

PC 11/12/09
#8
(Handed out at meeting)

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November 10, 2009

El Dorado County Planning Services
2850 Fairlane Ct., Bldg. C
Placerville, CA 95667

#104173.00
RECEIVED
PLANNING DEPARTMENT
09 NOV 12 AM 8:53

Re: P08-0030/Harris Parcel Map/APN 101-030-13

Dear Mr. Chairperson Mathews and Members of the Commission,

I represent Pamela M. Harris, Trustee of the Harris Family Trust dated July 24, 1995, one of the applicants, and John R. Olson represents Mary H. Nugent, Trustee of the Harris Family Survivors Trust, the other applicant. Based on their respective ancestors, the two parties found it desirable to divide up the family property. This was no easy task and resulted in litigation. After extensive negotiation and with a result that would be an extremely economical use of judicial resources, the parties reached a court-supervised settlement which divided up all of the property including the subject property. The problem is the settlement cannot be consummated with a division of the subject property as proposed with the conditions currently recommended by staff.

After a meeting with most of the departments submitting information for conditions for the parcel map both Mr. Olson and I were convinced that recorded restrictive covenants could agreed upon which would allow for approval of the proposed parcel map without conditions which would make the map and the proposed continued historic use of the property financially feasible. While there is no question about the efforts of the staff and the applicants continued attempt to work out the anticipated conditions, the process has been less then successful and the revised conditions are so burdensome as to not allow consummation of the settlement. The applicants apologize for your receipt of the communication on the eve of the continued

hearing of this matter, however, they did not receive the revised conditions until November 9, 2009 at 3:00 P.M. and since I was out of the office at a meeting for most of the day on the 10th and earlier reply was not possible.

We submit that this is a very unique parcel map and, genuinely, the only purpose for it is so trustee Mary Nugent can own 25 acres and trustee Pam Harris can own 125 acres. The owners of the property truly do not want to make any changes in the historic use of the property by their families since the United States granted it to Matthew and James Blair in 1880. The owners are willing to take whatever steps the county feels necessary to ensure that no change in use of the property takes place until appropriate conditions of a parcel map are imposed on the property. The owners submit that this can be ensured by deed restrictions which may not be changed without the concurrence of the county.

Since there will be no change in use of the property, the property cannot support the conditions which have been recommended by staff.

While the owners feel that most of the conditions are totally unnecessary at this time, they are willing to accept many of them as a cost of settling a very costly and time-consuming litigation.

However, since the requested map results in no development of the property, the conditions in their entirety cannot be sustained by the owners.

The owners suggest that many of conditions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 19, 20, 21, and 22 are not necessary at this time, as there will be no change in use of the property, however, the owners are willing to proceed with the map subject to these conditions. As an example, condition 2 speaks to "during construction," but there will be no construction on the property.

Condition number 1 indicates, in part, "While zoned TPZ, both parcels are prohibited from constructing any additional residences or non-compatible development as defined under Section 17.06.050.GG of the Zoning Ordinance." The owners have no problem with the limit of the use of their land, and, in fact, agree to such a limitation even after a rezone initiated by the county. The owners are very concerned that the rezone of their property will be a triggering event, unless the rezone comes as a result of their action. The owners suggest that the use of their property be limited until they initiate a rezone or

develop their property, at which time they would be required to meet the conditions the county would impose on a parcel map at that time.

Please refer to paragraph IV of the attached draft of restrictive covenants which would bind the land until modified with the agreement of the county.

Conditions 13 & 16 as currently proposed by staff, which start out "Prior to approval of a rezone or issuance of a building permit," are acceptable in general, however, the owners maintain that they should not be required to meet this condition if the rezone is not initiated by the owners, and that the building permit should be for a residence rather than additions for the property's current use. The owners maintain that the county can be thoroughly protected by recorded restriction as suggested in condition 16, similar to those attached.

Conditions 14 and 15 are totally unacceptable to the owners as they result in a current taking of what is estimated to be 4 acres of their property for road dedication, although the requested map results in no additional use of the roads.

For condition 18, the owners suggest the following language, "Prior to filing the parcel map, the applicant shall either: 1) sign an enforceable agreement with the EDC FPD indicating that no occupancy of any additional structures shall occur prior to the installation of a fire hydrant within 500 feet of each new parcel and the submission of documentation from the El Dorado Irrigation District indicating that a fire flow of 1,000 gallons per minute at 20 pounds per square inch for two hours will be met; or 2) install an NFPA 13D home sprinkler system with 3,000 gallons of water storage for all structures built on each parcel."

Sincerely,

COMBELLACK & CRAIG

David W. Combellack

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DWC:eb

Enclosure

cc: Pierre Rivas
Jason R. Hade
Paula Frantz
Claudia R. Wade
William Stevens
G. Baldock

RECORDING REQUESTED BY:

David W. Combellack

WHEN RECORDED RETURN TO:

COMBELLACK & CRAIG
3080 Cedar Ravine Rd.
Placerville, CA 95667

[Space Above this Line Reserved
for **Recorder's** Use]

NOTICE AND DECLARATION OF RESTRICTIONS

I. NOTICE IS HEREBY given that by this document a development limitation is imposed upon those certain parcels shown on (name of parcel map), which is filed in the Office of the County Recorder of the County of El Dorado, State of California, in Book _____ of Parcel Maps at Page _____

II. This DECLARATION OF RESTRICTIONS is made on _____, 2009, by PAMELA HARRIS as Trustee of the Harris Family Trust dated July 24, 1995 ("HARRIS") and MARY H. NUGENT as Trustee of the Harris Trust ("NUGENT") collectively ("Declarants").

