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STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
PLANNING COMMISSION

Resolution  
No. 2004-41

**A resolution denying Land Division Application No. 2003-289,  
Rex Fouch, applicant. Assessors Parcel Numbers 011-310-070  
and 011-310-071**

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WHEREAS an application for land division was received on the 15<sup>th</sup> day of December 2003 from Rex Fouch for the division of two parcels located at 3349 and 3357 Elizabeth Lane, at the end of Elizabeth Lane off Trower Road (agent, Ken Melton); and

WHEREAS the two parcels are known as Assessors Parcel Numbers 011-310-070 and 011-310-071; and

WHEREAS this was considered to be Map/Proposal 1; and

WHEREAS on the 19<sup>th</sup> day of January 2004 comments were received from the California Department of Forestry and Fire Protection indicating that the status of the unnamed road was unclear and that the project was inadequately marked; and

WHEREAS, based upon this determination, the applicant was notified on the 22<sup>nd</sup> day of January 2004 of the need to mark the property and parcel boundaries clearly; and

WHEREAS the application requirements were completed by the applicant and the application and Map/Proposal 1 was considered to be complete as of the 29<sup>th</sup> day of January 2004; and

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

WHEREAS Upper Trower Road, between Highway 140 and Elizabeth Lane, is a gravel County-maintained road that is not 18 feet wide and the improved travel lanes will not accommodate two passing vehicles; and

WHEREAS based upon these conditions, Upper Trower 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 recently 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 Upper Trower Road to Elizabeth Lane 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 140/Upper Trower Road intersection to the project site, the distance is 7,900 feet. From the Upper Trower Road/Elizabeth Lane intersection to the project site, the distance is 6,000 feet; and

WHEREAS in early February, 2004 following staff discussion of the dead-end road length issues with the applicant, the applicant stated that the project should not be subject to dead-end road standards, as there was an existing unnamed road within an easement connecting Elizabeth Lane to Highway 140, with the intersection of Elizabeth Lane and the unnamed road occurring at the project site (herein after referred to as "unnamed road"); and

WHEREAS the applicant verbally modified the project description to include the "unnamed road" as an emergency egress route only, to address the dead-end road length issues raised during the comment period; and

WHEREAS this was considered to be Map/Proposal 2; and

WHEREAS on the 15<sup>th</sup> day of March 2004, the applicant provided a copy of Document No. 946351, Mariposa County Official Records, entitled Stipulation and Easement Agreement; and Order Thereon, that describes a 20-foot easement for purposes of access for several specified parcels and specified property owners. This easement is for the "unnamed road"; and

WHEREAS the agreement specifies one of the application subject parcels, APN 011-310-070, and specifies the previous property owner Nona I. Gobles; and

WHEREAS this document lists agreements, including an agreement that the owners of the properties described shall not, by the grant, expand or extend their respective

historical usage of the roadway crossing the Dixon property, otherwise known as APN 011-320-004; and

WHEREAS based upon a review of the document, staff was unsure of the status of the 20-foot easement and whether it was an exclusive or a non-exclusive easement as the Title Report submitted for the project, Parcel Map Guarantee, Guarantee No.: M18813, Inter-County Title Company, did not identify the easement or the recorded agreement; and

WHEREAS on the 9<sup>th</sup> day of March 2004 the California Department of Transportation (Caltrans) responded to Planning staff inquiry regarding the easement for the "unnamed road" described, stating that they had no record of an encroachment permit for this easement; and

WHEREAS there are some highway encroachments for historic roads in the county which don't have an encroachment permit, and the applicant stated that he understands this access route is part of an old stage coach road to Hornitos; and

WHEREAS on the 29<sup>th</sup> day of March 2004 the California Department of Forestry (CDF) responded to the amended project and recorded document, stating that unless the easement for the "unnamed road" has a legal encroachment onto Highway 140, CDF does not consider the easement to be legal; and

WHEREAS on the 14<sup>th</sup> day of April 2004 Planning staff notified the applicant of the status of the project review as it related to narrow county-maintained roads; and

WHEREAS on June 2, 2004 Planning staff met with the applicant to review alternatives for addressing the dead-end road issue; 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 23<sup>rd</sup> day of June 2004 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; and

WHEREAS a duly noticed public hearing was scheduled for the 16<sup>th</sup> day of July, 2004; and

WHEREAS the Planning Commission meeting for the 16<sup>th</sup> day of July, 2004 was continued and rescheduled for the 23<sup>rd</sup> day of July, 2004; and

