RECOMMENDED ACTION AND JUSTIFICATION:
Adopt resolution denying Appeal No. 2007-85 and upholding the Planning Commission’s
denial of any continuance of the public hearing for Land Division Application No. 2006-347;
Fran Green, applicant and appellant; based upon:

1) All findings for denial as contained in Planning Commission Resolution No. 2007-13,
    adopted by the Planning Commission on April 20, 2007; and
2) All findings for denial as contained in the Draft Resolution included in this packet as
   Exhibit E.

Justification is provided in Memorandum to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
None

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Grant appeal, overturn project denial, grant appellant’s request for continuance of the public
hearing, and send the project back to the Planning Commission for additional review. The
Board may not approve the land division application as a result of this appeal.
TO: KRIS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: PUBLIC HEARING – Adopt a Resolution Denying Appeal No. 2007-85 and Upholding the Planning Commission’s Denial of Land Division Application No. 2006-347; Fran Green, Appellant; Ken Baker, Agent; APN’s 016-012-160 and 016-012-170

RESOLUTION 312a

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on June 26, 2007

ACTION AND VOTE:

11:10 a.m. Kris Schenk, Planning Director;
PUBLIC HEARING – Adopt a Resolution Denying Appeal No. 2007-85 and Upholding the Planning Commission’s Denial of Land Division Application No. 2006-347; Fran Green, Appellant; Ken Baker, Agent; APN’s 016-012-160 and 016-012-170

BOARD ACTION: Megan Tennemann, Planner, presented the staff report; and she responded to questions from the Board as to whether Parker Drive made a complete loop. County Counsel responded to a question from the Board relative to the basis of the appeal being on the denial of a request for a continuance.

The public portion of the hearing was opened and input was provided by the following:

Ken Baker, agent for the appellant, stated he wanted to present documents to the Board for consideration of this matter. County Counsel advised that if the documents are something that could have been presented to the Planning Commission, that they would be considered new material that would not be proper to submit at this hearing. He suggested that the Planning Director and his staff review the material.

11:20 a.m. Recess for Planning to review the documents.

11:47 a.m. County Counsel advised that he reviewed with Planning staff two items that the appellant offered: 1) a 2004 letter from the Planning Department to the applicant; and 2) a map drawn up on Monday evening with measurements of Parker Drive. He referred to the Appeals Procedures and advised that the information was or could have been made available at the Planning Commission’s hearing when the decision was made. Staff responded to questions from the Board and County Counsel relative to the review of the adequacy of the road; relative to the processing of the application and permit streamlining procedures; relative to processing of this application in relation to the timeframes of dealing with road issues on a countywide basis following the adoption of the General Plan Update. Chair Bibby advised that the information that Mr. Baker wanted to present is new information and would not be accepted at this time.
Ken Baker continued with his presentation and he stated he does not feel that he had a full hearing before the Planning Commission. The primary issue was the road, and he did not say that they would not meet the standards — they will follow all of the County and State rules and requirements. They wanted a continuance to be able to meet the requirements, and they are asking for that continuance to be granted today.

Staff responded to additional questions from the Board relative to the processing and road issues.

Mr. Baker responded to questions from the Board relative to the request for a continuance to allow the applicant an opportunity to deal with the road and traffic issues, and then to have a full hearing.

Skip Skyrud, Vice-Chair of the Planning Commission, asked to provide input. County Counsel responded to a question from Chair Bibby as to whether it is appropriate for a Planning Commissioner to provide input at this hearing; and he advised that it is okay. Skip Skyrud referred to the appeal and asked the applicant to address what new information surfaced after the April 20, 2007, hearing before the Planning Commission.

Rebuttal by the appellant:

Ken Baker advised that he had things delivered to him during the Planning Commission’s meeting, and he learned from the homeowners that they did not want Upper Parker Drive widened; and he wanted an opportunity to work with CalFire to see if the turn-outs that were previously installed would be considered acceptable versus widening the road.

The public portion of the hearing was closed and the Board commenced with deliberations.

(M)Pickard, (S)Turpin, to grant the appeal and overturn the Planning Commission’s denial of the appellant’s request for a continuance of the public hearing and send the project back to the Planning Commission based on the number of road capacity issues that have been subsequently raised; was withdrawn by the maker and second following further discussion. County Counsel requested a recess to speak with the Planning Director.

12:20 p.m. Recess

12:22 p.m. The Board reconvened and continued with the public hearing. County Counsel advised that he asked the Planning Director about processes. Supervisor Pickard stated he feels that this could be remanded back to the Planning Commission with the finding that direction was given to Planning and Public Works on May 22, 2007, to bring back a revised table of the Minimum Road Standards. County Counsel provided input and recommended that the appellant be required to file within ten days a request for the application to be continued to allow for the presentation of additional information. He advised that the request and additional information would be presented to the Planning Commission for the Commission to determine the appropriate length of a continuance. County Counsel noted that the motion was still on the floor; and at this point the motion was withdrawn.

(M)Pickard, (S)Turpin, Res. 07-312a was adopted remanding this matter back to the Planning Commission for consideration of a continuance and for the Commission to determine the length of the continuance based on the new information presented to it by the applicant; and requiring that the applicant file a letter with the Planning Director within ten days of this action requesting a continuance. Further discussion was held. Supervisor Bibby asked whether the intent of the motion was to allow the applicant to put the application on hold until the road issues are resolved; and Supervisor Pickard advised that was not the intent of the motion. County Counsel advised that by remanding this back to the Planning Commission, whatever authority the Commission has to hold this would be allowed. Kris Schenk advised that he feels it would not be a good policy to put a project on hold, although apparently it has occurred in the past. He advised that staff brought this forward for denial and that the Planning Commission denied the applicant’s request for a continuance. He advised that the project did not and probably can’t meet the road standard requirements. County Counsel advised that the Board’s motion would overturn the denial and it does not automatically allow the application to be held. This action affords the appellant to present evidence for the request for the continuance. Supervisor Bibby asked whether this project could be continually appealed back to the Board for new information or for new procedures to be put in place, and County Counsel responded as to the process. Ayes: Turpin, Fritz, Pickard; Noes: Aborn, Bibby. The hearing was closed.

Cc: Thomas P. Guarino, County Counsel
File
MEMORANDUM

Date: June 11, 2007
To: Mariposa County Board of Supervisors
From: Megan Tennermann, Associate Planner
Subject: Appeal No. 2007-85 for Fran Green, appealing the Planning Commission denial of Land Division Application No. 2006-347

Introduction
At their public hearing of April 20, 2007, the Planning Commission considered Land Division Application No. 2006-347. The project proposed to subdivide a 21.90 acre parcel into four parcels of between five and six acres in size, and to take access from Parker Drive in Ponderosa Basin at a point approximately 0.61 miles south of the intersection of Parker Drive and Pilot Peak. Parker Drive is a privately-maintained road of approximately 11 to 13 feet in width for all that portion of the road between the Pilot Peak intersection and the project site (with the exception of one portion eighteen feet in width and approximately twenty feet in length, located over a drainage culvert). Staff recommended denial based on the inadequate capacity of Parker Drive as defined by the 2006 General Plan and the California Department of Forestry and Fire Protection Fire Safe Guidelines; Parker Drive also fails to comply with the access standards established by the Mariposa County Subdivision Ordinance in sections 16.12.160 and 16.12.170. The staff report for this project is included as Attachment C.

