DEPARTMENT: Planning  

BY: Megan Tennermann, Asst. Planner  

PHONE: (209) 742-1219

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt resolution denying Appeal No. 2004-208 and upholding the Planning Commission’s denial of Land Division Application No. 2003-289; Rex Fouch, applicant and appellant; based upon:

1) All findings for denial as contained in Planning Commission Resolution No. 2004-41, adopted by the Planning Commission on October 22, 2004;

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, approving land division with conditions, or modifying conditions.

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Attachments:
A. Memorandum to Board / B. Notice of Appeal /  
C. PC Resolution / D. PC Minutes / E. PC Packet  
/ F. Comments from Affected Agencies / G. RICP  
Sections / H. State Firesafe Standard Sections / I.  
Draft Board Resolution

CLERK’S USE ONLY: 
Res. No. 04-531  
Ord. No.  
Vote – Ayes:  
Noes:  
Absent:  
( ) Approved  
( ) Minute Order Attached  
( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: 

Attest: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

By:  
Deputy

COUNTY ADMINISTRATIVE OFFICER: 
Requested Action Recommended

☑ No Opinion  
Comments:  

CAO:  

Revised Dec. 2002
MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: REQUEST FOR RESOLUTION DENYING APPEAL NO. 2004-208 AND UPHOLDING THE PLANNING COMMISSION’S DENIAL OF LAND DIVISION APPLICATION NO 2003-289; REX FOUCH, APPELLANT (AGENT: KEN MELTON)

Resolution Nos. 04-530 and 04-531

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on December 14, 2004

ACTION AND VOTE:

10:48 a.m. Kris Schenk, Planning Director;
PUBLIC HEARING Relative to Adopting a Resolution Denying Appeal No. 2004-208 and Upholding the Planning Commission’s Denial of Land Division Application No. 2003-289; Rex Fouch, Appellant (Agent: Ken Melton)

BOARD ACTION: Sarah Williams, Deputy Planning Director, advised that Megan Tennermann, Assistant Planner, would give the staff report. Megan presented the staff report and presented additional information that was received from California Department of Forestry and Fire Protection (CDF) relative to implementation of Public Resource Code 4290. Staff responded to questions from the Board relative to the additional information that was received from CDF and whether PRC 4290 applies to the internal portion of a project or the roads outside of the project area; whether Trower Road is maintained by the County; relative to the Fire Chief’s review of the project; whether the proposed project meets County standards; reference to the State Fire Safe Standards and the road standards that are required for emergency egress route; and review of the “no action” alternative and the consequences and clarification of the “through road/primary” access.

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

Rex Fouch, applicant and appellant, stated he would like to hear what others have to say and then he and his agent, Ken Melton, would like to address the Board. He also noted that several neighbors were present to support him and they would be affected by this.

Dennis Townsend, CDF, stated he was representing health and safety issues for the people that live here and not just the department. He advised that CDF’s opposition is to the ingress and egress to serve the new homes. He stated they are not opposed to the project, but feel that the roads need to meet minimum standards. He also noted that there are two other developments in line behind this project in the area. He expressed concern with the fire danger and the condition of the roads. He advised that the Fire Safe Standards were developed for areas in the lowest fire hazard severity zone and the County is two levels above that. He stated he is concerned with the safety of the encroachment to Highway 140 – the road is narrow and in some areas, you can not pass another vehicle.

Supervisor Parker asked whether the encroachment is included in the PRC 4290 requirements; and whether CDF could require improvements on a County road, especially one that was established prior to
1991. Tom Guarino, County Counsel, advised of a meeting that was held with CDF officials relative to PRC 4290 and post 1991 roads. He reviewed Section 9045.5 of the PRC program, and he advised that he does not feel that it says that CDF can overturn the County’s action; and he does not recommend that this be included in any action.

Dennis Townsend referred to the Fire Safe Guidelines and road requirements, and stated he feels that CDF does have authority to condition off-site improvements. He added that they are concerned with the ability for fire engines and another vehicle to be able to pass on a roadway.

William Peterson referred to his attempts to divide his property and the same problems that he encountered. He stated he could not find out if it was County or State law that had the road improvement requirements.

Bruce Crane, CDF Legal Counsel, provided input on the scope of PRC 4290.

