
STATE OF CALIFORNIA
COUNTY OF MARIPOSA
PLANNING COMMISSION

Resolution
No. 2006-16

A resolution denying Land Division Application No. 2005-186, Earl Purmont, Jr., applicant. Assessors Parcel Number 014-420-020

WHEREAS an application for land division was received on the 1st day of October 2005 from Earl Purmont Jr. for the division of one parcel located at 5278 Boyer Road and an unassigned address on Italian Creek Road, approximately 1.2 miles northeast of the intersection of Boyer Road and State Highway 49 South; and

WHEREAS the parcel is known as Assessors Parcel Number 014-420-020; and

WHEREAS in accordance with Mariposa County Code, Title 16 Subdivision Ordinance access requirements, the applicant proposed to access the project site from Boyer Road and Italian Creek Road. Access to subdivisions from a county maintained road or state highway must be within a 60-foot wide non-exclusive easement. Boyer Road is a county maintained road; and

WHEREAS Boyer Road, between Highway 49 South and the project site, is a paved County-maintained road that is not 18 feet wide for a 0.6-mile portion of its length and the improved travel lanes will not accommodate two passing vehicles in that area; and

WHEREAS based upon these conditions, Boyer Road is a narrow county-maintained road; and

WHEREAS Mariposa County Code, Title 16 Subdivision Ordinance does not mandate road improvements to a county maintained road for minor subdivisions; and

WHEREAS based upon the whole of the record for another land division application processed by Mariposa County, Land Division Application No. 2003-233, the county must nonetheless address the potential impacts of a land division served by a narrow county-maintained road on human health and safety and emergency response pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS based upon current Mariposa County policies and ordinances in place for land divisions, the issue of potential impacts of a land division served by a narrow county-maintained road on human health and safety and emergency response must be addressed on a case by case basis; and

WHEREAS based upon comments received during the comment period, it was determined that the access to the project site exceeded the dead-end road length requirements of both the Mariposa County Road Improvement and Circulation Policy and the State Fire Safe Standards. The dead-end road length requirements of the Mariposa County Road Improvement and Circulation Policy are 4,800 feet. The dead-end road length requirements of the State Fire Safe Standards are 2,640 feet. From the Highway 49 South/Boyer Road intersection to the project site, the distance is 1.2 miles, or approximately 6,400 feet; and

WHEREAS staff reviewed the existing roads and easements in the area to determine the feasibility of creating a through road; and

WHEREAS staff determined that creation of a through road, although necessary to approve this project, would not be easily achieved by the applicant; and

WHEREAS staff reviewed the history and creation of the subject property in order to determine whether there was some other way that the applicant could achieve his objective of selling proposed Parcel B; and

WHEREAS staff determined that there were no underlying historic parcels on the subject property; and

WHEREAS based upon the dead-end road length standards established by both the County Road Improvement and Circulation Policy and the State Fire Safe Standards, the Planning Department notified the applicant on the 13th day of February 2006 that the project as proposed did not meet the definition of a through road as contained in the Mariposa County Road Improvement and Circulation Policy and that staff would have to recommend denial of the land division; and

WHEREAS in that letter dated February 13, 2006, staff outlined several options for the applicant to achieve his objective of selling a portion of the subject property, including approaching the neighboring property owners about purchasing proposed Parcel B through the lot line adjustment process and working with neighboring property owners to build a through road; and

WHEREAS staff met with the applicant on February 17th, 2006 and the applicant requested the matter be scheduled for public hearing as soon as possible; and

WHEREAS a staff report recommending denial was prepared for the project and a public hearing duly noticed and scheduled for the Planning Commission meeting on the 17th day of March, 2006; and

WHEREAS a final Staff Report for the project public hearing for the 17th day of March 2006 was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures and the staff recommendation was to deny the project proposal with the recommended findings; and

WHEREAS the recommendation for denial was based upon action taken by the Planning Commission for other land division applications involving narrow County-maintained roads. For all of these applications, the proposals made by applicants to address the narrow county maintained road issues were approved by CDF; and

WHEREAS the recommendation for denial was also based upon review of the project for compliance with the County Road Improvement and Circulation Policy standards for dead end road length and the State Fire Safe Standards for dead-end road length, and the finding that the project does not meet those standards; and

WHEREAS the recommendation for denial was also based upon a conclusion that there were too many issues of the project which necessitated them to make waivers to normal requirements for subdivisions. The dead-end road length to the project greatly exceeded subdivision standards. The issues, in particular the narrow county maintained road issues, were policy issues more appropriately addressed by the Board of Supervisors; and

WHEREAS a project which will be rejected or disapproved by a public agency is not subject to the provisions of the California Environmental Quality Act, according to Section 15061(b)(4) of the CEQA Guidelines; and

WHEREAS the Planning Commission did hold a public hearing on the 17th day of March 2006 and considered all of the information in the public record, including the Staff Report and testimony presented by the public and the applicant concerning the application; and

WHEREAS the applicant suggested during that public hearing that they could prevent further development of proposed Parcel B by applying an open space easement or a conservation easement to the undeveloped portions of the parcel; and

WHEREAS the Planning Commission determined that staff would need time to evaluate this suggestion and continued the public hearing until April 21, 2006 at 9:00 a.m. or as soon thereafter as possible; and

WHEREAS staff did research and evaluate the suggestion to apply an open space or conservation easement to the property; and

WHEREAS staff determined from this research that open space and conservation easements may not be legally used to limit development in the manner proposed at the public hearing; and

WHEREAS staff also found that the level of existing development or potential development on the property does not affect the California Department of Forestry and Fire Protection determination that the additional parcel creates the additional fire protection responsibility; and

WHEREAS the Planning Commission did continue the public hearing on the 21st day of April 2006 and considered all of the information in the public record, including the amended Staff Report and testimony presented by the public and the applicant concerning the application.

