
From: Elizabeth Camacho <ecamacho@loeb.com>
Sent: Wednesday, September 18, 2024 3:12 PM
To: Kim Dawson; BOS-Clerk of the Board
Cc: Jose Lujano; Tim Moran
Subject: September 24, 2024 Meeting; Appeal of TPM P24-0009
Attachments: Letter to Board of Supervisors; Opp. to Appeal of TPM P24-0009.pdf

Clerk of Board of Supervisors,

On behalf of the applicant, Affirmed Housing, we submit the attached letter in response to the appeal of tentative parcel map P24-0009, which we understand will be included on the agenda for the Board of Supervisors September 24, 2024 meeting.

If you have any questions or need anything further from the applicant, please let me know.

Thank you,

Elizabeth Camacho

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Partner



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September 18, 2024

Board of Supervisors
El Dorado County
330 Fair Lane
Placerville, CA 95667

Re: September 24, 2024 Board Meeting; Appeal of Tentative Parcel Map P24-0009 (APN 115-410-011 - Green Valley Road/Bass Lake Road)

Honorable Supervisors:

We represent Affirmed Housing, which is the applicant for Tentative Parcel Map P24-0009 (the “**Parcel Map**”). On August 21, 2024 the Zoning Administrator approved the Parcel Map and found it to be categorically exempt from the California Environmental Quality Act (“**CEQA**”).

The Zoning Administrator’s determination was supported by substantial evidence in the record and the appeal provides no basis upon which to conclude that the Zoning Administrator erred or abused its discretion. The plain objective of this appeal is to frustrate and circumvent the potential future application of AB 2011, the Affordable Housing and High Road Jobs Act of 2022, which provides for a CEQA-exempt, ministerial approval process for eligible multifamily housing developments in certain commercial zones. The appeal seeks to misuse the Parcel Map approval process in order to require CEQA review for any AB 2011 project in direct contravention of both the letter and the intent of State law.

We respectfully request that the Board of Supervisors deny the appeal in its entirety.

I. There is No Basis to Overturn the Approval of the Parcel Map or to Require CEQA Review

The sole issue before the Zoning Administrator, and the sole issue before the Board of Supervisors on this appeal, is whether the Zoning Administrator erred in granting the proposed Parcel Map. The Parcel Map proposes a minor land division pursuant to County Code Section 120.36.030.A., which would modify the legal boundaries of an existing 5.682-acre undeveloped lot (the “**Property**”) by subdividing the Property to create one smaller lot (5.429-acres) (Parcel

A) and one Remainder.¹ The Parcel Map application did not propose, and the Zoning Administrator did not approve, any development on any portion of the Property.

The Zoning Administrator properly determined that the Parcel Map is consistent with the applicable requirements for a Tentative Parcel Map as discussed in the staff report. Among other things, the proposed parcels meet the required development standards for the Property's CPO zone, including minimum lot size and lot width, and are consistent with Title 130 of the County Zoning Ordinance, General Plan Policies, as applicable, and the Subdivision Map Act. As noted in the staff report, the proposed Parcel A could support future development, however no specific development is proposed as part of the Parcel Map.

The appellant does not provide any basis upon which to challenge the findings or conclusions of the Zoning Administrator that the Parcel Map is consistent with the applicable requirements for a minor land division. As discussed below, the sole basis of the appeal is appellant's erroneous arguments that the Parcel Map requires further review under CEQA to include analysis of a potential future development project under AB 2011, and that an AB 2011 project (not the Parcel Map) could violate County Code Section 120.44.030. As discussed below, the approval of the Parcel Map is a minor land division that is categorically exempt from CEQA and it would be a violation of the express provisions of State law to use the Parcel Map to circumvent AB 2011 and require CEQA review for an AB 2011 development project.

A. The Categorical Exemption for the Minor Land Division was Proper and Supported by Substantial Evidence

The Parcel Map falls squarely within the Class 15 "Minor Land Division" categorical exemption under CEQA Guideline Section 15315, and the Zoning Administrator properly found that this categorical exemption applied. This categorical exemption consists of the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The appeal makes no assertion that the Parcel Map failed to meet any of the requirements for this exemption.

