

- (2) Notwithstanding the provisions of Section 17-28, pertaining to road or street improvements, divisions of land under this section shall provide improved streets, roads or rights-of-way from a county or state maintained road to and within the land covered by the Parcel Map or waiver, based on the following guidelines:
- (a) Existing roads and their improvements, if any, must be preserved in addition to such work that might be required by this chapter. Should the improvement work cause damage to existing improvements, the existing improvements must be restored to their condition which existed immediately before development. The standards for improvements shall be as follows:
    - i. Parcel maps creating parcels, any of which contain less than five (5) gross acres, shall be required to improve new roads to the applicable minor road standard as set forth in the adopted Road Design and Construction Standards. Should the project burden an existing improved road, the existing improved road shall be improved to the applicable minor road standard to the nearest publicly maintained road or highway. Should the existing improved road already meet or exceed the applicable minor road standard, the existing road shall be improved by the application of a chip seal or slurry seal to the nearest publicly maintained road. The chip seal or slurry seal shall not be applied until the existing surfacing has been adequately prepared. Preparation may include patching, crack sealing and/or other preparatory work required by the Director of Public Works.
    - ii. Parcel maps creating parcels, all of which contain a minimum of one hundred (100) gross acres, shall not be required to construct or improve new roads, but shall provide ample dedicated right-of-way or easements that could accommodate a roadway constructed to a minor road standard. Should the project burden an existing improved road, repairs to deteriorated portions of the existing road shall be made as recommended by the Director of Public Works.
    - iii. Where the land development lies in an area of the County where the general plan provides for future, more intensive development, or where street or road patterns are already established, and an increase in traffic anticipated, the Subdivision Committee may require street or road improvement to a higher standard than the applicable parcel size would ordinarily require, so as to meet the anticipated future demands.

(Ord. No. 664, § 6.3, 1971; Ord. No. 791, § 1, 3-19-74; Ord. No. 846, § 1, 7-14-75; Ord. No. 996, § 1, 1-24-78; Ord. No. 2730, §§ 1, 2, 4-26-2005)

- (3) Parcel maps creating four (4) or fewer parcels, all of which contain a minimum of five (5) gross acres, shall be required to improve new roads to a minor road standard (<400 ADT) as set forth in the adopted Road Design and Construction Standards, except that the asphalt surfacing will not be required. Should the project have access to an existing improved road, the existing road shall be required to be improved to a minor road standard (<400 ADT) unless the improvements already meet or exceed the minor road standard (<400 ADT), in which case no additional improvements other than repair of deteriorated portions of the existing road shall be required.

(Ord. No. 2402, § 1, 6-12-97; Ord. No. 2730, § 3, 4-26-2005)

21.4 Tentative Parcel Map Information. A legible, reproducible tentative map, drawn to scale on a sheet 18" x 26" in size shall be prepared and submitted showing:

(Ord. No. 664, § 6.4, 1971)



(Ord. No. 664, § 7.14, 1971)

25.5 Alleys with a minimum width of thirty (30) feet shall be required in industrial, commercial and twenty (20) feet in multiple family areas where necessary to control access to arterials and major streets.

(Ord. No. 664, § 7.15, 1971)

25.6 Cul-de-sac and dead-end streets shall be not longer than 1000 feet. Each such street shall terminate in a turning area having a radius of not less than forty (40) feet to property lines. Turning areas having a similar radius shall be required at intermediate points on any cul-de-sac or dead-end street having a length in excess of five hundred (500) feet. The Director of Public Works may approve alternate turnaround designs. No cul-de-sac or dead-end street, or combination thereof, shall serve or provide access to more than thirty (30) lots.

(Ord. No. 664, § 7.16, 1971; Ord. No. 791, § 1, 3-19-74)

25.8 Names for proposed new streets shall be approved by the County Surveyor and shown on the tentative map.

(Ord. No. 664, § 7.17, 1971)

25.9 Streets shall conform, as to alignment and width to the official General Plan for Streets and Highways of the County.

(Ord. No. 664, § 7.18, 1971)

25.10 Streets or roads in any proposed subdivision shall connect to a state highway, to a maintained county road, or to a public road or right-of-way which meets the standards of this chapter as to design and improvement.

(Ord. No. 664, § 7.19, 1971)

25.11 Streets and other parcels designed and intended for any public use shall be offered for dedication. The County may, at its option, accept or reject any such offer.

(Ord. No. 664, § 7.20, 1971)

25.12 Provisions shall be made for the continued maintenance of streets and other parcels designed and intended for public use through the establishment of Zones of Benefit within the Countywide County Service Area, Permanent Road Division or other means acceptable to the Department of Public Works.

