



MENDOCINO COUNTY PLANNING COMMISSION

MINUTES FOR THE MEETING HELD ON: August 21, 2008

LOCATION: Mendocino County Board of Supervisors Chambers
501 Low Gap Road, Room 1070
Ukiah, California

COMMISSIONERS PRESENT: Little, Calvert, Nelson, Moser, Warner

COMMISSIONERS ABSENT: None.

PLANNING & BLDG SVC STAFF PRESENT: Raymond Hall, Director
Frank Lynch, Chief Planner
Dusty Duley, Planner II
Adrienne Thompson, Commissioner Services Supervisor

OTHER COUNTY DEPARTMENTS PRESENT: Frank Zotter, Deputy County Counsel
Tom Peters, Department of Transportation

1. **Roll Call.**

The meeting was called to order at 9:00 a.m. Commissioner Warner arrived at 9:04 am.

2. **Determination of Legal Notice.**

Adrienne Thompson advised the Commission that all items have been properly noticed.

3. **Director's Report and Miscellaneous.**

Mr. Hall discussed the Director's Report that had been distributed to the Commission. He noted Angie Hamilton, Code Enforcement Officer, had been transferred to Fort Bragg on a full time basis and Planner, Neal Leitner had accepted a job in New Jersey and Susan Decker had been hired as extra help. He noted the Board of Supervisors had heard the Wood appeal (CDP 60-2007) concerning a wind turbine and its danger to wildlife, birds more specifically. He noted the Board was split 2-2 in their vote, thus the CPA action approving the project would stand. He discussed several big projects in process including the Granite Construction Company Terrace Mining project, noted the Harris Quarry EIR required additional information regarding a Class 3 stream that would require a culvert and that there was a greater amount of truck traffic than previously estimated at the site. Mr. Hall discussed a TPZ conversion proposal in Sonoma County near the town of Gualala to rezone and convert 1,671 acres of TPZ land to vineyard. He noted several bills continued to move forward regarding fire safety including SB1500. He also commented on an agency action by the State Department of Housing and Community Development advocating emergency provisions for fire resistant construction standards requiring manufactured/modular homes to meet current building code standards if the property is located in the SRA. He noted the regulations could be in effect as early as September 1, 2008 and could have the greatest impact on individuals that wished to buy a used manufactured home or on those individuals trying to sell an older home that was not compliant with fire resistant standards.

4. **Consent Calendar.**

(During discussion by the Commission this item was moved to the Regular Calendar).

4a. **CASE#: UM 27-2003/2008**

DATE FILED: 4/16/2008

OWNER: CHARLES GUNTLY

APPLICANT: US CELLULAR

AGENT: ALLEN POTTER/ EAGLE CONSULTING

REQUEST: Use Permit Modification to allow for the addition of a 6 foot diameter microwave dish at the 40 foot level of an existing 150 foot tall steel lattice tower.

LOCATION: 9.5+/- miles northeast of Ukiah, lying 0.66+/- miles north of Highway 20 on a mountain peak within Guntly Ranch lying 3.75+/- east of the Highway 20 and East Side Potter Valley Road (CR# 240) intersection, located at 6100 East Side Potter Valley Road; AP# 177-270-32.

PROJECT COORDINATOR: DUSTY DULEY

Chairman Little commented under aesthetics that the site was in a very isolated location, however Condition #6 stated warning signs should be placed in the least visible location.

Mr. Duley noted it was standard condition language from the Wireless Guidelines.

Chairman Little felt the termination date of the modification should correspond with termination date of the original use permit for the tower.

Mr. Lynch noted the tower was built prior to Wireless Guidelines or use permit standards.

Chairman Little noted the item would need to be removed from the Consent Calendar to make any changes to the conditions of approval.

Commissioner Nelson made a motion to remove UM 27-2003/2008 from the Consent Calendar, seconded by Commissioner Warner and carried by a voice vote of (5-0), it is ordered to remove UM 27-2003/2008 from the Consent Calendar and continue the discussion under the Regular Calendar.

