

File Number: P-A24-0001
Date Received: 8/30/24

Receipt No.: R55839
Amount: \$450.00

APPEAL FORM

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Wesly Tonks

ADDRESS 3621 Foxmore Lane, Rescue, CA 95672

DAYTIME TELEPHONE (707)-514-5220

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with this appeal.

AGENT _____

ADDRESS _____

DAYTIME TELEPHONE _____

APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.)

1. Zoning administrator approval of Tentative Parcel Map P24-0009
 2. Zoning Administrator approval of Categorical CEQA Exemption for Tentative Parcel Map P24-0009
 3. Conditions of approval of Tentative Parcel Map P24-0009, if it is upheld.
- Please see the attached letter for the reasons of appeal.

2024 AUG 30 AM 9:44
PLANNING DEPARTMENT

DATE OF ACTION BEING APPEALED 08/21/2024


Signature

08/30/2024
Date

Sec. 130.52.090 - Appeals.

Any decision by the review authority of original jurisdiction may be appealed by the applicant or any other affected party, as follows:

- A. An appeal must be filed within 10 working days from the decision by the review authority by completing the appeal form and submitting said form together with the applicable fee, as established by resolution of the Board, to the Department. The appellant shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested.
- B. The hearing body for the appeal shall consider all issues raised by the appellant and may consider other relevant issues related to the project being appealed. The hearing body for the appeal shall be as follows:
 1. All decisions of the Director are appealable to the Commission and then to the Board.
 2. All decisions of the Zoning Administrator and the Commission are appealable to the Board.
 3. All decisions of the Board are final.
- C. The hearing on an appeal shall be set no more than 30 days from receipt of a completed appeal form and fee. If the Board meeting is canceled for any reason on the date on which the appeal would normally be heard, the appeal shall be heard on the first available regularly-scheduled meeting following the canceled meeting date. The 30-day time limitation may be extended by mutual consent of the appellant(s), the applicant, if different from the appellant, and the appeals body. Once the date and time for the hearing is established the hearing may be continued only by such mutual consent.
- D. In any appeal action brought in compliance with this Section, the appellant(s) may withdraw the appeal, with prejudice, at any time prior to the commencement of the public hearing. For the purposes of this Section, the public hearing shall be deemed commenced upon the taking of any evidence, including reports from staff.
- E. Upon the filing of an appeal, the Commission or the Board shall render its decision on the appeal within 60 days.
- F. No person shall seek judicial review of a County decision on a planning permit or other matter in compliance with this Title until all appeals to the Commission and Board have been first exhausted in compliance with this Section.

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

August 30, 2024

Re: Appeal for Tentative Parcel Map P24-0009

Dear Members of the Board of Supervisors,

This letter is presented to you as an appeal of tentative parcel map P24-0009 (“the map”), which was approved on August 21, 2024 by the El Dorado County Zoning Administrator. It is supported by members of Bass Lake Apartments Opposition Alliance. We request the board overturn the decision of the Zoning Administrator and issue a disapproval of the map. The piecemeal nature of the map is grounds for disapproval under multiple instances of established case law, and a disapproval is also required when considering the El Dorado County Code of Ordinances Section 120.44.030. We also find that no CEQA exemption should be granted under CEQA section 15300.2. Should the decision be upheld, this letter also asks that the conditions of approval be updated to better protect the environment and the community.

The Zoning Administrator’s decision was based on the following recommendations from the County Staff Report. These findings will be discussed in detail.

- A. Determine that the Tentative Parcel Map is categorically exempt from CEQA according to 15315 Minor Land Divisions
- B. Approve Tentative Parcel Map, P24-0009, based on the Findings and subject to the Conditions of Approval as presented herein.

I. Approval of Tentative Parcel Map P24-0009 (Piecemeal Development)

Affirmed Housing Group is attempting what is known as “piecemeal development” or “segmentation”, where a developer might try to avoid environmental review by dividing a larger parcel of land into smaller lots. Courts have often found that attempts to divide a parcel in such a way to avoid thorough environmental review are not permissible. Tentative Parcel Map P24-0009 is an attempt by Affirmed Housing Group to segment APN 115-410-011 in order to avoid environmental regulation under CEQA. Their application for ministerial development of Bass Lake Family Apartments under SB330 and AB2011 is their own self admission of this, as their proposed development will not qualify for the ministerial development allowed under these laws unless the map is approved. This is in fact due to the presence of wetlands on the remainder parcel. There is no other reason to request an approval of Tentative Parcel Map P24-0009, other than to avoid environmental regulation as granted under SB330 and AB2011.