The appellant argues that no categorical exemption should apply because there is an exception to a categorical exemption under CEQA Guideline Section 15300.2, based on Guideline Sections 15300.2(b) (cumulative impact) and (c) (unusual circumstances). However, Section 15300.2(b) provides for an exception only when "the cumulative impact of successive projects of the same type in the same place, over time is significant." (emphasis added). There is no evidence of any successive project of the same type, i.e., minor land divisions to create a smaller development site and a remainder parcel, and no evidence that any such minor land divisions would have any

¹ As defined in El Dorado County Code Section 120.36.040, a Remainder means "that portion of improved or unimproved land proposed to be subdivided that is not divided for the purpose of sale, lease, or financing" and "shall not be counted as a parcel for the purpose of determining whether a parcel or final map is required."

impact on the physical environmental, let alone a significant impact. Nor is there any evidence of “unusual circumstances,” that would establish an exception to the minor land use categorical exemption. The “unusual circumstances” exception requires a challenger to establish both that the project presents unusual circumstances, and that potentially significant impacts will result from those unusual circumstances; the potentially significant effect must be “due to unusual circumstances.” *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal. 4th 1086, 1104 (2015). The appellant has not identified any “unusual circumstance,” associated with the Parcel Map and, as discussed above, there no evidence of any impact on the physical environment as a result of the change in the parcel boundaries of the Property, which is the only effect of the Parcel Map and the only proposed action under consideration in the Parcel Map application and this appeal. All purported impacts raised by the appellant relate only to a potential future development project under AB 2011 which, as discussed below, is not a basis upon which to require CEQA review of the Parcel Map.

B. Approval of the Parcel Map Does Not Require CEQA Analysis of an AB 2011 Project

The appellant’s sole argument is that CEQA review of the Parcel Map was insufficient because it failed to include analysis of the potential impacts of a future development project on Parcel A pursuant to AB 2011, which provides for a CEQA-exempt, ministerial approval process for certain multifamily housing developments. However, there is no basis upon which to require CEQA analysis of any AB 2011 development project as part of the Parcel Map, and to do so would undermine and violate the provisions of AB 2011 itself.

1. The Parcel Map is Not Required in Order to Qualify an AB 2011 Project on the Property

First, the appellant is incorrect in its fundamental premise that an AB 2011 project on Parcel A requires the subdivision proposed by the Parcel Map. Appellant does not explain the basis for its assertion that the Parcel Map is required in order to meet the requirements for a project under AB 2011, and this alone is sufficient to reject this assertion. The appellant references wetlands as an apparent basis for its argument that the Parcel Map is required to make one of the two parcels eligible for development under AB 2011, but fails to point to facts or law that would establish that the Parcel Map is required for AB 2011 eligibility. In fact, no subdivision of the Property is required to comply with wetland requirement of AB 2011. While an AB 2011 project may not be located on a “site that is . . . Wetlands,” (see Gov. Code §§ 65912.111(e), 65913.4(a)(6)(C)), AB 2011 does not contain any requirement that the development “site” may not be located within a legal parcel that contains wetlands, if the wetlands are not part of the proposed development site. Pursuant to the express language of the statute, projects that do not propose the use or development of any area that constitutes wetlands comply with this requirement, and no subdivision would be required to meet the requirements of AB 2011.

2. Any Parcel Map in Connection with an AB 2011 Project Would be Exempt from CEQA

Second, to the extent that any subdivision were to be required or included as part of an AB 2011 project, that subdivision would be exempt from CEQA pursuant to the express provisions of AB 2011 itself. AB 2011 provides “[i]f the development is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).” Gov. Code § 65912.114(h)(emphasis added).

3. There is No Segmentation or Piecemealing of an AB 2011 Project

Finally, even if the Parcel Map were required to in order to qualify a development project on Parcel A under AB 2011 (which it is not), and even if the Parcel Map were not exempt from the requirements of CEQA under AB 2011 (which it is), there would be no “segmentation” or “piecemealing” violation of CEQA by utilizing the Class 15 categorical exemption and processing the Parcel Map as a project separate from any future development project under AB 2011.