Chairman Little asked if Condition #19 should be changed so that both the Use Permit and Modification would expire on the same date.

Mr. Lynch noted either date could be used, that of the original use permit expiration in 2014 or the date on Condition # 19 in the staff report of August 21, 2008.

Chairman Little asked if the applicant had a preference as to which expiration date was used on Condition #19.

Allen Potter, agent, preferred Condition #19 as the language was presented by staff and suggested ten years from the current date (8-21-08) as a universal expiration date.

The public hearing was declared open, seeing no one come forward, the public hearing was declared closed.

Commissioner Moser made a motion to approve UM 27-2003/2008 and change all expiration dates to August 21, 2018 for the Modification and Use Permit applications, seconded by Commissioner Nelson.

Commissioner Calvert was confused as to which date was being utilized on Condition # 19.

The Commission and staff discussed the date from the motion and agreed all permits would expire ten years from August 21, 2008, thus Condition #19 would remain unchanged.

Upon motion by Commissioner Moser, seconded by Commissioner Nelson and carried by the following roll call vote, IT IS ORDERED to approve UM 27-2003/2008 per the findings and conditions of approval contained in the staff report on pages PC 4 through PC 6, noting that the previous Use Permit and Modification shall expire concurrent with the date on Condition #19 of August 21, 2018.

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The project is Categorically Exempt from CEQA, Class 1b.

Project Findings: The Planning Commission approves #UM 27-2003/2008 subject to the conditions of approval recommended by staff further finding:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.
3. That such use preserves the integrity of the zoning district.

RECOMMENDED CONDITIONS OF APPROVAL:

1. Generators shall be equipped with mufflers and spark arresters, and shall not produce noise levels exceeding 50 decibels at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency uses are not included in this limitation.
2. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site, and shall be turned off except when in use by facility personnel.
3. No work shall be performed within the County road right-of-way without specific approval and issuance of an encroachment permit from the County Department of Transportation.
4. Exterior surfaces of antennas shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
5. Existing trees and other vegetation, which provide screening for the facility and associated access roads, shall be protected from damage. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.
6. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower. All signage shall be located and designed to have the least visual impact possible. The intent is that Federal safety requirements will be met with the least visual impact from public locations.
7. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.
8. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of the facility and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of the antennas and restoration of the site.

9. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
10. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site. If requested, public agencies shall be permitted to co-locate their facilities.
11. Prior to the final inspection by the Building Division of the Department of Planning and Building Services, an identification sign for each company responsible for operation and maintenance of facilities at the site, no larger than one square foot, shall be mounted on an exterior wall in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall be posted.
12. The antennas and supporting structure shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
13. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. The application along with supplemental exhibits and related material shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless the Planning Commission has approved a modification.
16. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
17. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

18. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
19. This permit is issued for a period of ten years and shall expire on August 21, 2018. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide a notice prior to the expiration date.
20. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within two years shall result in the automatic expiration of this permit.

21. The facility shall provide, if requested, space for any emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.

AYES: Little, Calvert, Moser, Nelson, and Warner
NOES: None
ABSENT: None

5. **Regular Calendar.**

5a. **CASE#: UM 19-97/2008**

DATE FILED: 5/21/2008

OWNER: THERON PETERSON, TRUSTEE

APPLICANT: ALLEN FINK, ON AIR LLC-VERIZON WIRELESS

AGENT: ALLEN FINK, ON AIR LLC

REQUEST: Use Permit Modification to allow for the addition of twelve panel antennas and a microwave dish to an existing 150 foot tall tower and placement of a 60-kilowatt diesel generator, a 210-gallon diesel tank and a 12 foot by 20 foot equipment shelter within the 800 square foot leased area.

LOCATION: Approximately 2+/- miles west of Leggett, accessed from Page and Gates Road (private), located 2+/- miles west of the Highway 1 and Highway 101 intersection, situated at 68170 Page and Gates Road; AP# 012-530-19.

