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**Title:** 9:30 A.M. (Continued from June 19, 2018) PUBLIC HEARING - Consideration of Appeal of Planning Commission's approval of Deviation DV 16-01 for Parcel Map PM 15-03; AB 18-01 APNs 024-049-07 and 10  
Supervisor District 1

**Sponsors:** Community Development

**Indexes:**

**Code sections:**

**Attachments:** 1. EXHIBIT A, 2. EXHIBIT B, 3. EXHIBIT C, 4. EXHIBIT D, 5. EXHIBIT E, 6. EXHIBIT F, 7. EXHIBIT G, 8. EXHIBIT H, 9. EXHIBIT I, 10. EXHIBIT J, 11. PublicInput\_PH\_Smythe, 12. Smythe\_07102018\_I, 13. Smythe\_07102018\_II

Date	Ver.	Action By	Action	Result
7/10/2018	1	BOARD OF SUPERVISORS	approved with conditions	Pass

**MEMORANDUM**

**TO:** Board of Supervisors

**FROM:** Michalyn DeValle, Community Development Director

**DATE:** July 10, 2018

**SUBJECT:** 9:30 A.M. - (Continued from June 29, 2018) PUBLIC HEARING - Consideration of Appeal of Planning Commission's approval of Deviation DV 16-01 for Parcel Map PM 15-03; AB 18-01 APNs 024-049-07 and 10

Supervisor District 1

- EXHIBITS:**
- A. Original Parcel Map conditions
  - B. Parcel Map Staff Report
  - C. Approved Tentative Parcel Map
  - D. Planning Commission Minutes, May 12, 2016
  - E. Initial Study IS 15-12
  - F. Calfire Letter dated February 5, 2017
  - G. Deviation Staff Report
  - H. Approved Deviation conditions
  - I. Planning Commission Minutes, January 25, 2018
  - J. Appeal Request and Letter

I. EXECUTIVE SUMMARY

The appellant is appealing the Planning Commission's January 25, 2018 approval of the Deviation for Parcel Map 15-03 to allow a deviation from Road Improvements and modification of various conditions located at 19658 and 19697 East Road, Lower Lake. A timely appeal was received by the appellant on February 8, 2018. Clarification of the Planning Commissions' approval of motions was heard on April 12, 2018. The appeal was filed by the applicant for the Parcel Map and the Deviation, Mr. Patrick Smythe, because of disagreement with the conditions of approval. Staff recommends denial of the appeal.

### ***Background and previous projects***

On May 12, 2016 the Planning Commission approved Parcel Map, 15-03 to create three parcels of land with sizes of 24.42, 30.73 and 21.24 acres. Several conditions had been added to the project as the California Natural Diversity Database identified several sensitive species and the parcel contains a mapped vernal pool with the United States Department of Fish and Wildlife. Conditions included requiring a building envelope to be established, a Biological assessment to be conducted prior to final map recordation so that mitigations could be added to the final map, and a wetland delineation to identify the vernal pool habitat.

During the Planning Commission hearing there was lengthy discussion concerning the Lake County Subdivision Ordinance and its requirement for public road dedication:

Chapter 17 of the Lake County Code known as the Lake County Subdivision Ordinance, Section 21.3 (1) states that: "Division of land under this Section [**Sec. 17-21. - Division of Land (Parcel Maps)**] shall provide a fifty (50) foot minimum width right-of-way easement together with an irrevocable offer of dedication for access over properties outside the land covered by the Parcel Map or waiver, to the nearest public road."

An application for a Deviation from road improvements is required and the following findings must be made prior to approval of a Road Deviation by the Lake County Planning Commission:

### **Sec. 17-31. - Deviation from Requirements.**

31.1 *Deviation based on hardship.* It is realized that there are certain parcels of land of such dimension, subject to such title restrictions, so affected by physical conditions or devoted to such use that it is impossible for the sub divider to conform to all the foregoing requirements when subdividing property.

31.2 The Planning Commission (or on appeal the Board of Supervisors) may grant deviations from the foregoing requirements, when all the following conditions are found to apply:

(a) That any deviation granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity.

(b) That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict literal application of this Chapter is found to deprive subject property of privileges enjoyed by other properties in the vicinity.