(Ord. No. 2725, § 2, 2-1-2005)

25.13 Streets intended for the exclusive use of lot owners in the subdivision, their licensees, visitors, tenants and servants, may be shown as private streets, provided:

(Ord. No. 664, § 7.21, 1971; Ord. No. 2725, § 1, 2-1-2005)

(a) Provision is made for continuing maintenance of said streets;



ERIN B. CARLSTROM  
ecarlstrom@dpf-law.com

April 10, 2018

**ITEM 3****9:15 AM****APRIL 12, 2018**

VIA EMAIL

County of Lake Planning Commission (CDD@lakecountyca.gov)  
Bob Massarelli (Robert.Massarelli@lakecountyca.gov)  
Michalyn DelValle (Michalyn.Delvalle@lakecountyca.gov)  
255 North Forbes Street  
Lakeport, CA 95453

**Re: April 12, 2018 Agenda Item 3  
Smythe Deviation, DV 16-01  
Parcel map, PM 15-03, Initial Study, IS 15-12**

Honorable Commissioners:

Our office represents the applicants, Pat Smythe and Cody Smith, in this deviation. At its core, this is a project designed to create one additional parcel, and to provide access to that parcel. While we appreciate the staff's recommendation of approval of the deviation, we would like to call the Commission's attention to the details of the request made. Principally, the staff report consistently refers to the deviation as a change from the project conditions "as amended by staff." It is here the problem lies.

The applicants' request is that the Commission reject standards imposed by staff outside the authority granted them by this body in 2016; specifically with respect to the requirement to dedicate East Road ("Condition D4"). As you will see in the following procedural history, the requirement to dedicate East Road was rejected by this Commission in 2016, and staff cannot now seek to impose it. Thus, the request by staff to dedicate East Road, Condition D4, should be rejected because the imposition of this requirement exceeds staff's authority.

The applicants also make several deviation requests. With respect to the requirement to widen and improve East Road ("Condition D1"), the applicants' request to deviate from the imposed standards should be granted because there is no rough proportionality between the imposed conditions and the development's proposed impact. For an easement condition to be granted, there must be a sufficient nexus between the identified impact and the easement condition, otherwise it may constitute a taking.<sup>1</sup> Staff has made no individualized determination that the required dedication is related in nature and extent to the impact of the proposed development.<sup>2</sup> Rather, the proposed requirement relies simply on blanket requirements included in Lake County Code. No specific facts or studies have been produced that indicate the dedication, widening, and improvement conditions are related to the likely impact of this minor subdivision. Thus, under well-

<sup>1</sup> *Nolan v. Cal. Coastal Commission*, 483 U.S. 825, 837 (1987). See also *Rohn v. City of Visalia*, 214 Cal. App. 3d at 1475, and *Surfside Colony, Ltd. v. Cal. Coastal Commission*, 226 Cal. App. 3d 1260, 1269.

<sup>2</sup> *Dolan v. City of Tigard*, 512 US 374, 391 (1994).

established case law, the imposition of these requirements may constitute a taking, and the deviation should be granted.

Finally, the deviation from Condition D1 should be granted because there is no policy rational behind the imposition of the road standards requirements. Staff has relied on Public Resources Code Section 4290 as it interprets Lake County Section 17-28, "Improvements" to require that the entirety of East Road be dedicated, widened and improved to minor roads standards.<sup>3</sup> PRC §4290 establishes minimum fire safety standards for State Responsibility Areas including the subject parcel, which are used to provide paths of ingress and egress for fire, police, and other emergency services.

Staff indicates that there is absolutely no flexibility in these requirements. However, as can be seen in the attached letter from Cal Fire, Title 14 of the California Code of Regulations specifically allows for exceptions to standard development requirements where alternative modifications can be implemented to meet the same practical effect. ("Attachment A"). In this instance, Cal Fire believes that East Road in its current form will not pose a risk to public safety. Thus, the deviation requested from widening and improving East Road should be granted because there is no public safety basis to support the proposed condition. Moreover, the County surveyor has already indicated on the record that proposed condition D4 is not a requirement. (See Attachment B).

### History

In 2015, our clients applied for a Parcel Map approval to divide their then-existing parcel into three smaller parcels. After more than a year, a hearing was scheduled with the Planning Commission, and a staff report prepared with conditions of approval. The morning of the Planning Commission hearing, an additional requirement was requested by staff, as a new proposed condition not included in the staff report. This was the requirement to dedicate and widen East Road throughout the entire subject parcel and through to Spruce Grove Road.