PROJECT COORDINATOR: DUSTY DULEY

Mr. Dusty Duley, Project Coordinator, reviewed the staff report and noted the location of the twelve antennas at the one hundred twenty foot level of the tower with ground based equipment. He noted access to the site was by some private roads shared by neighboring properties. He noted there were approximately ten property owners used a portion of the private roads and noted Condition #7 requiring preassessment of the road by a civil engineer. Mr. Duley stated aesthetics was the primary concern with cell towers and noted the tower would be visible on its ridge top location, however he felt the impact would not be significant and preferred collocation rather than building a new tower elsewhere. He noted the expiration date for the permit could be changed to August 21, 2018 to be consistent with the previous application and have the same expiration dates for all permits. He also noted several letters had been received from adjacent property owners that were concerned with the use of the roads as they are in poor condition.

Commissioner Calvert noted Verizon was her cell carrier.

Allen Fink, agent, noted he had questions on several conditions, but agreed Condition #7 would be adequate to handle the road. He noted Condition #8 required an encroachment permit for utilities, however utilities were already at the site, and the condition was not necessary. He felt Condition #9 and Condition #16 should be deleted since Verizon did not own the tower.

Chairman Little asked if Mr. Fink had received a copy of the letters from the adjacent owners.

Mr. Fink stated he had received copies and noted the damage to the roads had been caused by logging truck from the Mendocino Redwood Company.

Chairman Little noted road use has been a substantial issue and has been contentious on several occasion.

Mr. Fink stated Verizon would have a civil engineer document the status of the road and would repair any damage caused by Verizon.

Commissioner Warner referenced the letter from Edward Lasker, and asked if Verizon was seeking permanent use of the road.

Mr. Fink commented the easement originated in 1897 and provided access to the landlords (Theron Peterson) property. He noted he had read Mr. Lasker's letter, but was not aware of the \$200 lease deal.

Commissioner Calvert asked about the schedule for diesel deliveries.

Mr. Fink noted diesel would be delivered quarterly, unless there was a major power outage.

The public hearing was declared open.

Edward Lasker, adjacent landowner, noted he was speaking for himself and several other property owners that could not be present including Steven Day, David Hennessey. He read a letter from **Steven Day**, which was distributed to the Commission, stating that Verizon did not have an agreement with the landowners to use the front portion of Page & Gates Road, the fuel tank was not adequate for power outage, and requested the Commission stay the vote until negotiations could be completed. Mr. Lasker read the letter from **David Hennessey**, which was distributed to the Commission, stating he opposed adding a diesel generator to the area for fire safety and road maintenance issues. Mr. Lasker was gravely concerned with the potential fire safety at the site, and Mr. Lasker, Mr. Day, and Mr. Hennessey felt Verizon should contribute to the ongoing road maintenance.

Chairman Little asked Mr. Lasker if US Cellular had an easement to the tower.

Mr. Lasker stated he had not seen any record of an easement on his deed and noted the MRC logging trucks used roads on their own property to access the logging sites and not Page & Gates Road.

The public hearing was declared closed.

Commissioner Warner noted she was confused by the numerous easements and asked if they would show on a title report.

Mr. Lynch stated the property owner has the easement and typically will assign the right to cell companies to use the existing easement. He stated the landowner was "subleasing" his easement to the carrier.

Commissioner Warner commented the use of the road should not be major and asked staff if there was estimate as to the number of trips normally made by cell companies.

Mr. Lynch stated on average there were two trips per month.

Commissioner Warner felt it made sense for Verizon to contribute something to the ongoing road maintenance, but was not sure if the Commission had set an amount in the past when damage was not associated with the fee.

Mr. Lynch noted the Commission had not set an amount before, but encouraged cell providers to contact road associations to discuss payment. He noted staff has commented to providers that access has been problematic in the past and left it to them to resolve the issue.

Commissioner Warner asked how the size of the diesel tank was calculated.