Planning Commission Hearing
Staff presented this recommendation to the Planning Commission. The applicant rebutted a number of points made in the staff report, and requested that the project be continued to a later date. Commissioner Hagan pointed out that the basis for the project denial was the condition of Parker Drive and asked if the applicant wanted a continuance of the project in order to propose changes to Parker Drive; the agent for the applicant responded that they did not intend to propose improvements to Parker Drive. Commissioner Hagan stated that he felt there was no reason to continue the project to a later date if the applicants did not intend to resolve the road issue. The Commission denied the continuance, discussed the project, and denied the project by a vote of 4-0, with Commissioner Rudzik excused from the meeting. The minutes of the Planning Commission hearing on this project are included as Attachment D.

Basis for Appeal
The applicant has filed a Notice of Appeal to the Board of Supervisors, based on the Planning Commission’s decision to deny the project and not continue the public hearing for the Land Division until another date. The appellant states, “My agent gathered new information during the Planning Commission hearing and requested a continuance to have the opportunity to present solutions for
meeting the standards of a Rural Class IIB SRA road. My agent was asked if he was going to meet the new general plan requirements, he stated he would meet all State and County Codes and requirements. He simply asked for a continuance to be able to do so and was denied.

The minutes of the Planning Commission hearing, in which the agent for the applicant states clearly that the applicant does not intend to make improvements to Parker Drive, are included as Attachment D as stated above. The Notice of Appeal is included as Attachment B.

**Actions Available to the Board of Supervisors**
The appellant has limited this appeal to the decision of the Planning Commission to deny the request for a continuance. Therefore the Board is limited to taking action only on the request for the continuance.

1. The Board may uphold the action of the Planning Commission in denying the request for continuance; in that case, the denial of the project will also be upheld.
2. The only other option available to the Board is to overturn the action of the Planning Commission, grant the appellant’s request for continuance of the public hearing of their project, and send the project back to the Commission. The appellant’s project would then be put on hold to give the applicant time to present solutions for meeting the standards of a Rural Class IIB SRA road. Staff notes that unless the solutions include a proposal to modify the project to include road improvements to Parker Drive, the project will not comply with the General Plan or the Subdivision Ordinance requirements for access. Additionally, there was testimony presented during the public hearing relative to access which would have to be addressed by the environmental review document.

The Board does not have the option of approving the land division.

**Staff Recommendation**
Staff recommends that the Board uphold the action of the Planning Commission to deny the request for project continuance; the agent for the applicant stated clearly during the public hearing that the applicant did not intend to use the requested continuance to propose improvements to Parker Drive. Staff established in the staff report and during the public hearing that Parker Drive does not meet minimum road standards for the traffic load that it currently supports. Staff concurs with the Planning Commission that any continuance of the project is a waste of time if that continuance is not used to address the problems of the project relative to requirements established by both the Subdivision Ordinance and the General Plan which are the basis of the recommendation for denial. Staff therefore recommends that the Board uphold the action of the Planning Commission and deny the continuance of the public hearing for Land Division Application No. 2006-347.
MARIPOSA PLANNING
NOTICE OF APPEAL

APPELLANT / CONTACT PERSON

NAME  Fran Green—Appellant/ Ken Baker—Agant

MAILING ADDRESS  2100 Old Highway Catheys Valley, CA 95306

DAY TELEPHONE NUMBER  209-742-6012

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with name, address, and signatures of appellants. You may designate two persons on the list to receive copies of all correspondence and staff reports related to the appeal. The list must contain a statement which states the person signing the list has reviewed the Notice of Appeal form.

☐ Check this box if appellant is also the application or permit applicant for the finding or decision being appealed.

APPEAL BODY

Decision, finding, or determination is being appealed to

☐ PLANNING COMMISSION (Submit appeal form to Planning Director)

☒ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)

DECISION BODY

Decision, finding, or determination being appealed was made by

☐ PLANNING DIRECTOR

☒ PLANNING COMMISSION Resolution No. 2007-13

☐ OTHER COUNTY COMMISSION OR BODY (Name)

Date of Decision April 20, 2007

R:\Shared\PERMIT PLANNING\Application Forms\Notice of Appeal.doc
Revised June 2, 2006
Page 5 of 7
DECISION, FINDING, OR DETERMINATION BEING APPEALED (Attach copy of decision/findings)

APPLICATION NUMBER OR TYPE OF PERMIT: Land Div Application 2006-347

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR DETERMINATION BEING APPEALED

We are appealing the Planning Commission Resolution No. 2007-13, based on the Planning Committee not giving Ms. Green’s agent a continuance based on new information that surfaced during the April 20th hearing.

STATEMENT OF GROUNDS OF APPEAL

(If additional space is needed, attach additional sheets to Notice of Appeal form. The grounds of appeal must clearly state those issues or portions of the finding, decision, or determination being appealed. The Board of Supervisors or Planning Commission will consider only those issues which are raised in the appeal form.)

My agent gathered new information during the Planning Commission hearing and requested a continuance to have the opportunity to present solutions for meeting the standards of a Rural Class IIB SRA road. My agent was asked if he was going to meet the new general plan requirements, he stated he would meet all State and County Codes and requirements. He simply asked for a continuance to be able to do so and was denied.
Check this box if you request the right to submit additional reasons for appeal and amendments or supplements to the appeal. This additional information must be submitted no later than twenty five (25) calendar days prior to the hearing date of the appeal.

SIGNATURE OF APPELLANT  May 8, 2007

DATE
PROJECT: Land Division Application No. 2006-347 to divide a parcel measuring 21.90 acres into four parcels; Parcel A being 5.68 acres, Parcel B being 5.16 acres, Parcel C being 5.38 acres, and Parcel D being 5.68 acres. Parcel is located on Parker Drive in Ponderosa Basin, approximately 0.61 miles south-southeast of the intersection of Parker Drive and Pilot Peak Drive. APN 015-400-005.

APPLICANT: Fran Green

AGENT: Ken Baker

NOTICING: Gazette Ad: March 29, 2007; April 12, 2007
Mailed Notice: March 29, 2007
Site Posted: March 29, 2007

COMMISSION ACTION: Staff recommends the Planning Commission adopt a resolution denying Land Division Application No. 2006-347 with the recommended findings.