In your December 14, 2017 meeting, the item was introduced to you as a request to deviate from the County's requirement to dedicate a public right of way, which they referred to as Condition D4. Staff presented it to you as though this requirement had always been imposed on this project, and that the requested deviation would go against standard County procedure. However, in this instance, the facts are different. The requested requirement to dedicate East Road was introduced by staff at the 2016 meeting but was not approved by you. It was thus never a condition of the project. The minutes from your May 12, 2016 meeting are clear on this point.

As you will see in the attached Minutes ("Attachment B"), the County Surveyor introduced a new, proposed condition of approval the morning of the hearing. It was not included in the staff report, nor had it been published for public review and comment, or review by the commission prior to the hearing. This new proposed condition, referred to as "D5" in the minutes, would have required public access from a County-maintained road to the new subject parcel, improving the road to minor road standards, and extending a public dedication through the parcel to its eastern

---

<sup>3</sup> See page 6 of December 14, 2017's Staff Report.

border. After much discussion, the proposed condition was rejected by the Commission. The following language is taken directly from the minutes:

"Gordon Haggitt, Lake County Surveyor, explained that the proposed new condition D5 is... not an absolute requirement for this minor land division...

Comm. Malley said as far as he is concerned, no changes need to be made to the conditions of approval.

Ms. Knight (Principal Planner) noted that the conditions provided in the staff report [,] do not at this time reflect the recommendations by the County Surveyor....

Comm. Schoux moved, 2<sup>nd</sup> by Comm. Rosehill that the Planning Commission find that the tentative map applied for by Cody Smith and Patrick Smythe... is in conformity with the provisions of the Subdivision Map Act and Chapter 17 of the Lake County Code and, upon that basis, approve said map subject to the conditions and with the findings listed in the staff report dated April 26, 2016 (emphasis added)."

The Staff report before you today relies on the Subdivision Map Act and Chapter 17 of the County Code in finding that the project must be additionally conditioned to include the requirement to dedicate East Road. In other words, the staff presentation misrepresents the findings of the Planning Commission in 2016, wherein the project was found to be in accordance with both the Map Act and County Code. If staff had reason to contest the findings of the Planning Commission, there was a fifteen day appeal window, as specifically reflected in the minutes. No appeal was filed within the appeal window.

Thus, the project was approved and conditioned by the Planning Commission on May 12, 2016, which approval did not include the requirement to provide public access from a County maintained road, nor to extend the public dedication through the subject parcel to its easterly boundary. ("Attachment C, Proposed Conditions from May 12, 2016 meeting").

Following the issuance of the Planning Commission decision, our clients met with County staff to understand the delay in producing the final package. Discussions with staff demonstrated that there were efforts to produce the approved map with conditions INCLUDING those that had been rejected by the Planning Commission. The so-called "Existing Conditions" are included in your agenda packet as Attachment 9 to Attachment A, and it is here that we first see the transcription error. Condition D4 is presented as though it is an approved condition, and would require an offer of dedication for a public road. These "Existing Conditions" have been presented to you as the accurate reflection of the approved parcel map. They are not.

The production of these "Existing Conditions" is what prompted our client to file the original deviation request. This was not an attempt to skirt approved road standards conditions, but to contest the imposition of conditions previously rejected by this body, as well as to deviate from conditions that are not related to the actual impact of the proposed project, and do not meet a public safety purpose.

## **Argument**

### **Condition D4**

The attempt to impose Condition D4 should be rejected because it has already been rejected by this body. Lake County Code grants the Planning Commission "all the powers and duties with respect to tentative and final parcel maps and procedures relating thereto as specified by law..." including to "approve, conditionally approve, or disapprove said map..."<sup>4</sup> There is no allowance for staff to exercise additional discretion in processing an approved, conditioned tentative map. In this instance, so-called Condition D4 was rejected by the Planning Commission at your May 12, 2016 hearing, and staff may not now seek to impose it. Additionally, the imposition of D4 is infeasible. The applicants do not own or control the neighboring parcels between the subject parcel and Spruce Grove Road, nor will the neighboring property owners consent to the imposition of a public dedication and encumbrance across their property.

### **Condition D1**

The request to deviate from Condition D1 should be granted because there is no proportionality between the condition and the potential impact posed by this project. Federal rulings demonstrate, generally, that dedications or exactions must substantially advance a legitimate state interest through a nexus between the burdens imposed by the development and the proposed permit condition. This *Nollan/Dolan* test has been utilized by California courts to strike down similar conditions.

In *Rohn v. City of Visalia*, the City's proposed requirement for street widening was struck down because there was no evidence in the record that the dedication was required to compensate for actual traffic impacts produced by the proposed project. 214 Cal. App. 3d at 1475. In *Rohn*, the City sought to require the public dedication of portions of the project owners' land for expansion of surrounding streets.