Mr. Fink gave Mr. Lynch a copy of a title report verifying the right to the easement of the road to 1898 and discussed how the size of the fuel tank was derived. He noted the tank was estimated to run for approximately one week without refueling. He also noted the leased area in the US Cellular compound was a gravel space, approximately five to seven feet in diameter.

Commissioner Warner asked staff if diesel tanks were required to meet fire standards and their thoughts on the applicant's request to delete Conditions #8, #9 and #16.

Mr. Duley noted staff had no objection to deleting Condition #8, however Condition #9 and #16 were not part of the previous use permit and staff would prefer to keep those conditions.

Mr. Lynch stated the entitlement applied to the land and not Verizon thus an encroachment permit be provided from the landowner and was a valid condition to the use permit.

Chairman Little asked if the original use permit had a condition related to PRC 4290 regulations.

Mr. Lynch noted the tower was established prior to the permitting process and does not have a condition related to 4290 regulations. He also noted during the modification hearing in 2003, there was no public comment from neighbors regarding access easements.

Chairman Little felt it would be appropriate to include a condition regarding PRC 4290.

Commissioner Calvert was still concerned with the road issue and noted during an emergency when the diesel truck would refill the tank would be when the road was its softest. She agreed with Commissioner Warner that Verizon should contribute to road maintenance, but had no suggestions as to how to craft the condition.

Commissioner Warner asked the Commission's authority to require the organization of a road association.

Mr. Lynch did not think the Commission could require the creation of a road association. He noted in the past the Commission has requested a provider contact all property owners in an attempt to work out an agreement and in good faith contribute to road maintenance operations, but could not require an agreement be made.

Frank Zotter, County Counsel, agreed the Commission could not impose a condition requiring Verizon to acquire all of the property owners signature as part of the modification. He stated the road maintenance issues would be a civil matter and was beyond the Commission's expertise and resources. He felt the Commission should analyze the land use issue and seek other remedies.

Commissioner Moser suggested the Commission could encourage the formation of a road association by formalizing strong language to convince the landowner to establish an association.

Commissioner Nelson asked Mr. Zotter if there was an existing road association, could the Commission require both Verizon and US Cellular to contribute to the maintenance of the road?

Mr. Zotter stated if there was an existing road association, the Commission could condition a percentage to contribute. He also noted a condition could be crafted that if an association was formed in the next six months to one year, etc. an amount could be contributed.

Commissioner Calvert asked if the Commission could use the Porterfield Trust to extract a fee for continued maintenance of the road.

Mr. Zotter noted only the additional impact could be considered for the entitlement and noted the previous case had established an ongoing use, thus the Commission had a narrower right to deny the application.

Commissioner Calvert felt a condition encouraging Verizon to contribute to road maintenance would be a step in the right direction, but was still concerned about the long power outages and the weight of the vehicles traversing softened roads.

Commissioner Warner asked if US Cellular had a generator and required fuel delivered.

Mr. Duley noted US Cellular had a propane generator.

Commissioner Warner noted she thought US Cellular should also contribute to the use of the road.

Chairman Little commented the Commission could ask the companies to consolidate power generators to reduce fuel trips.

Mr. Fink thought it would be feasible for both companies to use the same fuel tank, but would need to discuss it further with US Cellular. He noted a larger generator would be required to handle both sites.

Commissioner Moser noted it might be more efficient to deliver one generator.

Commissioner Nelson noted having two companies work off of one generator could create problems responsibility for maintenance, fuel deliveries, etc. and it might be better to keep two separate generators.

Commissioner Warner thought two conditions should be added; one regarding the formation of a road association and two, adding language regarding the 4290 regulations.

Mr. Lynch provided condition language for the road association stating that: "Should a road maintenance organization be created for the access road serving the facility within the term of this entitlement, the subject property owner's share of total costs of annual maintenance shall consider the added impact caused by the communication facility and its various carriers"; and the second new condition to state that: "The project shall comply with Public Resources Code (PRC) 4290 et. seq, or any successor regulation regarding maintenance of a fire safe facility. Any requirement of a authorized fire agency shall become a condition of this entitlement."