STAFF SUMMARY ANALYSIS:
This minor land division is located approximately 0.61 miles south-southeast of the intersection of Pilot Peak Drive (maintained by the County) and Parker Drive (a privately-maintained easement road). Parker Drive has been reviewed by the Public Works Department and has been determined to fail to meet the standard of "adequate capacity" as contained within Section 5.3.02.E(1) of the Mariposa County General Plan adopted on December 18, 2006. Section 5.3.02.E(1) reads as follows: "all newly created subdivision parcels will have safe and maintained access roads. To qualify for subdivision, access to the subject property will be derived from a road that is: 1. maintained, and 2. has adequate capacity for the potential traffic volume generated by the total number of existing lots and those which can be created within the road system." A portion of Parker Drive approximately 3000 feet long located north of and adjacent to this project site is inadequate in width.

Staff cannot make the finding that the site is physically suitable for the type and density of development proposed by this project, due to the inadequate width of the access road. Staff also cannot make the finding that the project as proposed complies with the General Plan, due to the failure of Parker Drive to meet the adequate capacity standard. State law requires that projects which do not comply with the General Plan shall not be approved. Therefore, staff must recommend denial of this land division application.
1. Owner: Fran Green 9299 Las Torres Dr., Elk Grove, CA 95624
2. Agents: Ken Baker 2100 Old Highway Catheys Valley, CA 95306 (408)205-35
3. Contours Based on USGS. @ 20' Intervals
4. Slopes Approximate From Contours
5. Water Ponderosa Basin Water Co.
6. Sewer from Individual Septic Tanks
7. No Grading is Proposed on This Subdivision other than grading

Parker Drive created by offer of dedication and accepted for public use by Parcel Map Book 28 Page 35 Mariposa Records road bed AC pavement 20'-wide

(Roth) 7.23 Ac.

(RYLE) 5.83

PONDEROSA BASIN
A. Description of Project (see Site Plan, Page 3)

Minor land division of a 21.90 acre parcel into four parcels, creating Parcel A at 5.68 acres, Parcel B at 5.16 acres, Parcel C at 5.38 acres, and Parcel D at 5.68 acres. No development is present onsite at this time. The previous land division which created this parcel as its Remainder required that an easement should be recorded over the two onsite drainage channels, 75 feet from each side of the centerline of each channel, and required that a 75-foot-wide building setback be recorded on the east edge of the subject property. These actions limit the area of the project site available for development. Subject property is included in the Mountain Home zoning district and the Residential land use classification of the County General Plan. The applicants are not proposing residential development at this time; however, state law requires that a primary and a secondary residence is a permitted use on all residually-zoned parcels, so this land division has the potential to increase development on Parker Drive by eight residences.

Project was submitted on November 30, 2006. The Mariposa County Board of Supervisors moved on December 6, 2006 to certify the EIR and adopt the new General Plan; the General Plan currently in effect was adopted by Resolution No. 06-575 on December 18, 2006.

B. Project Background Data

Existing Zoning: Mountain Home

General Plan: Residential

Current Land Use: Residential; vacant.


Adjacent Land Uses:
North: Residential, Mountain Home
East: Agriculture/ Working Landscape, Public Domain (Sierra National Forest)
South: Residential, Mountain General
West: Residential, Mountain Home

Site Topography And Vegetation: Slopes onsite are steep, ranging from about 10% to approximately 30%. The fuel loading is heavy, with vegetation consisting of heavy brush transitioning into conifer pine and oak woodland, particularly in the area of the onsite drainage channels.
Project Analysis for LDA No. 2006-347

Planning evaluated the project for the following issues:

Access Easements:
The Mariposa County Subdivision Ordinance, Section 16.12.160 requires a 60 foot wide non-exclusive access easement from each parcel to be created to a county maintained road or a state highway.

Parker Drive is not owned or maintained by the County. There is an existing 60-foot wide easement over the portion of Parker Drive extending approximately 995 feet northward of the western boundary of the project site. The remaining portion of Parker Drive between Pilot Peak Drive and the project site (measuring approximately 2200 feet) has a fifty-foot-wide easement, as shown on the Record of Survey for Ponderosa Basin Unit No. 4, recorded on January 14, 1970 in Book of Maps at Page 1703, Mariposa County Official Records. Typically, where a sixty-foot-wide easement is not available, the applicant is required to provide engineered plans showing that the required road improvements are able to fit within the easement width that is available.

Access from Pilot Peak Drive:
The portion of Parker Drive beginning at the intersection of Parker Drive and Pilot Peak Drive and ending at the project site is generally between eleven and thirteen feet in width, with pavement that is crumbling and potholed in places, although the surface quality is generally in acceptable condition. Pilot Peak Drive is paved and in good condition, with sufficient width to accommodate two vehicles passing.

The Public Works Department has evaluated the traffic on this road, and found that 160 trips per day take place on Parker Drive. For a road carrying that traffic load, the minimum County standard is a Rural Class II road, which has two ten-foot-wide travel lanes and a two-foot-wide shoulder on each side. The required surfacing depends on a number of factors; based on the existing pavement over most of the road and the steep grades of the area that is not paved, probably the required surfacing would be pavement.

General Plan Adequate Capacity:
The Mariposa County General Plan establishes that “all newly created subdivision parcels will have safe and maintained access roads. To qualify for subdivision, access to the subject property will be derived from a road that is: 1. maintained, and 2. has adequate capacity for the potential traffic volume generated by the total number of existing lots and those which can be created within the road system.” [Section 5.3.02.E(1), Mariposa County General Plan]. “Adequate capacity” is defined in the General Plan as follows: “Adequate Capacity means a
road which meets County Improvements Standards, including width, for
existing traffic and proposed project traffic increases.” [Definitions,
Appendix A, Mariposa County General Plan]

Adequate capacity is determined by the Public Works Department.
Public Works evaluated the number of existing parcels using the road as
well as the proposed traffic resulting from the new parcel, and
determined that Parker Drive has an ADT load of 160. For a road with
that level of traffic, the Road Improvement and Circulation Policy and the
County Improvement Standards require a Rural Class II standard road.
Parker Drive does not meet that standard. In order to improve the road
to meet the adequate capacity standard, the applicant would have to
obtain a sixty-foot-wide easement over the entire length of Parker Drive
from its intersection with Pilot Peak Drive and improve the road to meet
minimum County standards for width, grade, and surfacing. The cost of
these improvements is prohibitively expensive, even if the additional
easement width can be obtained for that portion of the road over the
private properties to the north of the project site.

Affected Agency
Concerns:

CDF inspected the project site and submitted comments expressing their
concerns with this project. This project is located in the State
Responsibility Area, and the location is rated as a Very High Fire Hazard
Severity Zone, with a history of large and damaging fires. The creation
of four additional parcels constitutes an increase in fire protection
responsibility, and the road does not meet minimum standards
established by CDF for width.

