DEPARTMENT: Planning  

BY: Sarah Williams, Deputy Director  

PHONE: 742-1215

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2009-114 with findings, upholding the Planning Director’s action.

Justification is provided in the Staff Report to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant the appeal and reverse the Planning Director’s determination finding that there is adequate justification to grant unconditional Certificates of Compliance to the twelve (12) fractionalized patents.

Financial Impact? ( ) Yes (X) No  Current FY Cost: $Annual Recurring Cost: $

Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded

Amount In Budget: $  

Additional Funding Needed: $  

Source:

Internal Transfer  

Unanticipated Revenue  

Transfer Between Funds  

Contingency  

( ) General  ( ) Other

Staff Report to the Board with Attachments:

A. Vicinity Map:  B. Diagrams from court case:

C. Illustration of Patent for Certificate of Compliance Application:

D. Planning Correspondence 9/5/08:

E. Miller Correspondence 4/7/09:

F. Planning Correspondence 7/30/09:

G. Notice of Appeal:

H. Draft Board of Supervisors Resolution

CLERK'S USE ONLY:

Res. No.: (2)  

Ord. No.  

Vote – Ayes:  

Noes:  

Absent:  

( ) Approved  

Minute Order Attached  ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date:  

Attest: MARGIE WILLIAMS, Clerk of the Board  

County of Mariposa, State of California

By:  

Deputy

COUNTY ADMINISTRATIVE OFFICER:

( ) Requested Action Recommended  

( ) No Opinion  

Comments:

______________________________

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CAO:  

______________________________
TO: KRIS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board


THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on October 13, 2009

ACTION AND VOTE:

10:11 a.m. Kris Schenk, Planning Director;

BOARD ACTION: Kris Schenk advised of a request that was received to continue this hearing, and he advised that the appellant concurs. He advised that Tony Toso, Farm Bureau, requested that the hearing be continued as they have not had a chance to review all of the comments and they will meet on October 20th.

Jeff Miller, appellant, stated he concurs with the continuance; and he referred to additional deed information that he submitted that shows that 1/4th of the property was received from his mother and 3/4th came from the Chase estate.

(M)Allen, (S)Turpin, the hearing was continued to November 3, 2009 at 3:00 p.m./Ayes: Turpin, Bibby, Cann, Allen; Excused: Aborn.

Cc: Steven W. Dahlem, County Counsel
    File
November 25, 2009

TO: Kris Schenk, Planning Director

FROM: Margie Williams, Clerk of the Board

SUBJECT: Minute Order for Miller/Clifton Appeal

Attached you will find an amended Minute Order for the Miller/Clifton appeal hearing to reflect the correct spelling of the attorneys names that Mr. Miller referred to in his rebuttal.

Thanks.

Cc: Steven W. Dahlem, County Counsel
    Chris Ebie, Auditor
    Keith Williams, Treasurer/Tax Collector/County Clerk
    Becky Crafts, Assessor-Recorder
    File
Margie Williams

From: Sarah Williams
Sent: Tuesday, November 24, 2009 1:14 PM
To: Jeff Miller
Cc: Margie Williams
Subject: RE: Draft of presentation

This must be in the minutes... I'm copying to Margie Williams for her information.

Sarah

----------------------------------------------------------
From: Jeff Miller [mailto:snlir@att.net]
Sent: Tuesday, November 24, 2009 1:16 PM
To: Sarah Williams
Subject: Draft of presentation

Hi Sarah,

I just read the summation of the hearing. My cousin's attorney was Braucht not Brock and our attorney was H. Spencer St. Clair not Sinclair. Page 7 under Rebuttal by the Appellant, first paragraph.

Thanks.
Jeff
TO:  KRAK WECHK, Planning Director
FROM:  MARGIE WILLIAMS, Clerk of the Board


RESOLUTION No. 09-537

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 3, 2009

ACTION AND VOTE:

5:15 p.m. Kris Schenk, Planning Director; PUBLIC HEARING to Consider Appeal No. 2009-114, an Appeal of the Planning Director’s Determination Regarding a Portion of Certificate of Compliance Application No. 2007-093 for Twelve (12) “Fractionalized” Patents. Applicants and Appellants: Jeff Miller and Layne Clifton. Project Site for Certificate of Compliance Application No. 2007-093 was APN 016-080-002 (Now a Retired APN); 871 Highway 140, Le Grand (Merced/Mariposa County Line). (Continued from October 13, 2009)

BOARD ACTION: Kris Schenk introduced the appeal. Sarah Williams/Deputy Planning Director, presented the staff report, including review of the application and processing status; advised of changes due an appellate case, The People v. Tehama County Board of Supervisors, et al., (2007) (the Tehama case) and affect this case has on processing the “fractionalized” patents; reviewed the appeal issues; advised of correspondence received from the appellant; presented a revised formal resolution that reflects the continuance of this hearing from the original October 13th date; and advised that the applicant is still working to find additional grant deed information. Staff responded to questions from the Board relative to the property line for the original homestead of the property and how the line became different; and relative to the minimum parcel size for a subdivision today.