Commissioner Warner commented that collocation was more desirable than construction of an additional tower and noted there would be increased road activity. She encouraged the landowners to form a road maintenance organization and put pressure on the Porterfield Trust to extract compensation.

Upon motion by Commissioner Warner, seconded by Commissioner Moser and carried by the following roll call vote, IT IS ORDERED to approve UM 19-97/2008 per the findings and conditions contained in the staff report on pages PC 4 through PC 7, adding new Condition #27 to state "Should a road maintenance organization be created for the access road serving the facility within the term of this entitlement, the subject property owner's share of total costs of annual maintenance shall consider the added impact caused by the communication facility and its various carriers" and new Condition #28 "The project shall comply with Public Resources Code (PRC) 4290 et. seq, or any successor regulation regarding maintenance of a fire safe facility. Any requirement of a authorized fire agency shall become a condition of this entitlement".

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Planning Commission finds that the project is Categorically Exempt from CEQA, Class 1b.

Project Findings: The Planning Commission approves #UM 19-97/2008 subject to the conditions of approval recommended by staff further finding:

1. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
2. That the proposed use will not constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county.
3. That such use preserves the integrity of the zoning district.

CONDITIONS OF APPROVAL:

1. As soon as practical following completion of any earth disturbance, vegetative ground cover or driveway surfacing equal to or better than existing shall be reestablished on all disturbed portions of the site.
2. Temporary erosion control measures shall be in place at the end of each workday and shall be maintained until permanent protection is established.
3. All grading activities must comply with District Regulation 1 Rule 430 regarding fugitive dust emissions.
4. Prior to the development phase of the project, the applicant shall contact the Mendocino County Air Quality Management District and the County Division of Environmental Health for a determination as to the need for a permit to install the proposed generator.
5. Generators shall be equipped with mufflers and spark arresters and shall not produce noise levels exceeding 50 decibels at the nearest off site residence. Routine testing and maintenance shall be limited to weekdays between 8:30 a.m. and 4:30 p.m. Repairs and emergency uses are not included in this limitation.
6. Exterior light fixtures shall be designed or located so that only reflected, non-glaring light is visible from beyond the immediate vicinity of the site and shall be turned off except when in use by facility personnel.
7. Prior to development of the site, the applicant shall provide to the Department of Planning and Building Services an assessment prepared by a registered civil engineer of the condition of the existing private road, serving the site to provide baseline data on the condition of the road. The assessment may include photos or video but shall include a written narrative to document the road's current status. Any damage to the road associated with construction activity shall be repaired to an "as is" or better condition. Any portion of the roads used solely by the property owner is precluded from the assessment.
8. Prior to any work within State road right-of-way, including the installation of underground utility services, the applicant shall obtain an encroachment permit from the appropriate transportation agency.
9. The facility shall provide, if requested, space for any emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.
10. Exterior surfaces of antennas shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color samples shall be submitted to the Department of Planning and Building for approval.
11. Existing trees and other vegetation, which provide screening for the facility and associated access roads, shall be protected from damage. No trees that provide visual screening of the communications facility shall be removed after project completion except to comply with fire safety regulations or to eliminate safety hazards. Tree trimming shall be limited to the minimum necessary for operation of the facility.
12. One or more warning signs consistent with FCC and ANSI regulations shall be displayed in close proximity to the antenna tower. All signage shall be located and designed to have the least visual impact possible. The intent is that Federal safety requirements will be met with the least visual impact from public locations.
13. If use of any portion of the proposed facility is discontinued for more than one year, all parts of the facility not in use, above grade, shall be completely removed from the site, and the site shall be restored to a natural-appearing condition.