Ken Trujillo, resident on Elizabeth Lane, stated the road can use any improvements, and he noted that he has gotten by fire trucks during fires. He referred to a four-split that occurred on the top of the hill and there were no problems raised at that time. He stated he feels that if the applicant is willing to mitigate some of the measures, that this will improve the situation.

Rex Fouch stated he feels that this is their last opportunity to do improvements to the road that are needed. He advises that they are proposing to mitigate the problems; and he further noted that this land division was recommended for approval at one time, and was supported for approval by County Fire in writing, and that Public Works deferred the safety issues to County Fire. He advised that they are willing to meet PRC 4290 requirements the way it reads, and not the way it is being “cluttered.” He stated he does not feel that the State should dictate County policy. He agrees with Ken Trujillo that these issues should have been raised with the previous two land division applications, and he noted that nothing has changed since then. He expressed concern with the Planning Commission’s process and not allowing him and his agent to speak after the public portion was closed. He stated he does not feel that they are a part of the public, they are the applicant and their views should be listened to. He stated he feels that the Planning Commission’s decision should be overturned. He also stated that he does not feel that CalTrans should be involved in this, and he noted that CalTrans is not involved in the landfill project that Public Works is doing, and it will generate heavier traffic. He further noted that this road existed before Highway 140.

Megan Tennenmann noted that the letters from County Fire and Public Works that the applicant referred to were in the agenda package. Supervisor Bibby asked staff to check and respond during deliberations as to how long ago the previous two land divisions were approved.

Ken Melton, agent for the applicant, stated he disagrees with the applicant being a part of the public portion of these hearings, and he would appreciate he and Rex having an opportunity to provide input and being able to address any questions or concerns that the Board has. He stated he feels that the long staff report is not accurate. He referred to Dennis Townsend’s comments relative to PRC 4290 and implementation on roads that were constructed prior to 1991, and he stated he disagrees with him. He noted that the applicant agreed to meet all of PRC 4290 requirements that apply to his project. He stated he does not understand why CDF is here addressing County roads and issues. He reviewed the staff report and commented on the following:

- He disagreed with the agenda title wording, and responded to a question from the Board relative to clarifying his concern. Sarah Williams advised that staff presents the Planning Commission’s action in the agenda package to the Board.
- He referred to CDF’s dead end road length standards and stated they are just addressing the County’s rules and regulations.
- He stated he feels the issue relative to the legality, width, and condition of the unnamed road easement for a second route out of the project site is an incorrect statement. There was no request that this meet the through-road standards. It was as a fire egress only and there are no County standards.
- He agreed that this project was “caught up” in the narrow county road discussion, and he commented on the improvements that the applicant has offered to do on the road.
- He referred to the statement in the staff report that an agency did not support the project, and he stated he feels the agencies should only provide recommendations relative to the project and not advise of their support or non-support. He stated he does not feel that they need the support of CDF for a project. He referred to the Planning Commission’s discussion and stated he feels there are misstatements in the report; advised that no conflicting standards were found; and he stated he feels the statement relative to road improvements which intersect with state highways should
have a CalTrans encroachment permit based upon written policies in the Road Improvement and Circulation Policy is false.

- He referred to the “Real Issues and Non-Issues” in the staff report and “Precedence for Action by Previous Projects and Simple Steps.” He advised that there are two other land division applications, including the original one for this project. He advised that they are not addressing anything in this application concerning a through road, just dead end road issues; and yet staff addresses through road standards throughout the staff report.

- He referred to the additional detailed discussion on the “Dead End Road Issue” and advised there no request to waive the dead end road standards.

- He referred to the “Width of Easement for Unnamed Road” and “Narrow County-Maintained Trower Road” and noted that it is true that there are no standards for emergency egress roads, yet the staff report contains statements throughout on this. He referred to Joe Silva’s subdivision and the issue on Allred Road and requirements for twelve feet of travel lane; and he advised that this road is currently at approximately fourteen feet of travel lane, and the applicant proposed to widen it to sixteen feet. He stated he agrees with bringing Elizabeth Lane up to a Class II standard. He stated he feels there are statements in the staff report that are not true and may have misled the Planning Commission in its decision.