Planning evaluated the impact of four additional parcels on the road.
The existing parcel is undeveloped; however, the land division as
proposed would allow two residences to be developed on each parcel,
creating a potential of eight homes. Approving this project as proposed,
without improving Parker Drive to meet the minimum standard for
adequate capacity, would violate the County General Plan and therefore
would violate both Section 16.16.040.B.3.e of the Mariposa County
Subdivision Ordinance and Section 66474 of the California Government
Code.

Other Issues:

Although the recommendation to deny this project is based on the failure
of the proposed project to meet the requirements of the General Plan,
there are other issues that staff must consider as serious problems with
the application as proposed. The easements recorded on the property
over the onsite drainage channels together with the seventy-five-foot-
wide building setback on Parcels B and D significantly limits the areas
available on Parcels B and D for residential development. Additionally,
the proposed onsite easement road is proposed to be constructed
through the drainage easement; staff can reasonably conclude that the
proposed road construction would therefore result in impacts to the
drainage and the ravine protected by those easements. The applicant
does not currently have access to the Ponderosa Basin Mutual Water
Company water system. The greatest portion of the length of Parker Drive between the project site and Pilot Peak Drive does not meet the minimum standard of 18 feet in width established by CDF, and would have to be improved to that minimum standard even under the 1981 General Plan, even if the higher standard of "adequate capacity" was not required for this project.

Legal Issues: Section 66474.2 of the California Government Code reads as follows:

"(a) Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

(b) Subdivision (a) shall not apply to a local agency which, before it has determined an application for a tentative map to be complete pursuant to Section 65943, has done both of the following:

(1) Initiated proceedings by way of ordinance, resolution, or motion.

(2) Published notice in the manner prescribed in subdivision (a) of Section 66090 containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.

A local agency which has complied with this subdivision may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.

(c) If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply."

The project was submitted on November 30, 2006. Planning published a schedule of public hearings on the General Plan in the Mariposa Gazette on October 25, November 1, November 8 (Planning Commission hearing only), and November 22, 2006. The Planning Commission hearing on the changes made to the General Plan and the Environmental Impact Report had been held on November 17, 2006, and the Planning Commission recommended on that date that the Board of Supervisors certify the EIR and adopt the General Plan with their amendments. The Board of Supervisors held their workshop on December 6, 2006, and took action to certify the EIR and adopt the Plan on December 18, 2006.

According to the terms of the California Environmental Quality Act and California Government Code §65943, staff must determine within 30 days of application submittal whether the application is complete or whether additional information is needed. The General Plan was adopted eighteen (18) days after the submittal of the project. Planning had not determined that the application was complete at the time the General Plan had been adopted.
The agent for the applicant believes that this project should be subject to the requirements of the 1981 General Plan, as the project was submitted to Planning while that plan was in effect.

The applicant has stated in conversations with staff that Parker Drive between the project site and Ponderosa Court has been improved to meet minimum County standards as a condition of approval for several recent subdivisions. Except for a small portion immediately adjacent to Ponderosa Court, Parker Drive has been improved to a Rural Class I SRA A for that portion of the road; however it does not meet the Rural Class II standard as required by Public Works for this project. If the applicant wishes to use the portion of Parker Drive between Ponderosa Court and the project site as the primary access to the project, that portion of the road would have to meet the same standards as a dead-end access route. The portion of Parker Drive between the project site and Ponderosa Court is approximately 3000 feet long, well in excess of the maximum dead-end road length of 2,640 feet established by the California Department of Forestry and Fire Protection State Fire Safe Standards. In order for that portion of Parker Drive to not be considered a dead-end road, the entire length of Parker Drive, including that portion between the project site and Pilot Peak Drive, must be improved to meet minimum County standards. The project site itself was created as the Remainder of Parcel Map 28-35, which used Pilot Peak Drive as the primary access route.

Staff Analysis and Recommendation: Although staff sympathizes with the desires of the applicant, the County cannot make land use decisions based on that sympathy. The County standards for adequate capacity are established to protect public health, safety and well-being. This project does not comply with the standards, and the County may not waive those standards. Projects which do not comply with the General Plan shall not be approved [California Government Code §66474(a); Mariposa County Subdivision Ordinance §16.16.040.B.3.e]. The General Plan did not include “exception” provisions for projects which were submitted prior to the date of adoption of the current General Plan.

The approval authority, in this case the Planning Commission, must find that a project complies with the General Plan that is in effect on the date of project action in order to approve the project. If the proposed map is inconsistent with the applicable general plan, as this project is, California Government Code §66474 requires that the approval authority shall deny the project. The California Environmental Quality Act finds that a project is exempt from the provisions of CEQA if “[t]he project will be rejected or disapproved by a public agency,” according to §15061(b)(4) of the CEQA Guidelines.

Staff recommends the Planning Commission adopt a resolution with findings, denying the proposed project because it does not comply with the Mariposa County General Plan.
Project Findings for LDA No. 2006-347

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.e. The proposed map is not consistent with the applicable general plan as specified in California Government Code Section 66451. This is based upon consideration of the adequate capacity standard established by the Mariposa County General Plan.

2. The project proposes new residential parcels on a road which fails to meet the standards of adequate capacity as established by the Mariposa County General Plan. Road width standards are established for health and safety purposes and emergency response. There is no practical way for the applicant to improve Parker Drive to meet minimum standards for adequate capacity for this project, nor is there a practical or feasible alternative to this option.

3. The primary access to the site is from Pilot Peak Drive via Parker Drive. Parker Drive is a privately-maintained road; the road is too narrow to support two vehicles passing each other and the pavement in places is in disrepair. Parker Drive is eleven to thirteen feet in width from Pilot Peak Drive to the project site, other than one area that is eighteen feet in width and approximately twenty feet in length at the location of a culvert. Planning is not aware of any improvement programs planned for this road in the immediate future, other than routine maintenance and repairs. CDF 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 Parker Drive, 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 Parker Drive. Public Works has evaluated the road according to County standards. Based on the number of parcels on the road and the parcels proposed by the project, Public Works has determined that there are 160 average daily trips on Parker Drive. The Mariposa County Road Improvement and Circulation Policy requires that roads with an ADT load of 160 shall meet a minimum standard of Rural Class II, consisting of 20 feet of travel lane width and a two foot shoulder on each side for a total width of 24 feet. 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, 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 due to the inadequate road width.

5. The project and subsequent residential development of Parcel A, B, C, and D may result in human health and safety impacts, based upon the condition of Parker Drive, including road and encroachment improvements and width.