The City attempted to base this requirement on the "common sense" understanding that the project would result in an increase in traffic flow; therefore, improvements to the City's streets were necessary. However, the environmental impact report showed that conversion of the property would impose no significant traffic problems. Applying the *Nollan* requirement that exactions or dedications must substantially advance a legitimate state interest, the Court struck down the City's street widening requirement. *Id.*, at 1477.

Similarly, here there is no evidence that the requirement to widen and improve the road is required to compensate for actual impacts produced by this subdivision. One new parcel will be created, which presumably will generate residential rates of traffic, but no traffic study has been produced which might demonstrate a significant increase in traffic. One new group may take up residency in the area, but no findings demonstrate they will lack legal access to their parcels following the approval of the subdivision. To the contrary, the Applicants have entered into a private agreement with their adjoining neighbors to guarantee access to all property owners and to

---

<sup>4</sup> Lake County Code of Ordinances, Chapter 17, Article II, Section 17-8.7.

maintain the road's integrity.<sup>5</sup> Additionally, as in *Rohn*, the Initial Study for the Smythe project indicates that traffic impacts for emergency access would be less than significant, and no impacts are anticipated to traffic patterns or traffic levels of service. Thus, there is no evidence in the record to support such a condition.

Again, in *Surfside Colony, Ltd. v. California Coastal Commission*, an easement dedication was disallowed because there was no specific report or study produced in the record to justify the dedication. 226 Cal. App. 3d 1260, 1262. In *Surfside*, the Coastal Commission attempted to require Colony to dedicate public access to its private beach. Once again interpreting *Nollan*, the Court denied the Commission's condition, holding that there must be a "solid connection" between the public burden created by the proposed project and the necessity for the public easement. *Id.* Specifically, the Court argued that no specific studies were commissioned linking the specific project- a revetment- to the specific impact- beach erosion. *Id.*, at 1268.

Similarly, here, no specific study has been commissioned showing any impacts which are mitigated by the requirement to dedicate, widen and improve East Road from Spruce Grove Road and through the subject parcel. In fact, the only actual inspection of the subject parcel, conducted by Cal Fire, yields the opposite result- that the road as it currently exists meets public safety standards and no improvements or widening is necessary.<sup>6</sup>

### Conclusion

The request to dedicate East Road, Condition D4, should be rejected, because the condition contravenes the direction provided by the Planning Commission in 2016. The deviation from the requirements to widen and improve East Road, Condition D1, should be granted because no relationship exists or has been demonstrated between these conditions and the project's impacts. Finally, the deviation should be granted because there is no evidence in the record supporting the condition or any related public health or safety interest in dedicating a public right of way and widening and improving the road.

Thank you for your time and consideration.

Sincerely,

DICKENSON, PEATMAN & FOGARTY

Erin B. Carlstrom

EBC:gc  
Encls: Attachments A, B, C  
cc: Clients

<sup>5</sup> See Attachment Four of December 14, 2017 Staff Report.

<sup>6</sup> C. Vallerga, Fire Captain, Sonoma-Lake-Napa Unit, Dept. of Forestry and Fire Protection letter, February 5<sup>th</sup>, 2017.

# ATTACHMENT A

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION  
SONOMA-LAKE-NAPA UNIT**

21095 State Highway 175  
Middletown, California 95461  
(707) 987-3089  
Website: [www.fire.ca.gov](http://www.fire.ca.gov)



February 5<sup>th</sup>, 2017

To: Mr. Cody Smith  
Mr. Patrick Smythe  
19697 East Road  
Lower Lake, CA 95457

Subject: Deviation Request DV16-01

Gentlemen,

On this date, a site inspection was conducted at East Road in Lower Lake, California. This inspection found the following conditions currently exist as it relates to DV 16-01:

1. East Road is an existing driveway that is approximately twelve (12) feet wide with a gravel surface that serves four parcels (APN's: 012-049-05, 012-049-06, 012-049-07 and 012-049-10).
2. All affected parcels are within the State Responsibility Area (SRA) and fall under the requirements set forth in Public Resources Code 4290 and Title 14 California Code of Regulations, Division 1.5, Chapter 7, Subchapter 2, Articles 1-5.
3. East Road in its present condition meets the intent of Title 14 of the California Code of Regulations, Division 1.5, Chapter 7, Subchapter 2, Article 2, Section 1273.10(a) - Driveways.
- 4. East Road in its current form does not meet the specifications of Section 1273.01(b). However, Title 14 of the California Code of Regulations, Division 1.5, Chapter 7, Subchapter 2 Article 1, Section 1270.07- Exception to Standards, allows for the implementation of alternative modifications to the standards, provided a mechanism is in place to meet the same practical effect.
5. DV 16-01 affects the Applicants who own APN's 012-049-07 and 012-049-10. APN's 012-049-05 and 012-049-06 are not owned by the applicants. The driveway that passes through these two parcels is approximately 860 feet.
6. County data indicates that permits on parcels that share East Road were completed in 1981, which predates Public Resources Code 4290. This indicates that East Road has existed in some form since 1981.