- He referred to Planning Commission Resolution No. 2004-41, and he stated he feels the statement relative to Upper Trower Road and the travel lanes not accommodating two passing vehicles is false – there is no requirement for it to be eighteen feet and he has been able to pass other vehicles, and others travel it every day and are able to pass other vehicles. He agreed with the statement that Title 16 of the Subdivision Ordinance does not mandate road improvements to a county maintained road for minor subdivisions. He referred to the continuance of the public hearing by the Planning Commission; and he advised that the applicant was willing to postpone the hearing in order for staff to do more research to discuss the proposals made by the applicant and himself. He referred to the Initial Study for the project and staff recommendation to approve the amended project with conditions.

12:01 p.m. Recess and Chairman Parker reminded everyone that this is a public hearing and the Board members cannot discuss this matter outside of the hearing process.

12:21 p.m. Ken Melton continued with his presentation.

- He referred to the “Sign-off Checklist for List of Conditions of Approval and Mitigation Measures.” He referred to condition No. 13, and he stated he does not feel that reference to PRC 4291 should be left in the report. He referred to the CEQA checklist that was done for the original application and the statement that was checked that the proposed project “could not” have a significant effect; and he commended staff for including this in the report.

- He referred to the letters included in the package from Public Works and County Fire. He stated he feels that this project is a benefit to the area.

- He referred to CalTrans’ response to Megan relative to the unnamed road and their “guess” that it is a legal CalTrans access. He noted that there are several accesses that were never permitted and were in existence prior to the permitting process.

- Ken referred to the Mariposa County Road Policy 1991 relative to dead end roads, and he advised that no waiver was requested.

- Ken referred to the draft resolution for the Board, and he advised that the applicant objects to this resolution denying the appeal being placed in the package prior to review of his report. They would have been okay if a resolution approving and one denying the project were included for consideration.

- He referred to the staff report that was provided to the Planning Commission and he complimented staff, especially Megan, on the report. He further referred to the draft resolution for the Board, and he questioned the statement that based upon consideration of the whole record, that the Board is unable to make all of the required findings for approval of the project. He noted that the original staff report stated that the project meets all of the requirements, and the project has not changed.

- Ken requested that he and the applicant be included in the Board’s discussion relative to this project.
Ken Melton responded to a question from the Board relative to clarification of the State Fire Safe Standards concerning emergency egress. Tom Guarino, County Counsel, provided input relative to the dead end road issue and the through road standards. Ken further responded to the issues.

The public portion of the hearing was closed and the Board commenced with deliberations. Sarah Williams responded to Ken Melton's presentation and provided summary comments. She referred to Joe Silva's subdivision and the conditions; and she referred to the Road Improvement and Circulation Policy relative to the intersection of proposed road improvements with a State Highway. She stated she agrees with Ken that the legality of the encroachment is not the issue; but the standards are. Supervisor Parker asked whether this would hold true for emergency access. Sarah advised that the findings in the draft Board resolution are exactly the same as the findings adopted by the Planning Commission. She commented on the CEQA determination issue to address a narrow county-maintained road issue; and the issue of the appropriate involvement of CalTrans when a subdivision is using existing roads, and she stated the question is how wide roads should be when used for accessing a new subdivision. Discussion was held relative to the issues and the process for the Planning Commission's hearing. Staff responded to a question from the Board as to who will maintain the road improvements in the future that are done at the time of a land division.

Blaine Shultz, Fire Chief, responded to questions from the Board relative to his letter concerning the use of the unnamed road to meet the emergency egress standards. Staff responded to additional questions from the Board relative to the approval of the previous land division applications and the timeframes; meeting the dead end road standards; whether the road could be used strictly for emergency egress as an escape route; relative to the improvements that the applicant proposes; relative to findings that would need to be made to address the issues that have been raised for the Board to take action on the appeal; relative to the "loop" that shows on the map for Elizabeth Lane; and relative to future subdivisions being planned in the area. Dana Hertfelder, Public Works Director, responded to a question from the Board as to the status of funds that were collected in 1997 for road improvements to widen Trower Road. Staff responded to questions from the Board relative to the PRC 4290 standards and the County's standards, and findings that would be necessary to uphold the appeal. Tom Guarino advised that the eighteen foot with improvement was not a part of the application and was not before the Planning Commission. Sarah advised that the applicant would need to formally modify the application for this improvement.

1:47 p.m. Recess

2:01 p.m. Public hearing for Appeal No. 2004-221/LeBlanc was opened and continued until after the following.