BE IT THEREFORE BE IT RESOLVED THAT Land Division Application No. 2005-186 is hereby denied based upon the findings set forth in Exhibit 1 as supported by substantial evidence in the public record.

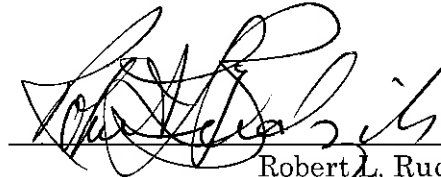
ON MOTION BY Commissioner DeSantis, seconded by Commissioner Skyrud, this resolution is duly passed and adopted this 21st day of April 2006 by the following vote:

AYES: Commissioners DeSantis, Ludington, Ross, Rudzik, and Skyrud

NOES: None

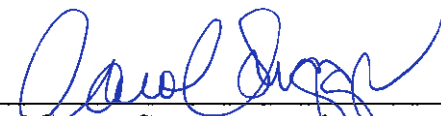
EXCUSED: None

ABSTAIN: None



Robert L. Rudzik, Chair
Mariposa County Planning Commission

Attest:



Carol Suggs, Secretary to the
Mariposa County Planning Commission

Exhibit 1

LAND DIVISION APPLICATION NO. 2005-186 FINDINGS

1. Based upon consideration of the whole record, the Planning Commission is unable to make all of the required findings for approval of a tentative parcel map as established by Mariposa County Code, the Subdivision Ordinance, §16.16.040.B.3. In particular, the Planning Commission is unable to make the findings mandated by Section 16.16.040.B.3.b and Section 16.16.040.B.3.d. The site is not physically suitable for the proposed density of development based upon location and access. The design of the subdivision may cause serious public health problems. This is based upon consideration of the dead end road length standards established by the Mariposa County Road Improvement and Circulation Policy and the California State Fire Safe Standards.
2. The project proposes new residential parcels on a dead end road which significantly exceeds the dead end road length standards established by the Mariposa County Road Improvement and Circulation Policy, Section II.C.1 and the dead end road length standards established by the California State Fire Safe Standards. Dead end road length standards are established for health and safety purposes and emergency response. The only acceptable mitigation to the California State Fire Safe Standards dead end road lengths, to provide the same practical effect, is an emergency egress route or through road which complies with the minimum road requirements of the State Fire Safe Standards. The applicant has not proposed a through road or an emergency egress road to serve this project. There is no practical or feasible way for the applicant to create a through road or emergency egress road for this project, nor is there a practical or feasible alternative to these options.
3. The primary access to the site is from State Highway 49 via Boyer Road and Italian Creek Road. Boyer Road is a paved county-maintained road which is not two travel lanes wide for its entire length between State Highway 49 and the project site. There are no improvement programs planned for this road in the immediate future, other than routine maintenance and repairs. Italian Creek Road is a privately maintained gravel and dirt road, with an average width of 8 to 10 feet. County and state road standards specify minimum travel lane width for roads for development, to allow two vehicles to pass, at 18 feet for travel lane width. According to CDF, the only acceptable mitigation to the narrow road conditions of Boyer Road and Italian Creek Road, to provide the same practical effect, is a road which meets the minimum road requirements (including travel lane width) established by the State Fire Safe Standards. Limited areas of lesser width may be considered acceptable by CDF, when there are improved turnouts for passing and adequate sight distance between the improved turnouts at the area of lesser width. The project does not propose improvements to Boyer Road or Italian Creek Road. Current access to the project site is not adequate for existing traffic or for the increase in traffic that would result from this land division.
4. Based upon consideration of the whole record and public testimony, the Planning Commission is unable to find that the project may not have a significant effect on the environment, and is unable to make the Mandatory Findings of Significance

established by the California Environmental Quality Act (CEQA) Guidelines, Section 15065. The project may have significant effects on Transportation/Circulation, and Human Health Hazards. The project may have significant adverse effects on emergency evacuation during a wildland fire event, thus exposing both residents of the area and responding fire personnel to a significant risk. The project site does not have adequate emergency access.

5. The project and subsequent residential development of Parcel B may result in human health and safety impacts, based upon the condition of Boyer Road, including road and encroachment improvements and width.
6. There is evidence in the record and public testimony to suggest that the project, although individually limited in its impacts, will have potential cumulative impacts on traffic safety and human health hazards. There is evidence in the record and public testimony to suggest that the project will have adverse indirect effects on human beings and the emergency response vehicles using Boyer Road and the Highway 49 South encroachment. There is no county program in place to address cumulative impacts the project may have on traffic safety and resulting human health hazards. There is no guarantee that there will be a program in place, prior to issuance of a residential building permit on the proposed Parcel B. There is no mechanism available to limit residential building permits on the proposed project parcels, pending implementation of a county program to address cumulative traffic impacts. State law requires that a secondary residence is a permitted use on all parcels in residential zones, and therefore the County may not limit the issuance of a residential building permit to Parcel B.
7. When there are conflicting requirements between State Law and County regulations, the Planning Commission finds that the more restrictive requirement should apply. This project meets neither the more restrictive State law nor the less restrictive County policy.