6. There is evidence in the record to suggest that the project will have potential significant impacts on traffic safety and human health hazards. There is evidence in the record to suggest that the project will have adverse indirect effects on human beings and the emergency response vehicles using Parker Drive. 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 any of the proposed 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. State law requires that the County may not limit the issuance of a residential building permit to parcels within residential zones in which residences are a permitted use, such as the four parcels proposed by this application.
Tennermann presented Land Division Application No. 2006-347 which proposes the division of 21.90 acre parcel into four parcels of slightly over five acres each. The project is located on Parker Drive in the Ponderosa Basin, aka APN 015-400-005. Tennermann stated that staff has found that the project is not in compliance with the Subdivision Map Act and all applicable county and state codes, specifically it does not meet adequate road capacity as stated in the Mariposa County General Plan. Tennermann then stated the definition of adequate road capacity; she went over average daily trip calculations and stated that this land division is required to have a Rural Class II road which requires two (2), ten (10) foot travel lanes and a two (2) foot shoulder on each side. Tennermann stated that although Parker Drive is paved the width is inadequate for two way traffic and the surface is crumbling and has potholes.

Tennermann stated that this Land Division is the remainder from the Oakander Land Division 2002-516 and that Parcel B has limited potential for development because of drainage easement. Tennermann also stated that the applicant does not have an easement to Ponderosa Basin’s Public Water System and explained that CEQA doesn’t apply to projects that will be denied.

Tennermann concluded that it is staff’s recommendation for the Planning Commission to find that this project is exempt from CEQA and adopt a resolution denying Land Division Application No. 2006-347 with the recommended findings.

Clarifications:

Skyrud inquired on circle page 3, the map, road going through the seasonal streams and asked about the 150 foot drainage easement and asked what is permitted within that easement.

Tennermann stated that subject to the permission of the California Department of Fish and Game some improvements, such as roads, may be allowed on a case by case basis.

Skyrud asked if Fish and Game had responded to this tentative map.

Tennermann replied they had and they noted that the Great Grey Owl is known to be in area and that the department has regulatory authority with regard to activities occurring in streams or lakes which could adversely effect any fish or wildlife resource. The Tentative map shows several drainages on the property and the proposed access road crosses three of these drainages. For any activity that may divert or obstruct the natural flow or change the bed channel or bank, the department may require a stream bed alternation agreement. This was in the California Department of Fish and Game letter which was dated 2/20/07 and copies of this letter can be provided. Tennermann concluded that a stream bed alternation agreement is an agreement with the California Department of Fish and Game and noted that the County is not involved in those agreements.

Skyrud inquired about the stream that runs through parcels A and C and that no easement is show. Skyrud inquired if staff recommends an easement there.

Tennermann stated that staff recommends denial of this project, but answered Skyrud’s question by stating that the Oakander subdivision 2002-516 required those easements that are shown on the tentative map because the stream that goes to parcels A and C did not cross the original parcels on the Oakander site, it was merely located on the remainder, so there was no easement required for that.

Public Comment Portion of the Hearing: Open.

Ken Baker, Agent for the applicant. Baker stated the history of the Greens coming to Mariposa, purchasing the property and putting their life savings into this investment. Stating that they paid professionals and met with the Planning Department, Public Works and attended meetings regarding the General Plan.
Baker stated that in March a letter was received that told them that their project wasn’t in compliance. Baker stated that they personally met with Fish and Game and that there is no owls, but a possibility of owls in the area. Baker also stated that he didn’t understand why the stream easement has to be so wide for a stream that comes in only a little each year.

Skryrud stated that the map that was submitted by the applicant clearly shows streams.
Baker states that it is only because they were required to do it.
Baker stated that Tennermann works very hard and that Planning is overloaded.
Skryrud stated that what the Commission has before them is a plan to develop the parcel and questioned Baker as to if there are other configurations to develop the parcel.
Baker stated yes.
Skryrud stated that when the applicant sits down with a blank piece of paper to develop the parcel they draw the lines to subdivide it, they have options of how to do this and what may be the best possible way to achieve what they want. The map that they have before them today is the one that the applicant has chosen to present.

Baker stated that this plan may not be what they wanted, but it is what they got because staff kept having them re do stuff. He stated that the Planning Department is trying to do their job, but the applicants should be allowed to design their own projects. Baker stated that applicants should be able to meet state and county code, the general plan and state law. But Baker felt that this should be done at the time of presenting the final map and to require this of applicants in the application phase has made this costly. Baker then stated for example that they didn’t want to run a cul-de-sac all the way back, they wanted to take out less trees, but were required to do so.

Skryrud asked if Baker wished to have the item continued to redraw the map.
Baker encouraged them instead to pass the map based on the applicant meeting all County and State Codes and General Plan at the time of final recordation. Baker stated that the letter received to the applicant stated that the Planning Commission must deny the project. Baker doesn’t feel that the Planning Commission must deny it.
Skryrud stated that it was the staff’s recommendation to deny and that the Planning Commission will take action to approve or deny based on findings.
Baker asked for an option for applicant to bring an amended plan back to the Commission when things have settled down.

Skryrud again asked if he wanted to continue the item.
Baker stated yes.
Skryrud stated that the item before us is this map, and that Baker is representing the applicant and they want a continuance to bring another map that he needs to request it and it will be considered. Skryrud stated that today there is an application and a map before us for consideration.

Hagan stated that the basis for denial is the access of Parker Road and redrawing the parcel map will not change that access.
Baker agreed that redrawing the map wouldn’t alleviate this issue. Baker stated that lower Parker Drive has the capability of meeting those standards, as does upper Parker Drive, but that the residents do not want the road widened.

Skryrud stated that on Lower Parker Drive where it connected to Ponderosa Court there is history on this road as when it was first built it was built outside the easement.
Baker stated that his client paid $150,000 to buy that property to satisfy that easement issue.

Skryrud stated that the original road was constructed outside the easement according to the Grand Jury report last year.
Baker stated that once they found out what had happened they corrected the problem. Baker then discussed the easement situation and how the road was put in. Skryrud asked Baker to sum up what he wants to tell the Commission.
Baker stated that they have adequate roads, the traffic is not nearly as high as reports and that the citizens of that community do not want the roads wider and that this project does meet county and state codes.

Steven Wright, lives on Parker Drive. Congratulations to Tennermann on her work and he agrees with staff. Wright doesn't want to see upper Parker Road paved into a two lane road. Wright presented a letter from another resident who could not attend the meeting. The letter also stating that they didn't want the road widened.

Theresa Castaldi. Castaldi stated her involvement in this project and about other projects that she has in the works that we are cutting off in regard to inadequate road width. Castaldi stated that she has gone through the submittal process and everything was ok until the new General Plan. Her projects were in before the new General Plan was adopted and they should be accepted under the Old General Plan.

Skyrud reminded Castaldi to only address the item on the agenda today.

Skyrud stated that on circle page 3 the map is dated 1-4-07 and stated that the General Plan that we are dealing with today is the one that we will deal with on this map.

