



Legislation Text

File #: 20-87, Version: 1

Memorandum

Date: February 4, 2020

To: The Honorable Moke Simon, Chair, Lake County Board of Supervisors

From: Michalyn DelValle, Eric Porter; Community Development Department

Subject: Dawson/Guerra Continued Appeal, File No. AB 19-02

Exhibits: A1 - Memorandum from Andrew Williams and David Casian
A2 - Public Resource Code (PRC) 4290 and 4291 Summary Report
A3 - Conditions of Approval for Use Permit UP 18-23
A4 - Memo to the Board of Supervisors for the January 14, 2020 Hearing
A5 - 2020 PRC Standards for Roads in SRA Areas

Executive Summary: (include fiscal and staffing impact narrative):

On January 14, 2020, the Board of Supervisors requested staff to contact the two parties to see whether a renegotiated easement could be a solution to the situation. Staff contacted the appellant's attorney, Andre Ross, who indicated his client would be willing to listen to any proposals by the applicant Will Dawson. Staff however was unable to contact Will Dawson, and to this date, no negotiations have taken place between the two parties.

The Board also requested further information on how PRC 4290 could be applied and met in the context of the Guerra/Dawson appeal, and to provide options for the Board's consideration if a renegotiated easement was not a viable solution.

If the contested use permit were to be approved, it would authorize outdoor commercial cannabis cultivation, a 5,000 square foot (s.f.) drying building, and the conversion of a 700 s.f. existing detached garage for chemical storage.

Analysis - Public Resource Code 4290

PRC Section 4290 sets the framework for specific standards for certain types of roads to be applied on properties in the State Responsibility Area (SRA; high fire); these specific road standards are found in the California Code of Regulations (CCR), Title 14, Chapter 7, and are identified in this memo as CCR §1271 (Definition; Roads) and CCR §1273 (Road Width).

CAL FIRE has delegated State Fire Code authority to the Lake County Building Official for properties that are within the SRA, including the Dawson/Guerra properties. The Lake County Building Official

also acts as Fire Marshal for Lake County.

On January 16, 2020, Code Enforcement Manager Andrew Williams contacted CAL FIRE's Sacramento headquarters and spoke with various CAL FIRE personnel in order to confirm the definition of the shared driveway serving the commercial use. Following this phone conversation with Sacramento's main CAL FIRE office, Mr. Williams and Chief Building Official David Casian determined that the 20 foot wide shared access easement in dispute by definition is a Road, since it serves a commercial use. This determination was made based on the conversation held between Mr. Williams and CAL FIRE, and from the definition found in 14 CCR §1271.00. The definition of a Road, as of January 3, 2020, is as follows:

Road: Vehicular access to more than two (2) parcels; more than four (4) residential units; or access to any industrial or commercial occupancy. Includes public and private streets and lanes. (14 CCR §1271.00)

Because the 20' wide Road leads to the commercial (cannabis) use, the Road must meet the construction standard found in 14 CCR §1273.01 as follows:

Width. (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. (14 CCR §1273.01)

The Building Official / Lake County Fire Marshal has determined based on these definitions and standards, that the 20' wide shared access easement is by definition a Road and that the road width standards found in 14 CCR §1273.01 apply. The existing 20' wide shared road is not compliant with the applicable improvement standards found in 14 CCR §1273.01.

Exceptions to Road Construction Standards

CCR §1270.06 contains a provision for exceptions to road standards found in 14 CCR §1273.01.

Staff discussed this option with the Building Official / Fire Marshal. The Building Official / Fire Marshal indicated that given the site configuration and the portion of the applicant Dawson's property to have the ability to install a new access that does not pass through the Guerra property, the Building Official / Fire Marshal would deny any request for an exception to 1273.01 road standards for the shared driveway.

The specific verbiage allowing exception consideration on a case-by-case basis states:

(a) Upon request by the applicant, exceptions to standards within this subchapter or to local jurisdiction certified ordinances may be allowed by the inspection entity listed in 14 CCR § 1270.05, where the exceptions provide the same practical effect as these regulations towards providing defensible space. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be made on a case-by-case basis only. Exceptions granted by the inspection entity listed in 14 CCR § 1270.05 shall be forwarded to the appropriate CAL FIRE Unit Office that administers SRA fire

protection in that county and shall be retained on file at the Unit Office.

(b) Requests for an exception shall be made in writing to the inspection entity listed in 14 CCR § 1270.05 by the applicant or the applicant's authorized representative. At a minimum, the request shall state the specific section(s) for which an exception is requested, material facts supporting the contention of the applicant, the details of the exception proposed, and a map showing the proposed location and siting of the exception. Local jurisdictions listed in 14 CCR section 1270.05 may establish additional procedures or requirements for exception requests.

(c) Where an exception is not granted by the inspection entity, the applicant may appeal such denial to the local jurisdiction. The local jurisdiction may establish or utilize an appeal process consistent with existing local building or planning department appeal processes.

(d) Before the local jurisdiction makes a determination on an appeal, the inspection authority shall be consulted and shall provide to that local jurisdiction documentation outlining the effects of the requested exception on wildfire protection.

(e) If an appeal is granted, the local jurisdiction shall make findings that the decision meets the intent of providing defensible space consistent with these regulations. Such findings shall include a statement of reasons for the decision. A written copy of these findings shall be provided to the CAL FIRE Unit headquarters that administers SRA fire protection in that local jurisdiction.

The applicant, Will Dawson, wants to continue to use the shared 20' wide access easement that transects the Guerra property, however Mr. Dawson has not requested any exception to CCR subsection 1270.06 in writing as is required by this subsection of the Cal. Code of Regulations.

Options Available to the Board

Option 1: Allow the existing 20 foot wide shared access easement to be used, but require it to be brought to PRC 4290 and 4291 compliance as authorized by CCR 1273.01.