7. The applicants have begun to widen East Road on APN's 012-049-07 and 012-049-10. This will meet the twenty (20) foot requirements set forth in Title 14 of the California Code of Regulations, Division 1.5, Chapter 7, Subchapter 2, Article 2, Section 1273.01- Road Width.

The Sonoma-Lake-Napa Unit does not foresee any issue on the existing 860 feet of East Road in its current state. This conclusion is based upon the following factors:

1. The area in question is flat, offering a clear line of sight from the intersection of Spruce Grove Road and the Applicant's property boundary. Both ends of this section of East Road has ample space to serve as turnouts for fire apparatus.
2. The driveway from East Road to APN 012-049-04 could serve as a turnout, meeting the same practical effect as outlined in Title 14 California Code of Regulations, Division 1.5, Chapter 7, Subchapter 2, Article 1, Section 1270.07- Exceptions to Standards.

If there are any further questions regarding this issue, please do not hesitate to contact me.

Best Regards,

//Original Signed//

Chris A. Vallergera  
Fire Captain  
Sonoma-Lake-Napa Unit  
(707) 987-3089 ext. 2  
[Chris.Vallergera@fire.ca.gov](mailto:Chris.Vallergera@fire.ca.gov)

cc: Greg Bertelli, Division Chief, CAL FIRE  
Willie Sapeta, Chief, Lake County Fire  
Charlie Denier, Battalion Chief, Lake County Fire

## ATTACHMENT B

LAKE COUNTY PLANNING COMMISSION

MINUTES

REGULAR MEETING

May 12, 2016

Commission Members

P Joseph Sullivan, District I  
P Bob Malley, District II  
P Gladys Rosehill, District III  
A Don Deuchar, District IV  
P Gil Schoux, District V

Staff Members

P Scott DeLeon, Interim CDD Director  
P Audrey Knight, Principal Planner  
P Shanda Harry, Deputy County Counsel  
P Danae Bowen, Office Assistant III

9:03 a.m. CALL TO ORDER

Pledge of Allegiance was led by Joe Sullivan.

9:04 a.m. CITIZEN'S INPUT – None

9:05 a.m. Public Hearing on consideration of a mitigated negative declaration based on Initial Study (IS 15-12) for Parcel Map (PM 15-03). The project applicants are CODY SMITH & PATRICK SMYTHE proposing to merge and resubdivide two lots comprising approximately seventy-eight acres into three parcels of: 24.42 acres, 30.73 acres net and 21.24 acres net. The project is located at 19658 and 19697 East Road, Lower Lake and further described as APNs 012-049-07 and 012-049-10. (Keith Gronendyke)

Comm. Sullivan recused himself from this item, because the company he works for did the parcel map.

Keith Gronendyke, Associate Planner, provided background information and a power point presentation on the project application.

Gordon Haggitt, Lake County Surveyor, explained that the proposed new condition D5 is part of the County subdivision Ordinance, whereby you are required to have public access from a County maintained public road to the subject parcel, which would bring this into compliance with the Subdivision Ordinance. Mr. Haggitt also indicated that the second part of the condition was to request that the Commission extend the public dedication through the subject parcel to its easterly boundary, but this is not an absolute requirement for this minor land division, but it is something, if the Commission finds it necessary to provide public access to the adjoining parcels to the east if they ever are further subdivided. He also added, in light of the fires from the summer of 2015, different routes of access, in and out of remote areas, would be vital for egress purposes.

Comm. Malley pointed out to Mr. Haggitt, that the Tentative Parcel Map shows that the east road continues out into the other side of parcel number two, but there is no connection, other than a driveway between Spruce Grove and East Road to parcel number one.

Mr. Haggitt said he understands the concerns associated with a public road going through the interior of the subject property, but said it is something to consider as a condition of approval, if there is going to be any future development to the east.

Attachment Seven

**9:14 a.m. Opened Public Hearing**

Pat Smythe, property owner, said his only issue was making the existing encroachment a public access road. He said his family does not have any problems with easements for fire access or utilities, but he sees no reason to require that road be opened to public access.