(c) That under the circumstances of this particular case the deviation, rather than the sections at issue in this Chapter, actually carries out the spirit and intent of this Chapter.

31.3 Adequate guarantees shall be provided to insure that any conditions imposed as a part of any approved deviation shall be carried out as specified.

The Planning Commission approved the Parcel Map on May 12, 2016 without requiring the public dedication of East Road. An application for a Deviation had not yet been received nor were the Deviation findings made at the time of

approval. (See Exhibit D).

Subsequently, the applicant had a discussion with the County Surveyor and a County Planner, both of whom indicated that Public Dedication was required and a Deviation from Road Improvements is required in order to deviate from the County Road standards. Mr. Smythe submitted an application for a Road Deviation on August 4, 2016. In the application, Mr. Smythe requested that Condition B1 of the approved parcel map conditions be removed, and conditions C2-C5 be modified to be required prior to issuance of a building permit instead of prior to recordation of Final Map.

The application for Deviation was circulated to the Department of Public Works (DPW) and the County Surveyor. The DPW Road Division commented that the conditions would need to include a requirement of Public Dedication, that conditions requiring a zone of benefit could be removed, and that clarity of the required road improvements were needed. Department of Public Works did not support the Deviation request. The Public Services Department commented that the condition requiring payment of Quimby Fees as required by Condition B1 could be removed.

Staff scheduled the hearing before the Planning Commission on December 14, 2017. Staff recommended that condition B1 be removed from the Parcel Map conditions. Condition C4 and C5 requiring a biological assessment and wetland delineation were combined for clarity. Those conditions were not recommended for removal as the applicant requested because the property contains a mapped vernal pool and the entire property is mapped as a proposed vernal pool. After a lengthy discussion Staff provided alternatives to the Public Dedication requirement and recommended that the conditions be modified as follows:

***D4: Prior to recordation of the final map, a fifty-foot wide conditional offer of dedication for public roadway and public utilities shall be made which may be accepted by the County as such time as a street shall have ceased to remain physically closed or posted and shall have been open to the public for a period of not less than three months for East Road from Spruce Grove Road to the east property boundary of Parcel Two and across the driveway access from East Road on Parcel Three to Parcel One. East Road will be dedicated for ingress, egress only for public law enforcement, fire protection, welfare and other related public or county agencies, their vehicles and personnel over the portion designated as a private roadway. The offer of dedication of East Road and the driveway to Parcel One as a public roadway will need to be made on the final map and off tract dedication so the roads can be open to the public should the private gated access be removed. Also, prior to recordation of the final map, a public utility easement along both East Road from Spruce Grove Road to the east property boundary of Parcel Two and along the driveway access from East Road on Parcel Three to Parcel One shall be offered for dedication.***

***D5: "An offer of dedication for a public roadway easement fifty feet in width as required for future development of the parcel described as the Southeast quarter of the Northeast quarter of Section 32, T.12N, R.6 W, M.D.B.&M. subject to the provisions for a gated access" will be made on the final map.***

***D6: Prior to recordation of Final Map, owner of APN 012-049-11 shall provide written approval authorizing the gated access entrance for East Road. A copy of the document shall be provided to the Community Development Department.***

Condition D6 was added because the gated access that was being proposed would directly affect this property owner and staff wanted to verify that all property owners affected by the gated access were in agreement.

Clarity was provided by Department of Public Works that requires that East Road meet a Minor Road Standard:

***D1. Prior to recordation of the final map, East Road extending from Spruce Grove Road to the Westerly boundary of Parcel Two where the cul-de-sac is to be constructed shall be improved to a Minor Road Standard, 24 foot wide road consisting of two 10 foot travel lanes with 2 foot shoulders, graveled. A cul-de-sac or other approved turnaround shall also be provided near the intersection of the driveway to the existing residence on Parcel One and at the end of East Road.***

Staff recommended combining the two prior conditions, C4 and C5 (Exhibit H) to provide clarity:

*C4. Prior to recordation of the final map, a biological assessment **and wetland delineation** 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. **The final map shall include a note(s) listing all mitigation measures recommended by the biologist.***

The hearing for the Deviation was continued to January 25, 2018 so that the applicant could discuss the gated access condition with his neighbors as East Road crosses two other parcels before entering onto Mr. Smythe's property.

The January 25, 2018 hearing was held and the Planning Commission approved the Deviation as modified by staff.