14. Prior to issuance of a building permit, the applicant shall provide an irrevocable letter of credit, bond, certificate of deposit, or other reasonable form of security satisfactory to County Counsel, sufficient to fund the removal of Verizon Wireless' equipment and restoration of the site in the event that the applicant abandons operations or fails to comply with requirements for removal of facilities and restoration of the site.
15. In the event that archaeological resources are encountered on the site, further disturbance in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
16. By commencing work allowed by this permit, the applicant agrees to negotiate in good faith with third parties requesting shared use of the site. If requested, public agencies shall be permitted to co-locate their facilities.
17. Prior to the final inspection by the Building Division, an identification sign for each company responsible for operation and maintenance of facilities at the site, not larger one square foot, shall be mounted on an exterior wall in a location visible when approached from the street, and shall provide the name, address, and emergency telephone number of the responsible companies. The address assigned to the site by the Planning and Building Services Department shall be posted.
18. The antennas and supporting structure shall be inspected every ten years, and following significant storm or seismic events, by a structural engineer licensed in the State of California to assess their structural integrity, and a report of the engineer's findings shall be submitted to the Planning and Building Services Department.
19. Prior to commencement of operations, all surplus construction materials and debris, including cleared vegetation, shall be removed from the site to a proper disposal facility. Thereafter the site shall be kept free of refuse.
20. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
21. The application, along with supplemental exhibits and related material, shall be considered elements of this entitlement and compliance therewith shall be mandatory, unless a modification has been approved by the Planning Commission.
22. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
23. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one or more of the following grounds:
 - a. That the permit was obtained or extended by fraud.
 - b. That one or more of the conditions upon which the permit was granted have been violated.
 - c. That the use for which the permit was granted is conducted in a manner detrimental to the public health, welfare or safety, or is a nuisance.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

24. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.
25. This permit is issued for a period of ten years and shall expire on August 21, 2018. The applicant has the sole responsibility for renewing this permit before the expiration date. The county will not provide

a notice prior to the expiration date.

26. This permit shall become effective after all applicable appeal periods have expired or appeal processes have been exhausted. Failure of the applicant to make use of this permit within two years shall result in the automatic expiration of this permit.
27. Should a road maintenance organization be created for the access road serving the facility within the term of this entitlement, the subject property owner's share of total costs of annual maintenance shall consider the added impact caused by the communication facility and its various carriers.
28. The project shall comply with Public Resources Code (PRC) 4290 et. seq, or any successor regulation regarding maintenance of a fire safe facility. Any requirement of a authorized fire agency shall become a condition of this entitlement.

AYES: Little, Calvert, Moser, Nelson, and Warner
NOES: None
ABSENT: None

[Break 10:09 am-10:15 am]

5b. CASE: #AA 1-2008

OWNER: BRIAN HURT

AGENT: LEW CHICHESTER

REQUEST: Administrative Appeal of a staff determination that the establishment of a shop/office building for a forest management business is not permitted within the Agriculture (AG) zoning district.

LOCATION: 1+- mile south of Covelo town center, lying on the south side of Cemetery Lane, 1/4 mile west of its intersection with Hwy 162

PROJECT COORDINATOR: FRANK LYNCH

Chairman Little noted Mr. Hurt was an acquaintance, but it would not alter his impartial decision.

Commissioner Moser noted Mr. Chichester was an acquaintance, however he could remain impartial.

Mr. Lynch reviewed the staff report and noted appeal stemmed from a building permit to convert an Ag Exempt Barn to an office/maintenance shop for a Timber Management Company on land under a Williamson Act contract. He noted the difficulty was fitting the building into the zoning district because a maintenance shop is not a permitted use in Agriculture zoning. He discussed the two maps distributed to the Commission illustrating the various properties owned by Mr. Hurt and soil types. Mr. Lynch noted the agent had made the argument that the shop provided a centralized location within Mr. Hurt's ownership to store equipment and run his timber management operation.

Chairman Little noted forestry falls under Agriculture zoning thus the timber use was not a problem, but the question would be storing equipment on an agricultural property.