Audrey Knight, Principal Planner, asked Mr. Smythe if the maintenance of this road was through a shared agreement and if the new parcels were going to be sold independently, how the road will be maintained.

Mr. Smythe said he and the two property owners to the west and fronting along Spruce Grove Road have improved the first part of East Road and that he would take care of the road easement from his property line and maintain it.

Mr. Gronendyke said condition D4 states: *"The County of Lake will not be accepting East Road into the County maintained roads system so provisions will be required to be made by the subdivider for continued road maintenance through the establishment of a Zone of Benefit or other means acceptable to the Department of Public Works"*. He said this is the mechanism to have the road maintained to certain standards.

Comm. Malley said that the applicant was opposed to making this a public access road, and asked if this has been worked out with staff.

Ms. Knight said that one issue is that the Subdivision Map Act requires, with access to private land from a public road. She further explained that the road would be serving as a private drive and according to Public Resources Code 4290, requires that the driveway meets 4290 standards and regulations. In regards to width clearances, pullovers/turnarounds for vehicular safety reasons, which are noted in G1 of the parcel map conditions of approval. Staff requires an agreement with the adjoining property owners, that serves a public purpose implementing Public Resources Code 4290, in case of an emergency. She noted that the possibility of rendering the applicant's parcel land locked is the issue, and all associated property owners need to be in agreement with this to continue as a private access easement.

Comm. Malley asked if the neighbors were noticed of this hearing today. He said he was more concerned with access to proposed parcel number one, than with parcels two and three. Comm. Malley said the existing easement is a narrow road that could create issues for fire vehicles coming in at the same time as private vehicles are trying to evacuate during a fire. He asked what the width of the dedicated easement currently is.

Mr. Smythe said that the easement description called for a sixty-foot wide easement and currently it is forty-feet in width. He said he is not opposed to a written agreement for road maintenance up to where the road stops at the eastern side of proposed parcel three. He said parcel one and parcel two already has an established easement through the original subdivision agreement.

Mr. Gronendyke said that there is a requirement that any required turnaround be constructed at the intersection of the driveway to the existing residence on parcel one.

**9:25 a.m. Closed Public Hearing**

Comm. Rosehill asked staff what the ordinance rules are that are trying to be implemented as far as making the easement a public road.

Ms. Knight explained that the language in the Subdivision Map Act says that prior to recordation of a final parcel map, an offer of dedication of public road and public utility easement shall be recorded for access through properties outside the land covered by the parcel map. She said what the Subdivision Map Act is trying to establish is a public right-of-way for inland property owners. Ms. Knight said an easement works from an understanding of private shared access, and public road is a shared County right-of-way, as opposed to an easement that might be granted between property owners for private

access. Ms. Knight also said whenever a subdivision of land occurs, the local jurisdictions want to make sure that there is public access so that property owners can access their property, without having a deeded easement in place. She said the idea behind it is essentially sound to make sure that all parcels can be equally accessed when they are subdivided. She added that it is common for rural counties to operate through private easements rather than public right-of-ways, but it relies on good neighbor relationships.

Comm. Rosehill said there is a heavy burden here on one property owner, who happens to have a road on their property that provides access to surrounding property owners and could also provide access to any emergency vehicles during a wildfire.

Ms. Knight said there also is an issue when semi-truck traffic associated with the winery business travels on the existing roadway. Truck traffic could cause negative impacts to the roadway and irritate neighbors whose property they drive through. East Road has historically been maintained jointly between the owners of all the properties.

Comm. Malley asked if that the applicant has read section D1 in the parcel map conditions, which reads: "*East Road being improved to a Minor Road Standard, except it will not be required to be a paved surface since each parcel will be larger than five acres. A cul-de-sac or other approved turnaround shall be provided near the intersection of the driveway to the existing residence on parcel one*". He also pointed out in section G1 on Wildfire Safety: "*All requirements of the State of California's Public Resources Codes PRC 4290 and 4291 shall be met during road construction, driveway construction, the installation of any gates or before the issuance of a building permit.*" Comm. Malley asked the applicant if he was aware of these conditions.

Mr. Smythe said that he was aware of Condition G1 and he is in agreement with it and has no issues with the conditions.

Comm. Malley asked what the Surveyor was proposing

Ms. Knight said Mr. Haggitt was quoting what the Subdivision Map Act states, and he is requesting a public dedication, but not a publicly maintained road. She said there are many of these in the County that are publically dedicated, but not publically maintained. Ms. Knight also stated that Mr. Haggitt is requesting this, because of the potential of further development to the east and to resolve any future disputes before they have a chance to arise.

Comm. Malley said as far as he is concerned, no changes need to be made to the conditions of approval.