Proposed Condition:

The proposed access shall meet California Code of Regulations (CCR) Title 14, Chapter 7, subsection 1273.01 within one hundred and eighty (180) days of the date of this decision including all permits that might be required. CCR 14 1273.01 compliance shall address:

Width. (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. (14 CCR §1273.01)

Option 2: Require a new access to be constructed off of Spruce Grove Road in accordance with CCR Title 14, Chapter 7, subsection 1273.01 standards.

Proposed Condition:

The Applicant shall construct a road in compliance with CCR Title 14, Chapter 7, subsection 1273.01 standards. The road shall be located off of Spruce Grove Road. An encroachment permit shall be obtained from the Department of Public Works. CCR Title 14, Chapter 7, subsection 1273.01 compliance shall address:

Width. (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. (14 CCR §1273.01).

Option 3: Allow the use of the shared 20' wide access easement and authorize an exception to CCR Title 14, Chapter 7, subsection 1273.01 standards.

Proposed Condition:

The applicant may use the existing 20 foot wide shared access and utility easement. No improvements to this easement are required. If an exception is granted, the County Community Development Department shall notify the local CAL FIRE Unit Office of this exception, including the location of the exception and specific details as to why the exception was granted.

If not budgeted, fill in the blanks below only:

Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Consistency with Vision 2028 and/or Fiscal Crisis Management Plan (check all that apply):

☒ Not applicable

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Well-being of Residents | <input type="checkbox"/> Public Safety | <input type="checkbox"/> Infrastructure | <input type="checkbox"/> <i>Technology Upgrades</i> |
| <input type="checkbox"/> Economic Development | <input type="checkbox"/> Disaster Recovery | <input type="checkbox"/> County Workforce | <input type="checkbox"/> <i>Revenue Generation</i> |
| <input type="checkbox"/> Community Collaboration | <input type="checkbox"/> Business Process Efficiency | <input type="checkbox"/> Clear Lake | <input type="checkbox"/> <i>Cost Savings</i> |

If request for exemption from competitive bid in accordance with County Code Chapter 2 Sec. 2-38, fill in blanks below:

Which exemption is being requested?

How long has Agreement been in place?

When was purchase last rebid?

Reason for request to waive bid?

Recommended Action:

A. Deny appeal number AB 19-02.

B. Adopt mitigated negative declaration (IS 18-28) for Use Permit (UP 18-23) with the following findings:

1. Potential environmental impacts related to aesthetics have been mitigated to less than significant levels by mitigation measures AES-1 and AES-2.

2. Potential environmental impacts related to air quality have been mitigated to less than significant

levels by mitigation measures AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6, AQ-7, AQ-8, AQ-9 and AQ-10.

3. Potential environmental impacts related to biological resources have been mitigated to less than significant levels by mitigation measures BIO-1, BIO-2 and BIO-3.

4. Potential environmental impacts related to Cultural and Tribal resources have been mitigated to less than significant levels by mitigation measures CUL-1 and CUL-2.

5. Potential environmental impacts related to Hazards and Hazardous Materials have been mitigated to less than significant levels by mitigation measure HAZ-1.

6. Potential environmental impacts related to Noise have been mitigated to less than significant levels by mitigation measures NOI-1, NOI-2, and NOI-3.

7. As mitigated, this project will not result in any significant adverse environmental impacts.

C. Approve Major Use Permit (UP 18-23) with the following findings:

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

2. The site is adequate in size, shape, locations, and physical characteristics to accommodate the type of use and level of development proposed.

3. The streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the proposed use.

4. There are adequate services to serve the project.

5. This project is consistent with the Lake County General Plan, Lower Lake Area Plan and Lake County Zoning Ordinance.

6. No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property.

Sample motions:

Option 1 - Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-02 and uphold the Planning Commission's decision to adopt Initial Study IS 18-28 and approve Use Permit 18-23 with the new condition as specified herein, applied for by Will Dawson for property located at 15232 Spruce Grove Road, Lower Lake, known as APN 013-060-18, and direct County Counsel to prepare findings of fact.

Proposed Condition:

The proposed access shall meet California Code of Regulations (CCR) Title 14, Chapter 7, subsection 1273.01 within one hundred and eighty (180) days of the date of this decision including all permits that might be required. CCR 14 1273.01 compliance shall address:

Width. (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. (14 CCR §1273.01)

Option 2: Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-02 and uphold the Planning Commission's decision to adopt Initial Study IS 18-28 and approve Use Permit 18-23 with the new condition as specified herein, applied for by Will Dawson for property located at 15232 Spruce Grove Road, Lower Lake, known as APN 013-060-18, and direct County Counsel to prepare findings of fact.

Proposed Condition:

The Applicant shall construct a driveway in compliance with CCR Title 14, Chapter 7, subsection 1273.01 standards. The driveway shall be located off of Spruce Grove Road. An encroachment permit shall be obtained from the Department of Public Works. CCR Title 14, Chapter 7, subsection 1273.01 compliance shall address:

Width. (a) All roads shall be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping. These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements. Vertical clearances shall conform to the requirements in California Vehicle Code section 35250. (14 CCR §1273.01).

Option 3: Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 19-02 and adopt Initial Study IS 18-28 and approve Use Permit 18-23, applied for by Will Dawson for property located at 15232 Spruce Grove Road, Lower Lake, known as APN 013-060-18, and direct County Counsel to prepare findings of fact.

Proposed Condition:

The applicant may use the existing 20 foot wide shared access and utility easement. No improvements to this easement are required. If an exception is granted, the County Community Development Department shall notify the local CAL FIRE Unit Office of this exception, including the location of the exception and specific details as to why the exception was granted.