A. The undersigned Declarants are the owners of the land located 2640 Blair Road Pollock Pines, California, identified as APN 101-030-031 ("the Property") more particularly described in "Exhibit A", attached to this declaration and incorporated in it this by reference.

B. Declarants are the defendant and plaintiff in the Superior Court of El Dorado County, California, and have entered a settlement agreement which has been approved by the Superior Court. One of the terms of the settlement agreement provides for NUGENT to receive 25 acres in the northwest corner of the Property as more particularly described in El Dorado County Development Services Planning Commission Staff Report file number P 08-0030 and with HARRIS to receive the remaining 125 acres. To completed the court approved settlement El Dorado County requires a parcel map.

C. El Dorado County may impose conditions on the approval of a parcel map. El Dorado County desires to impose conditions on Declarants' above described map based in part upon concern that additional residences on the Property will burden County services.

D. Declarants desire to continue to use the Property as one unit under a joint timber management plan and not change the use of the property.

E. The Property is currently zoned TPZ and Declarants realize they cannot currently build another residence on the property. El Dorado County is concerned that unless the conditions are now imposed on the above described parcel map El Dorado County will lose the chance to impose the conditions. Declarants do not object to the conditions but feel they would be unduly burdened should the conditions be imposed prior to additional residences being constructed on the Property or development of the Property after it is rezoned.

III. Declarants declare that the Property described in Exhibit A is held and will be held, transferred, encumbered, used, sold, conveyed, leased, and occupied subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of improvement and use of the Properties, and are established and agreed on for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties and every part of it. All of the restrictions, covenants, and limitations will run with the land and will be binding on all parties having or acquiring any right, title, or interest in the future in the Property. Each grantee of a conveyance or purchaser under a contract or agreement of sale conveying any right, title, or interest in any part of the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all of the restrictions, covenants, and limitations set forth in this Declaration. The development of the Property or a change in zoning shall be unanimously agreed to by the Declarants with each parcel having one vote.

A. Declarants shall continue to use the Property as one unit under the existing joint timber management plan and not change the use of the property. There shall be no non-compatible development permitted on the 25 acre TPZ zoned parcel and no further subdivisions are permitted to occur on TPZ zoned parcels.

B. The Harris Non-Industrial Timber Management Plan is updated and amended to include the legal descriptions of the newly created parcels. This joint timber management plan contains fire safe management provision, acceptable to the El Dorado County Fire Protection District and the California Department of Forestry and Fire Protection which has been prepared and implemented.

C. The Property in its condition as two parcels is based upon and limited to compliance with the project description and the Staff Report exhibit marked Exhibit E, set forth in the above reference file, except as to the conditions stated in the Staff Report which shall no longer apply. Any deviations from the project description, exhibits, or conditions as set forth below must be reviewed and approved by the County for conformity with the above parcel map's approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

D. The Declarants shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval of El Dorado County concerning a subdivision, which action is brought within the time period provided for in Section 66499.37. County shall notify the Declarant of any claim, action, or proceeding and County will cooperate fully in the defense. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action, as provided in Section 66474.9(b) of the Government Code.

IV. Prior to the Declarants' change of use or development of the Property after a rezone of the Property the county may impose the conditions appropriate for a parcel map and/or the change in use or development in question before the change and use or develop may proceed.

V. These restrictions shall remain in effect until amended, modified or rescinded by El Dorado County and the Declarants. The purpose of this Notice of Restriction is to give constructive notice of these development limitations.

Executed on _____, 2009 at Placerville, California

PAMELA HARRIS, as Trustee of
the Harris Family Trust dated July 24, 1995

MARY H. NUGENT, as Trustee of
the Harris Family Trust dated July 24, 1995

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State of California)

County of El Dorado)

On _____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

State of California)

County of El Dorado)

On _____ before me, _____, Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

REF: FILE NO P08-0030/Harris Parcel Map

7/23/09 PC
#7

RECOMMENDED CHANGES TO PROPOSAL

SUBMITTED TO: El Dorado County Planning Commission

FROM: Pamela Harris, Trustee, Harris Family Trust

Summary

The proposal creates two separate parcels, one 25 acres and one 125 acres from the existing 150 acre parcel, in accordance with a settlement agreement between the property owners. The use and zoning of the two parcels will remain the same as current use and zoning – TPZ and AE. No development of parcels is proposed at this time.

Request

Remove Conditions #13-16 (related to road improvements).

Clarify that Condition #18 applies only to new structures.

Remove Condition #19 (requiring fire safe management plan).

Rationale

Imposing conditions 13, 14, 15, 16 and 19 would be appropriate if the proposal included changes in land use and zoning, and/or new development, which the proposal does not do. Improving access (road improvements) and fire safety would appropriately be addressed and required at such time that changes are proposed to zoning and land use. The imposition of Conditions #13-18 is inconsistent with DOT conclusion that this project would not trigger the threshold for traffic impact (page 3).

Under this proposal, the land will retain its current TPZ and AE zoning, for use primarily in timber production. The two parcels will continue to be managed under the existing Timber Management Plan which includes appropriate measures for fire safe timber practices.

Pamela M Harris
7/23/09

Mary Harris Nugent
7-23-09