Mr. Lynch noted timber harvesting did not occur on the subject property and the timber management business had employees not related to agricultural uses on the property, making the conversion of the Ag Exempt building inconsistent with the zoning code.

Chairman Little commented that timber production meets the requirements of the Williamson Act and he personally does not feel forestry practices should be separated from agriculture. He felt staff was correct in their analysis of the zoning code and the Commission had the option of liberal translation of the code that staff did not.

Commissioner Calvert noted her first reaction was that timber practices are an Agricultural use and followed the right to farm ordinance. She thought it made sense to have a portion of the timber operation centralized.

Commissioner Moser noted the planning rules were there to be interpreted and it made good planning sense to locate the shop/office closer to more traversable roads, utilities, etc.

Commissioner Warner noted Williamson Act properties were subject to greater scrutiny than other properties and asked if building size requirements had been affected.

Mr. Lynch stated he had not heard anything regarding building size, but noted the Commission would have a presentation by the Department of Conservation on October 16, 2008. He thought, if the Farm Advisor had been asked to comment, they would find the use inconsistent because the building was not directly related to the ag use of the property it is located on.

Commissioner Calvert felt the issue was related to the zoning code more than the particular parcel in question and noted timber operations could be performed on parcel zoned from RR5 to TPZ.

Mr. Lynch noted the argument was the storage shed/office was not just for his own resource land, but a business that could be anywhere.

Chairman Little felt it was not uncommon to have equipment for various operations stored on one parcel and noted a tractor was a tractor if it was pulling a plow or a log.

Commissioner Calvert hoped the Commission could establish a method to accommodate and encourage legitimate agricultural business in the county.

Commissioner Nelson noted the intent of the Williamson Act was to help preserve agriculture and the only way for farmers to survive a tough economy was to diversity on property they already own. He was willing to make the necessary interpretation to allow the conversion of the building because it served a purpose.

Brian Hurt, appellant, noted the only reason he was before the Commission was because he had submitted an application to convert his building and was trying to do the right thing. He noted he was a third generation farmer that turned to timber because he could no longer make a living raising cows.

Law Chichester, agent, noted he was on the citizens advisory committee during the general plan update twenty-five years ago. He stated Covelo had changed considerably since the drafting of the General Plan. He discussed the maps distributed to the Commission and noted the best location for the shop was in town, even though it was not zoned for that type of structure. He stated they took an existing facility with roads and power, located on an unproductive piece of property with a gravel bar and used the land for the best purpose.

Commissioner Calvert asked staff how the Commission could ensure they were not setting a precedence for conversions in the future.

Mr. Lynch suggested language if the Commission chose to uphold the appeal and authorize the issuance of the building permit that "in this individual case" the conversion fits in with the use type.

Chairman Little commented that farmers must be nimble and take on endeavors that do not fit into a specific "box". He noted he would support upholding the appeal for this specific for project.

Commissioner Warner commented that she had initially agreed with staff's determination that a commercial operation should not be on ag land, but she was now convinced that the proper interpretation was to allow the use for this specific project.

Upon motion by Commissioner Calvert, seconded by Commissioner Moser and carried by the following roll call vote, IT IS ORDERED to uphold the Appeal in this individual case and authorize the issuance of Building Permit # BU 2007-0241, finding the structure is consistent with the general uses of agriculture.

AYES: Little, Calvert, Moser, Nelson, and Warner
NOES: None
ABSENT: None

6. **Matters from Staff.**

6b. **Review, Discussion and Set Date for Revocation Hearing of U 7-2001 (Priscilla Kirtley)
(Continued from 7-17-08)**

OWNER: Priscilla Kirtley

APPLICANT: Mendocino County Department of Planning and Building Services

REQUEST: REQUEST FOR REVOCATION ACTION FOR Use Permit #U 7-2001. This permit, granted in July 2003, authorized a mill by-product recycling operation, which consists of storing wood chips and delivering to various customers. Proposed improvements are, a 15,000 square foot metal storage building and a 1,000 square foot office building.