Ms. Knight noted that the conditions provided in the staff report, do not at this time reflect the recommendation by the County Surveyor.

Comm. Schoux moved, 2<sup>nd</sup> by Comm. Rosehill that the Planning Commission find that on the basis of the Initial Study (IS 15-12) prepared by the Planning Division, the parcel map as applied for by Cody Smith and Patrick Smyth and the mitigation measures which have been added to the project, will not have a significant effect on the environment, and therefore, a mitigated negative declaration shall be issued with the findings listed in the staff report dated April 26, 2016.

**MITIGATED NEGATIVE DECLARATION 3 Ayes 0 Noes (1) absent (Deuchar) (1) recused (Sullivan)**

Comm. Schoux moved, 2<sup>nd</sup> by Comm. Rosehill that the Planning Commission find that the tentative map applied for by Cody Smith and Patrick Smyth on property located at 19657 and 19658 Base Road, Lower Lake, is in conformity with the provisions of the Subdivision Map Act and Chapter 17 of the Lake County Code and, upon that basis, approve said map subject to the conditions and with the findings listed in the staff report dated April 26, 2016.

**TENTATIVE PARCEL MAP APPROVAL 3 Ayes 0 Noes (1) absent (Deuchar) (1) recused (Sullivan)**

Comm. Malley noted that there is a fifteen (15) calendar day appeal period provided by the Lake County Subdivision Ordinance

**9:38 a.m. Public Hearing on General Plan Conformity Report (GPC 16-03).**  
The project applicant is the LAKE COUNTY PUBLIC WORKS DEPARTMENT proposing the acquisition of approximately 645 square feet from APN 035-163-26 to support the construction of sidewalks, bike lanes, street lighting, and other safety improvements to the pedestrian and bicycle facilities along Foothill Blvd. and State Highway 20 through Clearlake Oaks. The project site is located in the State Highway 20 and Foothill Blvd. right-of-way in Clearlake Oaks in the vicinity of various APNs. (Peggy Barthel)

Peggy Barthel, Resource Planner, provided background information on the project application.

Eric Seely, Lake County Department of Public Works Right-of-Way Agent, said the need for this acquisition is to realign an access road that services the south side of the parcels on the north side of the road. He said it is a single lane paved access road, that currently just merges on to Highway 20, and better design practices would be to have that driveway not just merge on at an acute angle and reroute it so it would go on to Oak Grove Street. He said then that access road would swing over to a 45 degree angle and come in on to Oak Grove, which would provide a safer means of egress on to the public roadways, opposed to the angle where you have to turn on to Highway 20, looking back over your shoulder at almost 180 degrees.

Comm. Malley asked Mr. Seely if they would have to relocate the power poles and hydrant.

Mr. Seely said he was not certain about the fire hydrant, but most likely the utility poles will be relocated a few feet one way or the other to accommodate the sidewalk improvements.

Comm. Malley asked if the acquisition would pay the property owner for the property.

Mr. Seely said yes, they would negotiate with the property owner.

There was further discussion on the realignment with reference to; parking issues, driveway access, setbacks, widths, guard rail system, streetlights, sidewalks and emergency use.

Mr. Seely noted that the start date would be in 2017 and there are milestones to be met before going out to bid. He said the project is sponsored by Lake County and the funding is State and Federal Safe Routes to Schools, Community Development Block Grant Funds and local County match.

**10:03 a.m. Opened Public Hearing**

No one present wished to speak.

**10:03 a.m. Closed Public Hearing**

Comm. Malley moved, 2<sup>nd</sup> by Comm. Schoux that the Planning Commission report that the acquisition of approximately 645 square feet from APN 035-162-26 adjacent to Oak Grove Avenue as proposed by the Lake County Department of Public Works is in conformity with the Lake County General Plan with the findings listed in the Staff Report dated May 4, 2016.

**GENERAL PLAN CONFORMITY 4 Ayes 0 Noes 1 absent (Comm. Deuchar)**

## ATTACHMENT C

**COUNTY OF LAKE  
PATRICK SMYTHE  
PARCEL MAP 15-03**

**EXPIRES May 12, 2018**

Pursuant to the approval of the Lake County Planning Commission on May 12, 2016, there is hereby granted to **Patrick Smythe, P O Box 1007, Middletown CA, 95461**, approval of a **Parcel Map** to allow the subdivision of two existing seventy seven acre lots into three parcels, **Parcel One being 24.42 acres, Parcel Two being 30.73 acres net and Parcel three being 21.24 acres net** on property located at **19658 and 19697 East Road in Lower Lake** being **Assessor Parcel No 012-049-07 and 012-049-10** subject to the following conditions:

