



Legislation Text

File #: 07-1584, **Version:** 2

Hearing to consider an appeal of the approval of Tentative Parcel Map P78-0280C; the correction to said map would allow removal of a 100-foot non-building easement and replacement with a 15-foot wide drainage easement on property consisting of 1.12 acres (APN 042-280-34) in the Pollock Pines area. Appellant: Mark John Dwyer, Applicant: Kenneth Teague. (District 2) (Cont'd 10/16/07, Item 37)

RECOMMENDED ACTION: Planning staff recommends the Board deny the appeal, thereby upholding the action of the Zoning Administrator to conditionally approve P78-028C, based on the findings listed on Attachment 2, subject to the conditions listed on Attachment 3.

Background: There is 100 foot Non-building Easement recorded within the subject parcel created by this map. At the Zoning Administrator hearing on September 5, 2007, it was found that pursuant to the submitted analysis of General Plan Policy 7.3.3.4 and the Interim Interpretive Guidelines adopted June 22, 2006, as well as a Arrest/Investigation Report, and further information reported to staff from three subsequent site visits from the California Department of Fish and Game, the existing swale/linear depression on Mr. Teague's parcel alone could not be qualified as a wetland stream requiring any special setbacks required by County Code. Therefore, the 100-foot Non-building Easement was removed and replaced with a 15-foot wide drainage easement. The appellant is of the opinion that the drainage is a wetland and should continue to be subject to the 100-foot nonbuilding easement.

Policy 7.3.3.4 directs the County to provide buffers and special setbacks for the protection of riparian areas and wetlands. The linear depression does not drain enough of an area to result in the presence of an Ordinary High Water Mark which is required by the U.S. Army Corps of Engineers to determine the boundary of channels that are under the jurisdiction of the Federal Clean Water Act. There are no wetland indicator plants present within the vicinity of the drainage depression that would indicate water is ever present long enough to support their growth which would qualify it as wetlands pursuant to U.S. Fish and Wildlife definitions.

The map correction project was considered and approved by the Zoning Administrator on September 5, 2007. The appellant was present at the hearing and raised concerns that the ditch is not a drainage easement by showing photographs of water flow in the drainage course after a heavy rain. A third site visit by a California Department of Fish and Game Warden occurred after the Zoning Administrator's hearing after the photographs were sent to the Warden's supervisor. That visit confirmed the findings of the two prior visits, that there was no violation of Fish and Game Code, no streambed alteration occurred, and two phone conversations with the Warden confirmed the drainage swale/linear depression could not be classified as an intermittent stream either on the subject parcel nor above it where it entered the parcel. The submitted *Analysis of General Plan Policy 7.3.3.4 Regarding Construction at 4871 Rainbow Trail, El Dorado County, CA* done by Biologist/Botanist Adam Forbes concluded the same thing. The Warden, Biologist, and Planning staff did agree that the stream does have characteristics of an intermittent stream as it exits the Teague parcel and enters the Dwyer's parcel. The Warden, Biologist/Botanist, and Planning staff are all fully aware that

the Camino U.S.G.S. Quadrangle shows a dotted blue line running through the parcel map area, however, it should be noted those maps are done by aerial photographs, and locations and classifications require field observations for exact real world confirmations. Staff confirmed the information with two separate site visits and came to the same conclusion. The drainage swale, in its current state and on Assessor's Parcel Number 042-280-34 alone pursuant to the subject application, could not be recognized as an intermittent stream or wetland by definition and classifying it as a drainage easement would not adversely impact any public agency or any party with interest in this easement. Therefore, there is no basis to grant an appeal of P78-0280C.

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ATTACHMENTS

Attachment 1 - Appeal Form

Attachment 2 - Findings for Approval

Attachment 3 - Conditions of Approval

Attachment 4 - *Analysis of General Plan Policy 7.3.3.4 Regarding Construction at 4871 Rainbow Trail, El Dorado County, CA.*, Adam Forbes, M.S., Botanist/Biologist, Sycamore Environmental Consultants dated February 1, 2007, four pages

Attachment 5 - *Arrest/Investigation Report*, Darrell Stevenson, California Department of Fish and Game Warden, Badge #366, dated August 22, 2007