WHEREAS a staff report recommending denial was prepared for the project public hearing scheduled for the Planning Commission meeting on the 23<sup>rd</sup> day of July, 2004; and

WHEREAS on the 20<sup>th</sup> day of July 2004 Planning staff met with the applicant and his agent and reviewed staff's recommendations and the staff report for the project; and

WHEREAS on the 22<sup>nd</sup> day of July 2004 the applicant submitted a written request for postponement of the public hearing to "sometime in August" in order to work out a solution to the road issues as outlined in the staff report; and

WHEREAS on the 23<sup>rd</sup> day of July, 2004, the Planning Commission continued the public hearing until the 20<sup>th</sup> day of August, 2004; and

WHEREAS on the 12<sup>th</sup> day of August 2004 the applicant submitted letters to staff outlining his proposal to address the dead-end road issues and this included road improvements to the "unnamed road" within the 20-foot easement width; and

WHEREAS the applicant submitted a revised Parcel Map Guarantee, Guarantee No.: M18813, Inter-County Title Company and Item 17 is shown an "Informational Note: By stipulated easement agreement and order recorded December 19, 1994 as instrument No. 946351, a right of way for road purposes 20 feet in width was created providing access to and from state highway 140 over the existing road."

WHEREAS this was considered to be Map/Proposal 3; and

WHEREAS on the 12<sup>th</sup> day of August 2004 Planning staff received a memo from the Mariposa County Public Works Department stating that, although the access to the project exceeded the dead-end road length standards of the Mariposa County Road Improvement and Circulation Policy, the through road requirement is primarily a safety issue. If a waiver to the dead-end road length requirement was requested, Public Works deferred to the County Fire Department on the matter of determining the adequacy of the proposed road improvements to the "unnamed road"; and

WHEREAS on the 12<sup>th</sup> day of August 2004 Planning staff received a letter from the Mariposa County Fire Department stating that the proposed improvements for Map/Proposal 3 would allow the "unnamed road" to support adequate ingress and egress for the project; and

WHEREAS on the 20<sup>th</sup> day of August, 2004, the Planning Commission continued the public hearing until the 17<sup>th</sup> day of September, 2004 as requested by the applicant in order to give Planning staff time to review Map/Proposal 3 and agency comments and move forward to the Planning Commission with a staff recommendation for approval; and

WHEREAS a draft staff report recommending approval with conditions was prepared for the Planning Commission public hearing scheduled for the 17<sup>th</sup> day of September, 2004; and

WHEREAS on the 17<sup>th</sup> day of September 2004 the Commission again continued the public hearing until the 1<sup>st</sup> day of October, 2004 as requested by the applicant in order to work out conditions of approval that were acceptable to staff and to the applicant and agent for this project; and

WHEREAS a final Staff Report and Initial Study for the project public hearing for the 1<sup>st</sup> day of October 2004 was prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures and the staff recommendation was to approve the amended project known as Map/Proposal 3 with conditions. Staff's recommendation was based primarily upon the written input received from the County Fire Chief; and

WHEREAS the Planning Commission did hold a public hearing on the 1<sup>st</sup> day of October, 2004 and considered all of the information in the public record, including the Staff

Report and Initial Study for Map/Proposal 3, testimony presented by the public concerning the application, the comments of the applicant and agent, and the comments of Mariposa County Public Works Staff, Mariposa County Fire staff, Mariposa County Planning Department staff, and staff from CDF; and

WHEREAS the Planning Commission also considered action they took on other land division applications recently processed and approved, 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 based upon testimony of the project agent at the public hearing on the 1<sup>st</sup> day of October 2004, the applicant was not willing to consider any additional project amendments, to address the concerns of the Planning Commission; and

WHEREAS the Planning Commission of the County of Mariposa took action to deny Land Division Application #2004-289; and

WHEREAS the Planning Commission's action was 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 and the matter of the significant variance in comments and recommendations received from county and state fire agencies, were policy issues more appropriately addressed by the Board of Supervisors; and

WHEREAS the Planning Commission directed staff to bring back a resolution for denial with findings based upon the Commission's discussion and deliberation; and

WHEREAS staff prepared a resolution for denial with findings and scheduled it for consideration and action at the Planning Commission's meeting of the 22<sup>nd</sup> day of October, 2004.

BE IT THEREFORE BE IT RESOLVED THAT Land Division Application No. 2003-289 is hereby denied based upon the findings set forth in Exhibit 1 as supported by substantial evidence in the public record.