Piecemealing a project (dividing it into smaller parts to avoid comprehensive environmental review) is not permissible. Case law also clarifies that if evidence suggests that a lot split might lead to significant environmental impacts which were not previously considered, then a CEQA categorical exemption should be denied. This framework ensures that all potential environmental impacts are thoroughly analyzed before a project proceeds, particularly when a lot split could contribute to those impacts.

This precedent is often upheld in court rulings. Please reference the below cases for some examples:

- *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376: This case deals with the issue of piecemealing and the need to consider the "whole project" in environmental reviews.
- *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263: This case established the requirement that environmental review must consider the entire project and not just segmented parts.
- *Arviv Enterprises, Inc. v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333: Discusses cumulative impacts and the need for full environmental review when a project is segmented.
- *California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225: The court found that even when some project approvals are ministerial, if there are discretionary approvals at any stage, CEQA review is triggered for the whole project.

Affirmed Housing Group is attempting a covert jettison of protected wetlands to avoid a comprehensive CEQA review and potential later project denial. In their own words, "the purpose of this parcel map is to separate out any sensitive habitat" (Tim Moran, Irvine and Associates, Zoning Administrator Hearing 8/21/2024 at 1:18:52). Case law is not in favor of such action and provides adequate grounds for the Board of Supervisors to reverse the decision made by the Zoning Administrator. Public Agencies routinely identify and reject piecemeal development, and denial of Tentative Parcel Map P24-0009 would be routine and expected.

II. Categorical Exemption from CEQA

Under CEQA Section 15300.2, there should be no categorical exemption granted for this minor land division. Since tentative parcel map P24-0009 is a requirement for future proposed development under SB330 and AB2011, the map has substantiated cumulative impact and significant effect, as described under CEQA section 15300.2. Paragraph (b) of this section requires that no categorical exemption be granted if successive projects would have a cumulative impact on the environment. Paragraph (c) of this section requires that, under unusual circumstances which are found herein, no exemption may be granted if the proposal will have a significant effect on the environment. The successive nature of any future development allowed by the division of the parcel would have both a cumulative impact and a significant effect. Therefore, no CEQA exemption should be granted for this minor land division.

Of interest is the presence of multiple ongoing and proposed projects in close vicinity to the map. CEQA states that past, present, and probable future projects, whether they are exempt from CEQA or not, must be considered when evaluating cumulative effect (Cal. Code Regs. tit. 14 § 15130, *California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225). While the map, in combination with the proposed Bass Lake Family Apartments (a probable future development), would have a significant cumulative effect on the environment, it would also have significant traffic impacts on Green Valley Road, Bass Lake Road, and Foxmore Lane when considering this and other present and probable future projects in the local vicinity.

Past, Present, and Future Projects which should be considered when evaluating cumulative impact under CEQA, include, but are not limited to:

- Bass Lake Family Apartments
- Generations at Green Valley
- La Crescenta Six-Plex
- Cameron Meadows Project
- Town and Country Village El Dorado
- Oakhaven
- Revere at Silver Springs

When viewed in whole, the sum of these projects yields a significant cumulative impact on the environment, as well as a significant cumulative impact on traffic at Foxmore Lane and the surrounding area. Schoolchildren, parents, and teachers will all be put at greater risk, and any lapse in attention could lead to an unexpected collision in the delicate dance of daily life. As such, no categorical exemption should be granted.

III. Approval of Tentative Parcel Map P24-0009 (El Dorado County Code of Ordinances)

The splitting of the parcel identified by Assessor's Parcel Number 115-410-011 as represented on Tentative Parcel Map P24-0009 will likely make one of the two parcels eligible for development under SB330 and AB2011, which in turn introduces the likelihood of environmental damage, and avoidable injury to fish or wildlife and their habitat, and serious public health hazards as described in the El Dorado County Code of Ordinances Section 120.44.030.

The scope of environmental damage includes, but is not limited to, the following:

- Wetlands present throughout the site will not be protected, as future development will not have a CEQA requirement due to the ministerial nature of the future development.
- Swales and creeks present throughout the site will be destroyed by future development (see the current proposed development DR24-0004/PA24-0004).
- Future development under AB2011 and SB330 would destroy a habitat suitable for migratory birds and raptors like the White Tailed Kite.
- Future development under AB2011 and SB330 would destroy a habitat suitable for protected amphibians like the yellow-legged frog.

Because the map is a requirement to proceed with development under AB2011 and SB330, the above environmental risks will be a direct result of its approval. Therefore, the county must issue a disapproval under El Dorado County Code of Ordinances Section 120.44.030.