Staff responded to additional questions from the Board relative to findings the Board would need to make to uphold the appeal, and Sarah advised that findings could be made if the applicant is willing to make modifications to the project pursuant to Board discussion; however, that would require reopening the public portion of the hearing. Sarah also advised that she feels it would be important to obtain input from the agencies on the modifications. The Board concurred with reopening the public portion of the hearing.

Rex Fouch, applicant, deferred input to Ken Melton. Ken Melton advised that what the applicant has proposed to do and is required to do will improve the public health and safety. He stated he does not understand how anyone can address this as a hindrance to public safety. He advised that a Class I road will not fit within the twenty foot easement for the unnamed road; however, he believes they can get eighteen feet of travel surface, and he offered to do that. He also asked that the 4,800 feet for a dead end road be extended to 6,000 feet with this mitigation measure.

Supervisor Pickard clarified the applicant's willingness to modify the application. Supervisor Bibby asked about future maintenance. Tom Guarino responded to questions from the Board relative to the issue of usage of the easement and the applicant's responsibility. Supervisor Bibby asked whether this meets CDF's needs.

Rex Fouch stated he approves everything that Ken Melton said; and he advised that if there becomes an issue with the neighbors that he can not get the proposed eighteen feet, he will take responsibility for that by either negotiating with them or by not doing the project.

Dennis Townsend stated CDF would be agreeable to the proposed modification to the project, and he advised that eighteen feet meets the intent of the law. He noted that they have lesser issues that they can deal with the applicant on. He responded to a question from the Board and advised that this would mitigate the dead end road issue.
Ken Trujillo asked if the applicants are to join the road maintenance association for Elizabeth Lane. Rex Fouch advised that is a deed requirement.

Dana Hertfelder provided input relative to his concern that not only the unnamed road be improved, but the encroachment on Highway 140 should be consistent with County policy because he believes it will be used for ingress and egress. Chairman Parker clarified that would be an issue between the applicant and CalTrans. Tom Guarino asked that Planning staff restate the proposed amended condition and that the applicant agree to it on the record; then the Board could close the public portion and take action.

Ken Melton noted that the County regulations do not require anything on the encroachment that Dana Hertfelder referred to.

Tom Guarino provided an opinion to staff that the unnamed road does intersect with Highway 140. Sarah Williams read the amended condition to require the applicant to have eighteen feet of travel lane width on the unnamed road. He also asked that the applicant expressly agree that there is no obligation on the part of the County to obtain any additional width of that easement from the property owners. Rex Fouch agreed with the amended condition for the eighteen feet of travel lane and that there is no obligation on the part of the County to obtain any additional width of that easement. Sarah Williams asked for clarification of the CalTrans permit requirements for the encroachment. Tom Guarino referred to Condition No. 1 on the “Sign-off Checklist for List of Conditions of Approval and Mitigation Measures,” and he noted the County Road Policy is still in existence. Rex Fouch stated that if an encroachment permit is required for this project, then he feels that the County should be required to obtain one for the landfill project. He stated he does not feel that his improvements intersect with the Highway, and he noted that you will not be able to see it from the Highway. Discussion was held, and Tom Guarino provided clarification relative to the County Road Policy, and he advised that the unnamed road intersects the Highway; however, it will be an issue as to whether the improvements intersect and CalTrans will have issues of whether the usage of the road increases. He stated he wanted the applicant to be aware that he is subject to CalTrans regulations. Rex Fouch clarified that if he is going up to the CalTrans property, then he has to obtain a permit. Dana Hertfelder asked for clarification of the amended condition, so that they could be clear about the portion of the road that will be improved for inspection purposes. Rex Fouch clarified that they will improve the road to eighteen feet all the way to the apron. Tom Guarino clarified that there will not be improvements into the encroachment as he understands the condition.

The public portion of the hearing was closed. (M)Pickard, (S)Stetson, Res. 04-530 was adopted accepting the applicant’s modification to the application relative to the eighteen feet of improvements to the unnamed road/Ayes: Unanimous. (M)Pickard, (S)Bibby, Res. 04-531 was adopted granting the appeal, which overturns the decision of the Planning Commission; and direction was given to staff to bring back the formal resolution, with findings as discussed today, for action on December 21, 2004/Ayes: Unanimous. The hearing was closed.

cc: File