Castaldi stated that they were told to fill it out, get what is on the list and the requirements filled then that is to be considered accepted application from that date. Maps go through revisions and this was the latest map. Castaldi went on to state that the Board of Supervisors told her that the date that the application is submitted is the date to go with.

Skyrud asked if she is saying that this application should be considered under the old General Plan.

Castaldi replied, yes and that two small sub divisions just like this one were previously approved as this one should be.

Tennermann stated that she wanted to clarify that the inadequate portion of the road is between Pilot Peak (Forest Drive) and the project site.

Sandy Sebesta, property owner and resident on Parker Drive. Sebesta stated that both upper and lower Parker Drive affect her property. Lower Parker Drive has a large paved portion of the road that was to be removed and still hasn't been removed. Sebesta stated that traffic is all on upper Parker and the road is pot holed and dug up. When developers were constructing the lower portion of Parker Drive all the construction trucks used upper Parker Drive and thus tore up the road even more. Sebesta commented that no matter what happens, all that traffic will continue through our road (upper) and this road is not currently adequate to handle the traffic now.

Sebesta stated that it is a one lane road with a blind curve and wanted to propose that the mail boxes be moved to the lower section which although would be an inconvenience for her she felt it would be safer. Sebesta felt that the topography may not allow the road to be widened.

Skyrud stated that the location of the mail boxes is not within the Commissions jurisdiction and suggested she contact the Postal Service.

James Madding, property owner and resident on Parker Drive. Madding stated that his property is on what is referred to as upper Parker Drive which comes off Pilot Peak and is the first on the left side heading up the hill. Madding thanked Tennermann for laying out the road conditions and stated that he too had brought his live savings to this property about three years ago. He also spent money having the property surveyed, paying taxes, etc and was told that Parker Drive was a private road and all maintenance would be his responsibility along with the other residences.

Madding is concerned about road changes and the rights of others to make changes without his ok. Madding stated that his portion of road is getting damaged. Madding is concerned that there has been no notification to him of a request for widening and nothing submitted regarding the plan to widen upper Parker Drive. Madding felt that if they build and have lots on lower Parker that they should use lower Parker and not upper Parker, there has been no addressing of maintenance and questioned as to whether or not is this to become a Planning Commission Meeting 4/20/07
County maintained road. If not County maintained then he should have some say. Madding concluded that the existing road can not be widened to accommodate the requirements and also spoke of seasonal creeks.

  Hagan requested that Madding point out his parcel on the overhead map. Madding did.
  Tennermann clarified that this project was properly noticed to the neighboring property owners and the general public and if Madding’s property was more than 600 feet from the subject property that he may not have been personally noticed.
  Hagan inquired to Tennermann to clarify if lower Parker is public or privately maintained.
  Tennermann replied that it is all privately maintained and that privately maintained roads have always been required to be brought up to county standards.
  Hagan inquired if the private roads have public access routes?
  Tennermann replied, yes.
  Williams stated that prior to our General Plan; relative to offsite road improvements the Planning Department, in our recommendations, had to make nexus findings. This means that the level of offsite road improvements has a connection with project impacts. There is a level to the offsite road improvements that we can recommend. That is the reason why the offsite portion of Parker Drive was not recommended for the full level of road improvements for those past projects. Williams explained prior General Plan and Current General Plan requirements in regard to adequate capacity.

  Ken Sebesta, property owner and resident on (upper) Parker Drive. Sebesta stated that they love living there and do not want the road touched, and that they will maintain the road themselves. Sebesta stated that developers want to come up and build lower Parker for their access and that trucks use upper Parker which ends up tearing up their road. Sebesta stated that they need to leave upper Parker alone, get the trucks off this part of the road. Sebesta concluded that the more development and more splitting of parcels it just makes for more traffic.
  Skip inquired to Dana Herfelder, Public Works, about whether there are weight restrictions on private easement roads.
  Herfelder replied no.
  Joe Rayle, resident on upper Parker Drive. Rayle stated that his house is part of the original Oakander development, which is between upper and lower Parker. Rayle stated that he is on one of the newer roads that the Planning Commission dictated. Rayle stated that where the new road attaches to upper, when they paved it they didn’t pave a portion of upper Parker that they tore up when they put in the new road. They stated that this would be corrected, it still isn’t corrected. There have been many promises and time lines have not been met. Rayle stated that one of the criteria for him moving there was that he wanted to be on a paved road, and that he has been driving on an unpaved road since he moved there. There were two years of the new road that was gravel. When it was finally paved the developer explained that they didn’t have to pave it, that they did it out of the goodness of their hearts. Rayle inquired what the definition of paved is as he assumed this meant asphalt or concrete. Rayle stated that the county uses a different definition when it comes to the word paved. Rayle asked for a definition as to what the county considers a paved road.
  Rayle stated that although they do not want upper Parker to be widened, he concurs with the staff report that it should be widened because it is dangerous with accidents waiting to happen. Rayle described construction trucks driving fast on the road and tossing out trash. Rayle described the poor condition of the road. Rayle stated that one of the CDF requirements of the original Oakander development was a turn out every 300 feet and that has not been done. The construction trucks have torn fence, broke water main, smashed lights and crushed culverts. This damage has been at our expense. Parker needs to be widened. The developer doesn’t want to spend the money to widen it. If it is widened what will the surface be? We have to maintain that road. Currently it is a 12 foot road, if widened that means we have to maintain a larger portion at a larger expense to us.
  Skyrud stated that the project that is before us is an application for a subdivision which has been recommended to be denied and asked that Rayle summarize. Skyrud stated that Planning Commission Meeting 4/20/07 7
upper Parker road is a public easement on a privately maintained road and that Rayle mentioned they said that would be paved. Skyrud asked who “they” are.

Rayle replied, Ken Baker.

Skyrud asked Hertfelder for a definition of paved.

Hertfelder answered that a new road is asphalt or concrete. The current Parker Drive we are referring to is paved but it is classified as an oiled road. Under road standards there is a Rural Class 1 and an A and B, which is a difference in gravel. Rural Class 1 C requires an asphalt/concrete surface. We do have different standards whether it is a gravel road or paved road surface.

Castaldi thanked Skyrud for allowing her to speak again. Castaldi stated that she owns the old Betty Parker Home and wants to put to bed the road issue. The road that Dana spoke about, the gravel road, was already there. When we put in a nicer, wider road to help take the traffic off upper Parker Drive we placed the road over the exact same place that the original road was. Castaldi stated that her map would not have passed if there were encroachment problems. Castaldi stated that Sebesta had told their gravel/road person, Keith Williams go ahead and build the road, and then after it was done she declined to give them an easement. The road can not be removed, because there is a water line directly under where Sebesta is talking about.