The scope of public health hazards includes, but is not limited to, the following:

- Schoolchildren, parents, and school employees at Green Valley Elementary will be at risk of pedestrian traffic incidents from any ministerial development under AB2011, which will not require any type of traffic study to mitigate risk.

- The existing community currently is, and will be more difficult to evacuate should any ministerial development under AB2011 occur. Evacuation orders are not uncommon in this high fire risk area (see Silver Fire of August 2024). Additional infrastructure improvements would be required to mitigate these risks. Under ministerial development, these improvements would not be identified nor implemented as no traffic study would be required.

Because the map is a requirement to proceed with development under AB2011 and SB330, the above public health hazards will be a direct result of the approval of the map. Therefore, the county must issue a disapproval under El Dorado County Code of Ordinances Section 120.44.030.

Lastly, since the approval of the map is a requirement for proposed future development under SB330 and AB2011, which would place 100% high-density residential housing on the parcel, the approval of the map is not consistent with the El Dorado County General Plan, which currently has the parcel zoned commercial. This map robs the surrounding residential community of an essential piece of commercial zoning intended to serve the multiple needs of the rapidly growing community. This commercial zoning was provided for the specific purpose of meeting the service needs of the nearby residential housing developments. Instead, this map will increase the demand of such needs while removing the possibility of meeting them. Rather than forcing high-density housing onto the parcel, this commercial property, turned daycare, could provide a safe and sensible pickup/dropoff zone for the school while providing a valuable amenity to the surrounding community.

IV. Conditions of Approval of Tentative Parcel Map P24-0009

Should tentative parcel map P24-0009 be upheld, the following conditions should be added to ensure the safety of the community and the environment.

Protection of Wildlife (Raptors) - appeal the conditions to include a survey of all sensitive species, not just White-tailed Kites. Protected Species rarely respect artificial lot split boundaries.

County Department of Transportation (DOT) - include a condition which requires a traffic report prior to obtaining building and grading permits. The surrounding area (Green Valley Elementary School and Foxmore Lane), is particularly impacted by traffic as it stands, and probable future developments will more than double the amount of residents living on Foxmore Lane. The current verbiage is not enough to ensure the safety of students, parents, and school faculty.

Easements - Condition a drainage easement along the Western edge of the property which mirrors the current drainage easement on 3621 Foxmore Lane. The developer shall be held responsible for maintaining and improving drainage on this section of the properties as required by future developments on the property. The county shall require and be the approver of proposed improvements, and maintain them once construction is complete.

V. Conclusion

In light of all that has been detailed, it is imperative that the Board of Supervisors takes a decisive stance against the approval of Tentative Parcel Map P24-0009. The overwhelming evidence points to a developer's intent to circumvent environmental regulations by piecemealing this project, an action

repeatedly condemned by the courts. The potential environmental devastation from an invalid CEQA exemption, coupled with the serious public health risks—particularly to vulnerable schoolchildren—cannot be ignored. The situation is dire, and the consequences of upholding this map are far-reaching, potentially irreversible, and heartbreaking. Tentative Parcel Map P24-0009 will have a redefining effect on the community, indicating to developers that El Dorado County is a place where legally dubious piecemealing to erode environmental regulation is common practice. We implore the Board to recognize the gravity of these risks and disapprove of this map before it is too late.

Respectfully,

A handwritten signature in black ink, appearing to read 'Wesley Tonks', with a long horizontal line extending to the right.

Wesley Tonks
3621 Foxmore Lane
Rescue, CA 95672
watonks@gmail.com

cc: El Dorado County Planning Division
cc: Sierra Crossing HOA
cc: Bass Lake Apartments Opposition Alliance



Cash Register Receipt
County of El Dorado

Receipt Number
R55839

DESCRIPTION	ACCOUNT	QTY	PAID
ProjectTRAK			\$450.00
P-A24-0001	Address:	APN: 115410011	\$450.00
APPEALS FEES			\$450.00
ALL APPEALS	3720200 0240	0	\$450.00
TOTAL FEES PAID BY RECEIPT: R55839			\$450.00

Date Paid: Friday, August 30, 2024

Paid By: Wesly Tonks

Cashier: BLD

Pay Method: CHK-PLACERVILLE 171

You can check the status of your case/permit/project using our online portal etrakit <https://edc-trk.aspgov.com/etrakit/>

Your local Fire District may have its' own series of inspection requirements for your permit/project. Please contact them for further information. Fire District inspections (where required) must be approved prior to calling for a frame and final inspection through the building department.