The public portion of the hearing was opened and input was provided by the following:

Appellants Presentation:

Jeff Miller advised that he is one of the applicants. He advised that Parcel 32 (the pink and green piece on the map) were created by a deed and he has not provided that deed to staff. He advised that all of the property was originally owned by Harry Chase, then there was a foreclosure and parcels were sold and traded and repurchased. In 1971, a line was drawn and the property was divided. They
knew there were patents and that they were separating them and the attorneys for both sides said that everything was legal and the divided parcels would be recognized as separate parcels as was their intent. He advised that he has a different opinion of the Tehama case and he does not feel that it prevents recognition of the “fractionalized” patents as their intent was to keep the parcels separate. He advised that when they received their first tax bill in 1971 after dividing the property, it was for the full 4,333 acres and when they asked about receiving tax bills for each parcel, they were told that the tax bill had no bearing on the separate legal parcels. So they didn’t file separate deeds to receive individual tax bills. He referred to a line in the Tehama case that says if you give away a portion, it becomes a separate parcel. He responded to a question from the Board relative to being able to locate additional information to help with the determination for some of the parcels in question.

Sarah Williams provided input relative to the assignment of Assessor Parcel Numbers (APN) for tax bills; advised that the “vicinity map” on circle page 19 in the packet shows the current APNs and the map on circle page 24 shows the boundary of the patents and how they relate to the current property line for Miller/Clifton. She responded to questions from the Board as to what the decision would have been if this matter was considered prior to the Tehama case and advised that the Certificates of Compliance would have been issued for the “fractionalized” patents; and advised that there was no minimum parcel size.

Opponents Presentation:

Rita Kidd stated she was speaking as a Board member for MERG and reviewed the key points in the letter she presented. She advised that they are not opposed to the request; however, wanted to present information relative to “fractionalized” parcels. She referred to their previous research with the Hewlett’s request to receive Certificates of Compliance, and she advised that Santa Barbara County charges $1,000 per requested Certificate of Compliance and they have a very clear policy that you have to be able to track back to the original boundary of the patent through the changes of title.

General Comments:

Anita Starchman Bryant stated she was speaking as a member of the public and responded to the input provided by Rita Kidd. She clarified that the burden of research is on the applicant in Mariposa County and not the County. She responded to a question from the Board and advised that she does not know what research Santa Barbara County does.

Staff responded to questions from the Board as to whether right-of-way and access to each of the parcels is an issue.

Rebuttal by the Appellant:

Mr. Miller responded to questions from the Board relative to the status of their research and he advised that additional research will not help them with the parcels that are split by the property boundary as they relied on their attorney’s advice that the split created separate parcels; advised that he is not aware and has not been able to locate any letters or documents to support the advice given by their attorney – H. Spencer St. Clair, and he advised that Attorney Braucht represented the other portion of the property. He advised that he was at the meeting with his mother and father and Attorney St. Clair and personally heard the discussion and statement that the parcels that were split would become separate parcels; and he had a direct conversation with Philip Chase that he had received the same information from his attorney. He referred to the Tehama case and advised that the creation of separate parcels is what the parties intended.

The public portion of the hearing was closed and the Board commenced with deliberations. County Counsel responded to a question from the Board relative to the definition of “extrinsic” as used in the Tehama case and advised that it means events that occurred outside the confines of the deeds or instrument that transferred property. Staff responded to questions from the Board relative to being able to further consider any new evidence that might surface following this hearing; whether this is the first application that has been processed since the Tehama case; and relative to the change in the revised resolution that was presented to reflect the continuation of this hearing. County Counsel reviewed the actions available to the Board: 1) uphold the appeal; 2) deny the appeal; or 3) provide direction for staff to come back. Staff responded to a question from the Board relative to being able to sell a parcel if it has a Certificate of Compliance. Rick Benson, County Administrative Officer, reiterated the options for action as stated by County Counsel.

(M)Allen, (S)Turpin, Res. 09-537 was adopted upholding the appeal and overturning the Planning Director’s determination and findings based on the evidence that was presented; and finding that the Tehama case allows for oral testimony to be considered. Further discussion was held relative to the decision and future consideration of requests. County Counsel advised that the Board’s job is to weigh
the evidence on a case-by-case basis and to determine whether there is sufficient credible evidence, including looking outside the confines of the deed, to preserve the historic parcels that were granted originally. Ayes: Turpin, Cann, Allen; Noes: Aborn, Bibby.