#### I. APPEAL DISCUSSION

Mr. Smythe submitted a timely request for an appeal on February 8, 2018. The Planning Commissions' January 25, 2018 motions of approval were clarified during the Planning Commission meeting on April 12, 2018.

The appellant is requesting that Conditions D4, D5 and D6 be removed from the conditions; the appellant asserts the Planning Commission original May 12, 2016 approval did not require public dedication and therefore should not be required. The Appellant asserts that the existing 60-foot wide East Road easement meets the County Road requirements.

East Road from Spruce Grove Road is not publicly dedicated and does not meet current County Road standards.

The appellant is requesting that condition D1 be amended to allow a single twelve foot travel lane rather than the twenty-four foot width as required by the Department of Public Works. He asserts that the existing road meets Calfire requirements. A letter from Calfire is included as Exhibit F indicating that Title 24 requires a twenty-foot wide road. County Road Standards require a twenty four-foot wide road (*24 foot wide road consisting of two 10 foot travel lanes with 2 foot shoulders, graveled*).

The appellant also requests that a turnaround be permitted on the Eastern boundary of Parcel 2 and hammer heads turnarounds be permitted on the boundary of Parcels 1 and 3 rather than the cul-de-sac indicated in condition D1. Condition D1 indicates that the Department of Public Works can approve alternative turnarounds. The Department of Public Works has expressed that they would consider alternative turnarounds. Condition D1 does not need to be modified.

The appellant requested removal of conditions C4 and C5, which require a Biological assessment and wetland delineation. He asserts that these were not required as part of his vineyard and winery minor use permit. The minor use permit for a 3,000 square foot winery building and a two acre vineyard was permitted and determined to be exempt from CEQA by staff. The vineyard and winery building maintained an 80 foot setback from the vernal pool. The Planning Commission approval of the Deviation for Parcel Map found that the previous negative declaration IS 15-12 met the requirements of Section 15162(a) of the State CEQA Guidelines and that no additional environmental review need be prepared, with the findings that there has been no change in the project that would create new significant environmental impacts and that there has been no substantial change in circumstances resulting in new significant environmental effects.

Due to the mapped vernal pool and that the entire parcel is mapped as a proposed vernal pool Staff cannot support the removal of Conditions C4 and C5. Without requiring the Biological assessment and wetland delineation we cannot know the limits of the vernal pool nor can we establish if sensitive species will be impacted by future development.

The Deviation DV 16-01 for Parcel Map 15-03 as modified by staff was approved by the Planning Commission on January 25, 2018 with the findings that the deviation would not result in the grant of a special privilege inconsistent with the limitations on other properties in the vicinity, that there were no traffic safety impacts associated with the deviation,

and that the project would not result in any significant adverse environmental impacts.

I. **ENVIRONMENTAL ANALYSIS**

A CEQA Initial Study for the Parcel Map was completed. Implementation of and compliance with project conditions of approval identified in the CEQA Initial Study as mitigation measures, included as conditions of approval for the parcel map and deviation, would avoid or reduce potential impacts to Biological Resources, Geology and Soils, Hazards and Hazardous Materials, and Hydrology and Water Quality to less than significant levels.

IV. **FISCAL IMPACT: Budgeted \_ Non-Budgeted \_ None X**

**Estimated Cost: N/A Amount Budgeted: N/A Additional Requested: N/A**

**Annual Cost (if planned for future years): N/A**

V. **FISCAL IMPACT (Narrative): Action taken by the Board will have no fiscal impact on the County.**

VI. **STAFFING IMPACT (if applicable): N/A**

VII. **RECOMMENDATION**

Staff recommends that the Board of Supervisors make a motion of intended decision to deny the appeal of Deviation DV 16-01 for Parcel Map 15-03 approved by the Planning Commission on January 25, 2018.

**Sample Motion:**

**Appeal Denial**

I move that the Board of Supervisors make an intended decision to deny the appeal AB 18-01 of Patrick Smythe, and direct County Counsel to prepare proposed findings of fact.

**RECOMMENDED ACTION:**

Staff recommends that the Board of Supervisors make a motion of intended decision to deny the appeal of Deviation DV 16-01 for Parcel Map 15-03 approved by the Planning Commission on January 25, 2018.