



RESOLUTION No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION DENYING THE APPEAL FILED BY JAMES POWELL AND CAROL FULLER POWELL (“APPELLANTS”) REGARDING THE PLANNING COMMISSION’S JULY 28, 2016 APPROVAL OF THE BYERS WAREHOUSE PROJECT (“PROJECT”) CONSISTING OF THE ADOPTION OF A MITIGATED NEGATIVE DECLARATION (EIS15-019) AND APPROVAL OF A SUBDIVISION MAP AMENDMENT (AM14-001), DEVELOPMENT PERMIT (DP15-006), BIOLOGICAL MANAGEMENT PLAN (MGT15-020), FLOODPLAIN MANAGEMENT PLAN (MGT16-001), AND PETITION FOR EXCEPTIONS TO ROAD STANDARDS (MI15-020) FOR THE BYERS WAREHOUSE PROJECT ON PROPERTY LOCATED AT 11773 SLOW POKE LANE, GRASS VALLEY (APN 09-320-25), AND SUSTAINING THE PLANNING COMMISSION’S SAID ACTIONS ON THE PROJECT

WHEREAS, on July 28, 2016, after a duly noticed public hearing, the Nevada County Planning Commission considered the application of Raymond W. Byers and public testimony before taking action to approve the Byers Warehouse Project (Project) consisting of adopting a Mitigated Negative Declaration and approving a Subdivision Map Amendment, Development Permit, Biological Management Plan, Floodplain Management Plan, and Petition for Exceptions to Road Standards, subject to conditions of approval; and

WHEREAS, on August 5, 2016, James Powell and Carol Fuller Powell (Appellants), filed a timely appeal to all of the Planning Commission’s actions taken on July 28, 2016; and

WHEREAS, on September 13, 2016, the Board of Supervisors agreed to accept the appeal as to the Planning Commission’s actions on the Project and scheduled the appeal for hearing on October 11, 2016; and

WHEREAS, on October 11, 2016, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal and denied the appeal.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct;

2. The Planning Commission's action on the Mitigated Negative Declaration is upheld with the following findings A-C:
 - A. The project, including the Subdivision Map Amendment, Development Permit, Biological Management Plan, Floodplain Management Plan, and Petition for Exceptions to Road Standards, has been reviewed pursuant to the California Environmental Quality Act and the County's environmental review guidelines (Nevada County Land Use and Development Code Chapter 13), and that there is no substantial evidence in the record supporting a fair argument that the proposed project, as mitigated and conditioned, might have any significant adverse impact on the environment; and
 - B. The Mitigated Negative Declaration (EIS15-019) reflects the independent judgment of the Planning Commission and the Board of Supervisors, and that the mitigation measures contained therein and imposed as conditions of the project, and agreed to by the applicant, will reduce potentially significant impacts to less than significant levels; and
 - C. The location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.
3. The Planning Commission's action on the Biological Resources Management Plan is upheld with the following findings A-B:
 - A. The issuance of the Biological Management Plan is consistent with the provisions of Section 4.3. Resource Standards of the Nevada County Land Use and Development Code, in that encroachment into watercourse setbacks is necessary due to parcel configuration and site topography; and
 - B. Minimization of impacts to waterways and associated habitat has been attained through the incorporation of mitigation measures identified by Glenn Delisle in his Management Plan dated June 2015.
4. The Planning Commission's action on the Floodplain Management Plan is upheld with the following findings A-B:
 - A. The issuance of the Floodplain Management Plan is consistent with the provisions of Section 4.3. Resource Standards of the Nevada County Land Use and Development Code, in that encroachment into floodplain setbacks is necessary due to parcel configuration and site topography; and
 - B. Minimization of impacts to the floodplain setback has been attained through the incorporation of mitigation measures identified by SCO Planning & Engineering in the Management Plan dated December 16, 2015.
5. The Planning Commission's action on the Petition for Exceptions is upheld with the following findings A-D:
 - A. The Petition for Exceptions is necessary because there are special circumstances or conditions affecting the subject property including the existing residential development on Slow Poke Lane; and
 - B. The Petition for Exceptions is necessary for the preservation of a substantial property right of the petitioner because the petitioner has been conducting business at the current location for approximately 25 years; and