LOCATION: In Redwood Valley, on the south side of Uva Drive (CR# 239) approximately 1/4 mile south of its intersection with Highway 101, located at 9500 Uva Drive; AP# 162-100-64 (formerly portion of AP# 162-100-46).

Mr. Lynch reviewed the previous hearing and noted the applicant had not been operating within the conditions of their use permit. He stated the owner, Priscilla Kirtley, had submitted a letter voluntarily abandoning the project no later than October 1, 2008, would remove all chips and equipment, provide mitigation and lock the property from further use. Mr. Lynch stated that staff had accepted the termination.

Chris Kirtley noted he had not intended to operate outside the terms of the use permit, however with the closures of numerous mills they did not have the funds to build the structures needed to house the chips. He noted current market conditions had forced Kirtley Shavings out of business. He hoped to be able to open another shavings business some time in the future.

Jim Ronco, agent, stated Mr. Kirtley would restore site back to its original form and hoped to return with another application in the future.

The public hearing was declared open, seeing no one come forward, the public hearing was declared closed.

The Commission reflected on the changing conditions in the economy, but had no suggestions or alternatives for what could be done to save local business.

Upon motion by Commissioner Calvert, seconded by Commissioner Nelson and carried by the following roll call vote, IT IS ORDERED to accept the proposal by the applicant to abandon the project and restore the site to its original form.

AYES: Little, Calvert, Moser, Nelson, and Warner

NOES: None

ABSENT: None

6a. **Review, Discussion and Set Date for Revocation Hearing of U 29-93 (Bald Hills Quarry)
(Continued from 7-17-08)**

OWNER: Biaggi Family Properties & Mendocino Redwood Company (MRC)

APPLICANT: Mendocino County Department Planning and Building Services

REQUEST: REQUEST FOR REVOCATION ACTION FOR Use Permit #U 29-93. The permit (and associated reclamation plan) was granted on June 16, 1994, and allowed for extraction and processing (crushing, screening, washing) of up to 50,000 cubic yards of rock per year for twenty (20) years with a maximum extraction of up to 100,000 cubic yards of rock in any one year from a hill side quarry.

LOCATION: Approximately four miles northeast of Manchester, one and a half miles east of Highway One, accessed via a private ranch road on the north side of Alder Creek: AP# 132-220-05, 132-250-01 & -04.

Chairman Little began to recuse himself from the hearing, however Mr. Lynch noted it would not be necessary.

Mr. Lynch stated Planning and Building Services had received a letter from Sonoma Bank on August 15, 2008, which stated that Bedrock Products, Inc. was approved for financial assurance of the Bald Hills Quarry and documentation would be provided by August 29, 2008. He noted at this time, staff accepted the letter and recommended, should the need arise in the future; the matter be brought back to the Commission.

Upon motion by Commissioner Moser, seconded by Commissioner Warner and carried by the following roll call vote, IT IS ORDERED to accept the letter dated August 15, 2008 provided by Sonoma Bank, certifying that Bedrock Products Inc, is financially assured for the Bald Hills Quarry.

AYES: Calvert, Moser, Nelson, and Warner
NOES: None
ABSTAIN: Little

7. Matters from Commission.

Commissioner Warner asked if a resolution for Britt Bailey had been written.

Mr. Lynch stated he had submitted a resolution for Mark Edwards and Britt Bailey to Mr. Zotter and was awaiting corrections.

Commissioner Warner noted she did not see the specific comments the Commission had submitted addressing building height limits in the EIR of the General Plan Update. She distributed her comments to the Commission for reference.

8. Approval of Minutes.

There were no minutes to approve.

9. Matters from Public.

No one was present from the public who indicated a desire to address the Commission.

10. Adjournment.

Upon motion by Commissioner Calvert, seconded by Commissioner Warner, and unanimously carried (4-0), IT IS ORDERED that the Planning Commission hearing adjourned at 11:02 a.m.