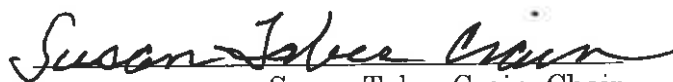
ON MOTION BY Commissioner Rudzik, seconded by Commissioner Ludington, this resolution is duly passed and adopted this 22<sup>nd</sup> day of October, 2004 by the following vote:

AYES: Commissioners Ludington, Turpin, Rudzik, Skyrud, and Crain

NOES: None

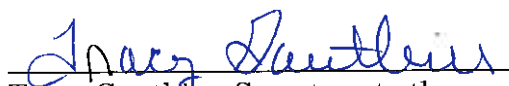
EXCUSED: None

ABSTAIN: None



Susan Taber Crain, Chair  
Mariposa County Planning Commission

Attest:



Tracy Gauthier, Secretary to the  
Mariposa County Planning Commission

Exhibit 1

**LAND DIVISION APPLICATION #2003-289  
FINDINGS**

1. Based upon consideration of the whole record and public testimony, 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, Section 16.16.040.B.3. In particular, the Planning Commission is unable to make the findings mandated by Section 16.16.040.B.3.a, Section 16.16.040.B.3.b, and Section 16.16.040.B.3.d. The site is not physically suitable for the proposed type of development or 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: a) the condition of Upper Trower Road, b) the condition of the Highway 140 encroachment at Upper Trower Road, c) the limited easement width of the unnamed emergency egress route ("unnamed road"); d) the condition of the Highway 140 encroachment at the "unnamed road"; and e) 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. Based upon consideration of the whole record and public testimony, the Planning Commission is unable to make all of the required findings for approval of a tentative parcel map as established by the Subdivision Map Act, California Government Code Section 66474. In particular, the Planning Commission is unable to make the findings mandated by Section 66474(c), Section 66474(d), and Section 66474(f). The site is not physically suitable for the proposed type of development or 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: a) the condition of Upper Trower Road, b) the condition of the Highway 140 encroachment at Upper Trower Road, c) the limited easement width of the unnamed emergency egress route ("unnamed road"); d) the condition of the Highway 140 encroachment at the "unnamed road"; and e) 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.
3. 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 project proposes an emergency egress route on the "unnamed road", however the 20-foot wide easement for the "unnamed road", created by Document No. 946351, Mariposa County Official Records, entitled Stipulation and Easement Agreement, is not wide enough to allow improvements to meet the minimum road requirements of the State Fire Safe Standards.

4. The primary access to the site is from State Highway 140 via Upper Trower Road and Elizabeth Lane. Upper Trower Road is a gravel and dirt county-maintained road which is not two travel lanes wide between State Highway 140 and Elizabeth Lane. There are no planned improvements programs for this road. 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 Upper Trower road, to provide the same practical effect, is a through 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 proposes some improvements to Upper Trower Road, however the improvements will not meet the minimum road requirements of the State Fire Safe Standards.
5. The existing highway encroachment at Upper Trower Road and State Highway 140 is not wide enough to allow two vehicles to pass. There is no evidence available from Caltrans, to support a finding that the existing highway encroachment at Upper Trower Road and State Highway 140 is adequate or improved to Caltrans standards for an intersection for existing traffic and the subdivision. Mariposa County Subdivision Ordinance standards do not require improvements to this intersection for the project, and the project does not propose any improvements to the highway encroachment at Upper Trower Road and State Highway 140.
6. There is no evidence available from Caltrans, to support a finding that the existing highway encroachment at the "unnamed road" and State Highway 140 is improved to Caltrans standards for an intersection for existing traffic and the subdivision. Although the Mariposa County Road Improvement and Circulation Policy requires a State encroachment permit when "proposed road improvements intersect with State Highways", based upon testimony at the public hearing on the 1<sup>st</sup> day of October, 2004, the applicant does not propose any improvements to the highway encroachment at the "unnamed road" and State Highway 140.
7. 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.
8. The project and subsequent residential development of the parcels may result in human health and safety impacts, based upon the condition of the two Highway 140 encroachments, the condition of Upper Trower Road, and limited ability to improve the "unnamed road" providing access to and emergency egress from the site, including road and encroachment improvements and width, lack of shoulders, and sight distance.
9. 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 Upper Trower Road and the "unnamed road" and their Highway 140 encroachments. 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 residential building permits on the proposed project parcels. 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.

10. When there are conflicting requirements between State Law and County regulations, the Planning Commission finds that the more restrictive requirement should apply.