Baker requested to continue this to another date so that they can meet with the home owners so that they can fix the traffic issues on upper Parker Drive.

Skyrud stated that the item before them today is not with the residents on upper Parker Drive. It is their map and what they have proposed and asked Baker what his plan is.

Baker stated that the Planning and Public Works are doing a good job, but that the General Plan is not being interpreted correctly. He wants to solve issues that are real. The Greens are caught in the cross fire and would like the opportunity to present their project in the best possible light.

Skyrud stated that we have a project before us, for action today and as the applicants representative if you continue this would we be doing something different, what changes to this application do you see that you would make.

Baker stated that he would supply more information on things that didn’t get explained.

Ross asked of Baker, you mentioned that this map doesn’t reflect what you really wanted to present. Would we see something different?

Baker replied it would depend on the time allotted us.

Skyrud stated that when this map was submitted that it was submitted as Baker as the developer and Planning Staff does not draw maps. This is the map that you submitted after discussions with Planning because you thought this was your best shot. A map should be submitted that the Planning Commission can approve.

Hagan stated that the fact that the Planning Department is basing their recommendation for denial is because of inadequate access and how will that fact change if the map is redrawn?

Baker stated that is not true, there is adequate access. Baker stated that it is inadequate now because of the new General Plan.

Hagan stated that Baker would not be submitting any data to the Planning Department to prove that the road is adequate and what Baker is taking issue with is the Planning Departments determination that you will be held to the standards of the new General Plan, not the old General Plan, and asked Baker if that was true.

Baker stated not quite. He hopes to bring forward information that they will be satisfied with and that they will recommend approval. Baker stated that information is out there but it is not available today and he would like the opportunity to present that when it is available.

Skyrud asked of staff: we have received public testimony regarding traffic this is exempt from CEQA but based on the testimony received today, could we request the applicant to provide us with a focused EIR for a Traffic Study?

Williams inquired if the Commission is interested in approving the project because there is no need to do Environmental Review if you are going to deny the project. You do not have to have Environmental Studies to deny the application.

Planning Commission Meeting 4/20/07
Skyrud stated that we could request a focused traffic study?
Tennermann stated that the only reason to do an EIR would be that you direct staff to approve project.
Williams stated that the road is not adequate by existing county standards.
Skyrud stated asked the commission about a continuance of this project.
Hagan stated that he is not convinced that we need to continue.
Williams poised the question to the Commission: Is this project subject to the new General Plan standards? If yes, then we would need to look at the access to lower Parker Drive as requested by agent and now we have width issues and a dead end road length issue because lower Parker Drive doesn't comply with the dead end road length issues. If lower Parker doesn't comply, then CDF will say that we need another way out of the project site. This then brings us back to the condition of upper Parker Drive. If CDF comes in and says that the site doesn't comply with the dead end road length standards per State Fire Safe Regulations and the applicant would then need to provide another route out. CDF can recommend that we require an alternative route out in order to comply with the minimum standards.
Williams stated that it is Planning's position that this project is subject to the new General Plan. The issue relative to the map is that when the map was first submitted, the turn around was in the middle of the drainage easement and we felt that was not an appropriate place for a 90 foot diameter turn around. That was one of the suggested changes that staff made to the applicant, there was also a need to change the boundary of the map because the boundary wasn't accurate on the first map. The boundary of the first map showed a LLA that was not part of the currently submitted project. The map had issues it was not correct. We needed a new map to process. Even though they submitted their application on November 30th, the map that we processed was the map that you have in your packet which was submitted on January 2007. This was the map that was sent out for comments.
Skyrud inquired as to who makes the decision whether a project falls under the old General Plan or the new General Plan?
Tennermann stated that it is state law section 66474.2 of the California Government Code states that projects accepted as complete for processing according to CEQA guidelines while a new GP update is being considered (which is 30 days after submittal of application) shall be held to the previous General Plan. This application was submitted on November 30, 2005 and the old General Plan was approved on December 18th, 2006. No letter of completeness was written for this project prior to that date. To clarify Tennermann stated that this project was not deemed to be complete and therefore is subject to the new General Plan.

Public Portion of the Hearing: Closed.

Skyrud stated that the applicant has requested a continuance and reminded the public that the decision made can be appealed to the Board of Supervisors.

Deliberations:

Hagan stated that he is convinced that the new General Plan applies.
Ross concurred with Hagan that the new General Plan applies to this application and that they should move for recommendation for denial.
Williams recommended that the Commission include as one of their findings, a time line as to when the project was received, maps etc., relative to applicability of the new General Plan.

On motion of Commissioner Ross, seconded by Commissioner Hagan, the Planning Commission adopted a resolution denying Land Division Application No. 2006-347 with the recommended amended findings adding government code and project time line.
Motion carried by the following vote:

AYES: 4 (Hagan, Ross, Skyrud, DeSantis)
NOES: 0
EXCUSED: 1 (Rudzik)

3A. Informational Items

Williams brought the Commission up to date on future meetings:

May 4th Planning Commission meeting one of the items is Halferty Development which is the Rite Aid Design review, two other Land Divisions, one will be a recommendation for approval and the other a recommendation for denial, similar to today’s application relative to inadequate capacity provisions of the General Plan.

May 18th is SDA Camp Wawona continued hearing.
Hagan asked if SDA is a public hearing or is the public part closed?
Williams stated that it is a continued public hearing, the public is invited to attend, the public input portion is closed. The Commission will be conducting deliberations and requesting staff to address issues that were raised at the prior public meeting.

Skyrud asked if the public portion can be reopened for SDA?
Williams stated that you do not have to renotice the meeting to re-open it.
Williams stated that counsel will be here to help us.

Kris Schenk stated that the Board of Supervisors have set up an on-site workshop tour on June 13th for SDA Camp. There will be kids up there at the camp during the tour, which will make it different from when the Planning Commission toured the site. This workshop is open to the public. Schenk also mentioned that on June 19th the Board of Supervisors meeting will be at the Tenaya Lodge for a public hearing. This means that it is predicated that Planning Commission completes their action on the May 18th hearing.

Skyrud asked if SDA falls under the new General Plan
Schenk replied, yes, and more specifically under the Wawona Specific Plan.

Schenk stated that the new assistant planner will be here at the beginning of May, he will replace Wes, who left in December. The Board also approved a contract position for Patricia Nicholson. Nicholson worked in 2002 and 2004 as a planner in the department and she most recently has been a contract planner. Nicholson will be able to handle some of the more complex projects, such as Deerwood.

Schenk stated that if a project was deemed as complete prior to the time that the adoption of the New General Plan was noticed then that project would go under the guidelines for the old General Plan.

Skyrud stated that since County Counsel was present he had a question of basic law and asked Tom Guarino if someone owns land and there is a public road easement going through that land who has the right to come and pave that road?

Guarino then gave a basic overview of easements.

