley Band of Pomo Indians, said the appeal makes sense to her and CEQA exists to limit the impact of actions on the environment. She thought that the Categorical Exclusion, based on her own experience with doing environmental reviews is needed. She said with putting twenty-one new pilings into the lake there will be turbidity and felt that it is not appropriate to call this a categorical exemption, where you should have introduced mitigation measures and she was shocked to see that it was approved last fall, despite Fish and Wildlife saying that there is a listed species of Clear Lake Hitch that have to be factored in. She said to move forward with this and not require a simple Initial Study, where the projects are evaluated for impacts is foolhardy at this point, especially when a state agency stated that there are some things that need to be done. She said it makes sense to evaluate the project to make sure that everything that can be done to protect the Clear Lake Hitch is done according to state law and that is why CEQA exists and that is why the Department of Fish and Wildlife got involved and sent a letter. She said that the Community Development Department said that they did not need to do any additional environmental review and she felt that was an inappropriate response. She said that the Planning Commission are the keepers of CEQA and have to do the right thing and allow the Initial Study to occur, because that will mean that things will be done properly.

Mark Borghesani, Kelseyville Lumber owner, said he supports the project and he is opposed to the appeal.

Mark Tanti, Clear Lake Marine Construction, said as a marine contractor he is concerned with the direction of this process. He said the lake is the biggest draw Lake County has to this community. He asked that this appeal be denied.

Chuck Sturges, neighbor to the east of Bell Haven, said they live right next door to this project site and he said it is going to be a huge obstruction and felt it will impact their view and quality of life. He read a letter into the record and was concerned with the approval of this project. He shared his concerns with the 576 square foot proposed roofed sitting pavilion extending approximately 250 feet into the lake, which is 82 feet beyond the traditional building limits set by the County. He said this structure would be 125 square feet greater than his living room and dining area combined. He also shared his concerns with tulles and willows being protected along the shoreline.

Joan Sturges, neighbor right next door to proposed project, submitted a picture of her view of the lake and where the dock is being proposed. She said when you start building out, you are basically paving the lake and the building limits and restrictions are in place for a good reason. She said they are going to be building a structure on the end of the dock almost the size of her house. She said she does not see the reason for it and is opposed to this dock being built.

Laurel Ulbrick, property owner a few doors down from the proposed project, said she is here in support of the project and denial of the appeal.

Ken McPherson, owner of Edgewater Resort, said that this will impact the lake and the enjoyment of the thousands of people that he brings in per year to the Edgewater resort, all of them who are paying TOT taxes. He said this dock is being substantially lengthened and would like clarity on the proposed project.

Comm. Malley said the testimony has been that they have scaled back the project during the early months of negotiations and they are not going further beyond the existing facilities that is there now.

Mr. McPherson asked if the end of the pier will be equal to the exterior edge of the pavilion or does the dock termination then the pavilion stretches out further?

Comm. Malley said the pavilion will not go past the end of the existing float.

Mr. McPherson said until today he was unaware of the potential environmental impacts on this project. He said that Edgewater Resort relies on fishermen, because approximately 50% of the people who stay at his resort go out on their docks or on boats to fish, which concerns him greatly. He said if it is a question of taking a few more months to determine those potential environmental impacts, he asked that the time should be taken. He said a roofed pavilion will negatively impact the view from his resort and does not want the view obscured.

Ms. Dohring read a letter into the record from Pacific Coast Fish Wildlife Wetlands Restoration Association. She said that this is a non-profit company that restores fish habitat throughout all of Northern California. She said she contacted this association to conduct a review and access and identify native fish and wildlife habitat on the property.

Ms. Ryan said there is an error in the report that Ms. Dohring read, and said that they mention the Clear Lake Hitch and the spawning in January and February. She said it sounds to her that they are not aware that the spawning occurs in the creeks in February, March and April. She said the issue is more of what happens in the spring and summer months on the shoreline and there are Clear Lake Hitch in that part of the lake where this dock is being proposed. She said to say there is a mitigation measure, because they are not going to be doing the work in January and February and that will protect the Clear Lake Hitch, is not a correct assumption, because during those months the Clear Lake Hitch are heading towards the mouth of the creeks.

Mr. Sturges said Fish and Wildlife told him if he went by all the mitigating procedures, he could not drive pilings between January and June.

Ms. Dohring said she is currently reviewing with this company she contacted, if the project would even meet the minimum threshold of what would be required from the Department of Fish and Wildlife and filing a 1600 Lake or Streambed Alteration Agreement. She said it is ongoing and does not have anything to do with the permit process.

Mr. Wunderlick spoke to the size and scale of the dock and said the tulles will not be impacted.

11:00 a.m. Closed Public Hearing

Shanda Harry, Deputy County Counsel, pointed out the number of Commissioner's in attendance today, and that any decision made today would have to be unanimous.

Comm. Hess said that he liked the project and understood the points about the nature of the lake. He said their job as Commissioners, is not to adjudicate financial disputes between property owners, and although it was passionate testimony, it is irrelevant to the work of this Commission. He said he is prepared to vote for the proposed motion today of denying the appeal.

Comm. Suenram understood the reasons to extend out from the shoreline in Soda Bay, and how it can be extremely difficult to get into any docks in late summer, because of low water levels. He felt that visitors who come into the area do not necessarily respect the environmental aspects of the lake as much of those of us who reside here. He said any measures we can take as responsible property owners to mitigate those issues down the road is an important factor to consider. He said this is a project that should go forward and the decision that was previously made should be upheld and the appeal should be denied.

Comm. Malley said he is of the same opinion as the other Commissioners. He asked staff about the Class 2 exemption from CEQA and the replacement or reconstruction of existing structures and facilities where the new structures will be located will have substantially the same purpose and capacity as the structure replaced. He asked if staff

could explain how adding the pavilion, a boat launch and a boat lift, does not add to capacity.

Mr. Gronendyke said it would add some capacity, but essentially the same uses will be performed as previous.

Comm. Malley said changing the appearance and possibly the ability to have more people out on the dock at the same time, still falls under this exemption.

Mr. Gronendyke said yes, that is what he would determine.

Comm. Malley said he is also of the opinion that the appeal should be denied, simply because he did not think a full CEQA is called for in this situation and he understands the zeal to protect the Clear Lake Hitch and the environment.

Comm. Hess moved, 2nd by Comm. Suenram that the Planning Commission deny the administrative appeal, AA 16-02, of the approval of Categorical Exemption, CE 16-64 with the findings listed in the staff report dated February 27, 2017.

APPEAL DENIAL 3 Ayes 0 Noes 2 Absent (Comm. Crandell and Levesque)

Comm. Malley noted that there is a seven (7) calendar day appeal period provided by the Lake County Zoning Ordinance.

ADJOURNED 11:10 a.m.

Bob Malley, Chair
Lake County Planning Commission

Respectfully Submitted,

By: _____
Danae Bowen
Office Assistant III