- C. The granting of the Petition for Exceptions will not be detrimental or injurious to other property in the territory in which said property is located because of the required turnouts which will allow for fire safe access; and
 - D. The granting of the Petition for Exceptions to road standards will not constitute a grant of special privileges inconsistent with the limitations upon similar properties.
6. The Planning Commission's action on the Map Amendment is upheld with the following findings A-G:
- A. The Map Amendment removing a non-existent pond and ditch and setbacks from South Fork Wolf Creek from the recorded map is consistent with the Nevada County Land Use and Development Code Section L-II 4.3.10 which establishes standards for setbacks applicable to water features; and
 - B. The Map Amendment will have a cumulatively minor impact on the subdivision and its impacts in that provisions are currently in place for managing resources and mitigating any potential impacts to resources; and
 - C. The Map Amendment conforms to the provisions of Government Code Section 66474; and
 - D. The Map Amendment will not affect any of the other findings for approval required by the Nevada County Subdivision Ordinance; and
 - E. The Map Amendment is necessary because there are changes in the circumstances which make the conditions sought to be changed no longer appropriate or necessary as the pond and ditch previously identified in Book 3 of Subdivision Maps at Page 222 no longer exist; and
 - F. The Map Amendment does not impose any additional burden on the present fee owner of the property; and
 - G. The Map Amendment does not alter any right, title, or interest in the real property reflected on the map recorded as Parcel 2 in Book 3 of Subdivision Maps at Page 222.
7. The Planning Commission's action on the Development Permit is upheld with the following findings A-L:
- A. This project as conditioned and mitigated is consistent with the General Plan goals, objectives and policies, and with the Industrial General Plan land use map designation applicable to this project site; and
 - B. The proposed use is allowed within and is consistent with the purpose of the M1 zoning district within which the project is located, which allows light industrial uses with an approved development permit; and
 - C. The proposed use and any facilities, as conditioned, will meet all applicable provisions of the Land Use and Development Code or a same practical effect of those provisions, including design and siting to meet the intent of the Site Development Standards mitigating the impact of development on environmentally sensitive resources; and
 - D. The site for the proposed use is adequate in size, shape and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon, without compromising site development standards; and

- E. That East Bennett Road, a County-maintained road; Lava Rock Avenue, a private road; and Slow Poke Lane, a private road, are adequate in size, width, and pavement type to carry the quantity and kinds of traffic generated by this project in that the project, which involves the construction of a warehouse building to store materials already being stored onsite, would not generate additional traffic; and
- F. The proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area; and
- G. Adequate provisions exist for water and sanitation for the proposed use; and
- H. Adequate provisions exist for emergency access to the site; and
- I. That this development permit, proposing a warehouse building for an existing light industrial use, is consistent with the intent of the design goals, standards, and provisions of the Nevada County Zoning Ordinance; and
- J. That based on the comments received and conditions applied from the Nevada County Departments of Building, Public Works, Planning, and Environmental Health; Northern Sierra Air Quality Management District; and the Nevada County Fire Marshal's Office, adequate public services exist in the immediate area to support the project, including adequate public roads, public utilities, and fire protection services; and
- K. All feasible mitigation measures have been imposed upon the project to offset the impacts this project may have on air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hydrology and water quality, noise, transportation and circulation, and utilities and service systems; and
- L. That the conditions listed in Exhibit "A" are the minimum necessary to protect the public's health, safety and general welfare.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the appeal of James Powell and Carol Fuller Powell, and upholds the decision of the Planning Commission to adopt a Mitigated Negative Declaration (EIS15-019) and approve the Subdivision Map Amendment (AM14-001), Development Permit (DP15-006), Biological Management Plan (MGT15-020), Floodplain Management Plan (MGT16-001), and Petition for Exceptions to Road Standards (MI15-020) for the Byers Warehouse Project on property located at 11773 Slow Poke Lane, Grass Valley based on the findings as set forth herein and adoption of the Conditions of Approval set forth in Exhibit "A."

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure section 1094.6.