**A. General**

1. The final parcel map shall be in substantial conformance with the tentative map submitted to the Community Development Department and approved by the County Surveyor on October 28, 2015. The configuration of the final parcel map may include minor amendments, provided that the proposed parcels comply with the Zoning Ordinance and General Plan, and the modification does not result in any increased environmental impact. Any modification shall be subject to approval by the Community Development Director and the Department of Public Works.
2. Prior to recordation of the final parcel map, all parcel corners and angle points shall be monumented, subject to the approval of the County Surveyor.
3. All existing easements shall be shown on the final parcel map.
4. A parcel map shall not be recorded if development has occurred on the property that would be inconsistent with the Zoning Ordinance or other applicable code should the map be recorded.
5. Prior to recording the final map, all current and supplemental taxes shall be paid.

**B. Recreation**

1. Prior to recordation of the final map, the permit holder shall pay a park in lieu (Quimby) fee to the Department of Public Services equivalent to an amount as established by Lake County Subdivision Ordinance Section 17-27A.2.

**C. Biological & Cultural Resources**

1. This tentative map approval shall not become effective, operative, vested or final until the California Department of Fish and Game filing fee required or authorized by Section 711.4 of the Fish and Game Code is submitted by the property owner to the Community Development Department. Said fee shall be paid within 30 days of approval. Failure to pay said fee by the specified deadline shall result in this tentative map automatically becoming null and void.
2. Should archaeological materials be discovered during future development, all activity shall be temporarily halted in the vicinity of the find and a qualified archaeologist be retained to evaluate the find and recommend mitigation procedures.
3. Prior to recordation of the final parcel map, a building envelope shall be established on parcel two that minimizes any impacts to the recorded vernal pool area and on parcel three to address steep slopes and setback requirements for septic systems and wells from single family residences.
4. Prior to recordation of the final map, a biological assessment shall be conducted by a biologist to assess the vernal pool area and to determine if mitigations are required to protect any listed endangered or threatened species located in the vernal pool vicinity. Any mitigation measures recommended by the biologist shall be incorporated into the final conditions of approval.
5. Prior to final map approval, a wetland delineation shall be conducted to identify all areas within the vernal pool habitat area currently located on APN 012-049-10.

**D. Roads**

1. East Road will be improved to a Minor Road Standard, except it will not be required to be a paved surface since each parcel will be larger than five acres. A cul-de-sac or other approved turnaround shall be provided near the intersection of the driveway to the existing residence on parcel one.

2. A street sign that meets the Lake County Road Design and Construction Standards shall be installed at the East Road/Spruce Grove Road intersection.
3. The subdivider shall submit a Cost Estimate and Improvement Plans prepared by a Registered Civil Engineer for all roadway improvements. A signed Engineering/Inspection Agreement with a stipulated deposit of two percent of the Engineer's Cost Estimate shall be submitted prior to plan review.
4. The County of Lake will not be accepting East Road into the County maintained roads system so provisions will be required to be made by the subdivider for continued road maintenance through the establishment of a Zone of Benefit or other means acceptable to the Department of Public Works.

**E. Air Quality**

1. Vegetative waste from property development should be composted or chipped as a means of disposal.
2. A District burn permit is required for all open burning and only clean dry vegetation that was grown on the property may be burned.

**F. Environmental Health**

1. Prior to final map approval, adequate water quantity must be demonstrated on parcel three. Demonstration may include, but may not be limited to (GPM) gallons per minute for a four hour testing period and the recovery rate established in a 30 minute period if public water service is unavailable. The 4 hour pump test must be overseen by the Environmental Health Division.
2. Prior to the approval of the final map, the subdivider shall apply for a site evaluation on parcel three to determine if on-site wastewater disposal is possible.

**G. Wildfire Safety**

1. All requirements of the State of California's Public Resources Codes-PRC 4290 and 4291 shall be met during road construction, driveway construction, the installation of any gates or before the issuance of any building permit.

**H. Timing and Expiration**

1. This approved map shall expire on May 12, 2018, unless an extension has been granted consistent with the Subdivision Ordinance and the Subdivision Map Act.
2. The permit holder shall permit the County of Lake or representative(s) or designee(s) to make periodic inspections at any reasonable time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

**INTERIM COMMUNITY DEVELOPMENT DIRECTOR  
SCOTT DELEON**

Prepared by: KG

By: \_\_\_\_\_  
Danae Bowen, Office Assistant III

**ACCEPTANCE**

I have read and understand the foregoing parcel map conditions and agree to each and every term and condition thereof.

Date: \_\_\_\_\_

\_\_\_\_\_  
Applicant or Authorized Agent Signature

\_\_\_\_\_  
Print Name