Hagan asked Schenk how many applications were submitted prior to the finalization to the General Plan?

Williams stated that we are dealing with less than 10 applications.

Schenk stated that this may not seem fair in the applicant’s point of view, and that we struggle with that, but the County does have the ability to allow applications to meet that criteria by a certain date.

Ross inquired about applications submitted and the timeliness and whether there is fast tracking.

Williams stated that she looks at every single application that comes in the office and reviews them then assigns them. She picks the planner based on the complexity of the project.

Williams stated that there are too many projects and not enough planners and concluded that if Planning Commission Meeting 4/20/07
Resolution
No. 07-XXX

A resolution upholding the Planning Commission denial of a continuance of the public hearing for Land Division Application No. 2006-347; Frances Green, applicant. Assessor Parcel Number 015-400-005

WHEREAS an application for land division was received on November 30, 2006 from Frances Green for a property located at an unassigned address on Parker Drive in Ponderosa Basin, also known as Assessor Parcel Number 015-400-005; and

WHEREAS the project proposed to divide a parcel of 21.90 acres into four parcels of slightly over five acres each; and

WHEREAS the project is located on Parker Drive, a privately-maintained road of between eleven and thirteen feet in width between the project site and Ponderosa Court; and

WHEREAS privately-maintained roads have historically been required to comply with minimum road standards established by the County based upon the requirements established by Sections 16.12.160 and 16.12.170 of the Mariposa County Subdivision Ordinance; and

WHEREAS the Mariposa County General Plan was adopted on December 18, 2006; and

WHEREAS Section 16.12.034 of the Mariposa County Subdivision Code requires that the Planning Department notify the applicant in writing of the completeness of the application not more than thirty days after receiving the application; and

WHEREAS any application that has not been deemed incomplete in writing within that thirty-day review period is automatically deemed complete; and

WHEREAS staff is required to determine whether an application is consistent with the General Plan in effect on the day that the project is accepted as complete for processing; and

WHEREAS staff had not determined that the application was complete for processing prior to the adoption of the General Plan; and

WHEREAS the project was received on November 30, 2006, nineteen days prior to the adoption of the General Plan, and therefore was not automatically complete by the time the Plan was adopted; and

WHEREAS therefore the project was deemed to be complete on December 30, 2006; and
WHEREAS the project is therefore subject to the provisions of the 2006 General Plan including all requirements for adequate capacity; and

WHEREAS the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS Parker Drive does not meet the minimum County standard of a Rural Class IIB SRA road that is necessary to serve the parcels along that road; and

WHEREAS the Public Works Department stated in a memorandum to Planning on February 28, 2007 that Parker Drive did not meet the minimum standard for adequate capacity; and

WHEREAS the Planning Department wrote to the applicant on March 9, 2007, explaining that the applicant had the option to withdraw the application or to proceed to the Planning Commission hearing and have staff recommend that the application be denied; and

WHEREAS the agent for the applicant requested that a public hearing be scheduled as soon as possible; and

WHEREAS a duly noticed public hearing was therefore scheduled for the 20th day of April 2007; and

WHEREAS the Planning Department reviewed Section 15061(b)(4) of the California Environmental Quality Act Guidelines, which states that an application is exempt from the provisions of CEQA if that application will be rejected or disapproved by a public agency; and

WHEREAS a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS the Planning Commission did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report, testimony presented by the public concerning the application, and the comments of the applicant and her agent; and

WHEREAS the Planning Commission of the County of Mariposa found that the project is exempt from the provisions of the California Environmental Quality Act and denied Land Division Application No. 2006-347; and

WHEREAS the Planning Commission adopted Resolution No. 2007-13 on April 20, 2007 with the recommended findings stating that this project is denied; and

WHEREAS the applicant was given twenty (20) calendar days to appeal this decision to the Board of Supervisors; and

WHEREAS the applicant filed their appeal to the Board on May 10, 2007, exactly twenty calendar days after the public hearing on this project; and
WHEREAS the applicant appealed the decision of the Planning Commission to deny the applicant's request to continue the project to a later date; and

WHEREAS the basis for denial of the project was the inadequate condition of Parker Drive; and

WHEREAS the agent for the applicant stated during the public hearing that the applicant does not intend to make improvements to Parker Drive relative to access requirements established by both the Mariposa County Subdivision Ordinance and the 2006 Mariposa County General Plan; and

WHEREAS the Planning Commission determined that the applicant did not intend to use the project continuance to address the problems of the proposed project; and

WHEREAS the Planning Commission denied the applicant's request to continue the public hearing to a later time due to their determination that the project continuance would serve no purpose; and

WHEREAS the Planning Department circulated the appeal among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS the public hearing for the appeal was scheduled for the 26th day of June 2007 beginning at 11:00 a.m. or as soon thereafter as possible; and

WHEREAS the public hearing was duly noticed in accordance with County and State regulations; and

WHEREAS staff provided the Board of Supervisors with a copy of the Planning Commission Staff Report for this project, prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures, together with the minutes of the Planning Commission hearing and a memorandum summarizing the Staff Report and the appeal; and

WHEREAS the Board of Supervisors did hold a public hearing on the noticed date and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public concerning the application, and the comments of the applicant and her agent,

NOW THEREFORE BE IT RESOLVED THAT the Board of Supervisors does hereby deny Appeal No. 2007-85; and

BE IT THEREFORE FINALLY RESOLVED THAT the denial of this appeal is based upon the findings set forth in Exhibit 1 of this resolution.

ON MOTION BY Supervisor «Motioned_by», seconded by Supervisor «Second_by», this resolution is duly passed and adopted this June 26, 2007 by the following vote:

AYES: Supervisors

NOES: None
EXCUSED: None
ABSTAIN: None

DRAFT

JANET BIBBY, Chair
Mariposa County Board of Supervisors

Attest:

Mariposa County
Approved as to form:

MARGIE WILLIAMS
Clerk of the Board
Mariposa County Board of Supervisors

THOMAS P. GUARINO
County Counsel
1. Based upon review of the record, the Board of Supervisors finds the Planning Commission determination to take action on Land Division Application No. 2006-347 and not continue the public hearing as requested by the applicant's agent is appropriate. The Board of Supervisors finds that, without an indication that the agent's request to "present solutions for meeting the standards of a Rural Class IIB SRA road" could result in improvements being made to Parker Drive, the additional time would not result in any change in potential project action. Parker Drive is subject to the access improvements required by the Subdivision Ordinance. Parker Drive is subject to the "adequate capacity" provision of the General Plan. Parker Drive does not comply with minimum road width requirements for 2-lane traffic.

2. Based upon Finding No. 1, the Board of Supervisors finds that the Planning Commission findings to deny the project, as included in PC Resolution No. 2007-13 are appropriate. The BOS hereby re-adopts these findings by reference.