Segmentation or piecemealing under CEQA is the improper division “of a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole.” *Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners*, 91 Cal. App. 4th 1344, 1358 (2001). The rationale behind the piecemealing prohibition is that “the requirements of CEQA cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial.” *Orinda Assn. v. Board of Supervisors*, 182 Cal. App. 3d 1145, 1171 (1986). Here, however, processing a parcel map separately from an AB 2011 project would not “avoid” any otherwise required analysis under CEQA. The Parcel Map itself has no physical impacts on the environment, and it is only the potential AB 2011 project that is the basis for the appellant’s arguments of a potential physical impact on the environment. Thus, it is not the separate approval of the Parcel Map that would eliminate a requirement for CEQA review of physical impacts on the environment, but AB 2011, which expressly exempts such projects from CEQA review.

The Parcel Map results only in a change in the legal boundaries of Parcel A, and does not itself have any impact on the physical environment. The only potential physical impacts raised by the appellant concern those of a potential AB 2011 project. However, any AB 2011 project would be exempt from CEQA review pursuant to the express provisions of AB 2011. State law expressly provides that a project that qualifies under AB 2011 is a “use by right” and thus does not require any discretionary local government approvals and is not a “project” for purposes of CEQA. Gov. Code § § 65912.110, 65912.101(q). Because the only potential physical impacts identified by the appellant are those that would result from an AB 2011 project, which is not a “project” subject to CEQA, approval of a parcel map separate from an AB 2011 project would not eliminate any CEQA review that should otherwise occur. *See Friends of Juana Briones*

House v. City of Palo Alto, 190 Cal. App. 4th 286, 312 (2010) (action exempt from CEQA cannot be deemed environmentally significant and does not meet the requirements for segmentation/piecemealing).

Thus, processing a parcel map separately from an AB 2011 project would not avoid or result in the elimination of any otherwise required CEQA review and does not constitute impermissible segmentation or piecemealing. Indeed, using the Parcel Map (which itself has no impacts on the physical environment) to require CEQA review of an AB 2011 project (which is exempt from CEQA) would violate AB 2011 by requiring CEQA review for a project that the California Legislature expressly exempted from CEQA review.

C. The Parcel Map Would not Conflict with the County Code

The appellant is also incorrect that the Parcel Map would result in “environmental damage” that would violate County Code Section 120.44.030. First, as discussed above, the Parcel Map results only in the change in the legal boundaries and does not itself authorize any development or other changes in the physical environment. Second, to the extent that the appellant bases these arguments on a potential future AB 2011 project, AB 2011 specifically provides that a project that meets all applicable requirements of AB 2011 is permitted regardless of any potential inconsistency with a local government’s general plan, zoning ordinances or regulation. Gov. Code § 65912.110.

Furthermore, we note that any AB 2011 project would be required to meet the applicable requirements of AB 2011 itself, which include a number of requirements related to environmental issues.

II. **No Additional Conditions of Approval Are Required or Appropriate**

The appeal also requests that if the Parcel Map is upheld, additional conditions of approval be imposed upon it, which would require additional studies and require Affirmed Housing to grant a drainage easement on its property. However, as discussed above, the Parcel Map does not itself propose or authorize any development and there is no nexus to require the conditions of approval proposed by the appellant. Nor can the County use the Parcel Map to impose conditions of approval on a potential AB 2011 project, as no AB 2011 project is before the Board of Supervisors, and AB 2011 expressly provides that a qualified AB 2011 project is a “use by right” and is not subject to any discretionary local government review or approvals. Gov. Code §§ 65912.110, 65912.101(q).

While additional conditions of approval are not appropriate, we note once more that AB 2011 does include requirements that address a number of environmental issues.

III. **Conclusion**

The appeal is nothing more than an effort to use the Parcel Map to obstruct the application of AB 2011, which the California Legislature enacted to provide a streamlined, ministerial process for projects that meet its specific requirements.



Any AB 2011 project proposed for the Property would be processed in accordance with the detailed requirements of AB 2011. However, there is no AB 2011 project pending before the Board, and the appellant cannot use the Parcel Map to change the AB 2011 process as it would apply to any such project proposed for the Property. Indeed, using the Parcel Map to modify the AB 2011 requirements would be a violation of State law and would subject the County to all applicable enforcement action, which could include action by the Department of Housing and Community Development.

The appeal is without merit and we respectfully request that the Board deny the appeal in its entirety.

Sincerely,

A handwritten signature in blue ink that reads 'Elizabeth A. Camacho'.

Elizabeth A. Camacho
Partner