Kris Schenk asked for clarification relative to the findings for this action and discussion was held. Rick Benson advised that the findings could be based on the testimonial evidence that was presented by the appellant relative to the intent of the parties when the parcels were separated. County Counsel provided additional input and advised that the Board could find that the intent was to protect the separate parcels; and that extrinsic evidence was offered by Mr. Miller relative to his personal meeting with his mother's attorney together with his father concerning the discussion of the separate parcels. Supervisor Cann asked about having a definition of "extrinsic" for Planning. County Counsel responded that it is a term of art meaning it has a specific legal definition and he will provide that information to staff. He further recommended that the Board direct staff to bring back the recommended findings that would support upholding the appeal, and Chair Aborn so directed. The hearing was closed.

Rita Kidd suggested that a workshop be held on historic parcels "patents." She advised that she feels that this action just doubled the number of sub-standard parcels because the parcels on the other side of the property line equal the number in question in this appeal. She feels that this action took away staff's ability to negotiate the merger of substandard parcels and leaves open for those parcels that were merged to come back and that creates another dilemma.

Cc: Steven W. Dahlem, County Counsel
    Chris Ebie, Auditor
    Keith Williams, Treasurer/Tax Collector/County Clerk
    Becky Crafts, Assessor-Recorder
    File
TO: KRS SCHNKE, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board

Project Site for Certificate of Compliance Application No. 2007-093 was APN 016-080-002 (Now a Retired APN); 871 Highway 140, Le Grand (Merced/Marijosa County Line).
(Continued from October 13, 2009)

RESOLUTION 09-537

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 3, 2009

ACTION AND VOTE:

5:15 p.m. Kris Schenk, Planning Director;
Project Site for Certificate of Compliance Application No. 2007-093 was APN 016-080-002 (Now a Retired APN); 871 Highway 140, Le Grand (Merced/Marijosa County Line). (Continued from October 13, 2009)

BOARD ACTION: Kris Schenk introduced the appeal. Sarah Williams/Deputy Planning Director, presented the staff report, including review of the application and processing status; advised of changes due an appelate case, The People v. Tehama County Board of Supervisors, et al., (2007) (the Tehama case) and affect this case has been processed the “fractionalized” patents; reviewed the appeal issues; advised of correspondence received from the appellant; presented a revised formal resolution that reflects the continuance of this hearing from the original October 13th date; and advised that the applicant is still working to find additional grant deed information. Staff responded to questions from the Board relative to the property line for the original homestead of the property and how the line became different; and relative to the minimum parcel size for a subdivision today.

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knew there were patents and that they were separating them and the attorneys for both sides said that everything was legal and the divided parcels would be recognized as separate parcels as was their intent. He advised that he has a different opinion of the Tehama case and he does not feel that it prevents recognition of the “fractionalized” patents as their intent was to keep the parcels separate. He advised that when they received their first tax bill in 1971 after dividing the property, it was for the full 4,333 acres and when they asked about receiving tax bills for each parcel, they were told that the tax bill had no bearing on the separate legal parcels. So they didn’t file separate deeds to receive individual tax bills. He referred to a line in the Tehama case that says if you give away a portion, it becomes a separate parcel. He responded to a question from the Board relative to being able to locate additional information to help with the determination for some of the parcels in question.

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Rebuttal by the Appellant:
Mr. Miller responded to questions from the Board relative to the status of their research and he advised that additional research will not help them with the parcels that are split by the property boundary as they relied on their attorney’s advice that the split created separate parcels; advised that he is not aware and has not been able to locate any letters or documents to support the advice given by their attorney – Spencer Sinclair, and he advised that Attorney Brock represented the other portion of the property. He advised that he was at the meeting with his mother and father and Attorney Spencer and personally heard the discussion and statement that the parcels that were split would become separate parcels; and he had a direct conversation with Philip Chase that he had received the same information from his attorney. He referred to the Tehama case and advised that the creation of separate parcels is what the parties intended.

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decision and future consideration of requests. County Counsel advised that the Board’s job is to weigh the evidence on a case-by-case basis and to determine whether there is sufficient credible evidence, including looking outside the confines of the deed, to preserve the historic parcels that were granted originally.

Ayes: Turpin, Cann, Allen; Noes: Aborn, Bibby.

Kris Schenk asked for clarification relative to the findings for this action and discussion was held. Rick Benson advised that the findings could be based on the testimonial evidence that was presented by the appellant relative to the intent of the parties when the parcels were separated. County Counsel provided additional input and advised that the Board could find that the intent was to protect the separate parcels; and that extrinsic evidence was offered by Mr. Miller relative to his personal meeting with his mother’s attorney together with his father concerning the discussion of the separate parcels. Supervisor Cann asked about having a definition of “extrinsic” for Planning. County Counsel responded that it is a term of art meaning it has a specific legal definition and he will provide that information to staff. He further recommended that the Board direct staff to bring back the recommended findings that would support upholding the appeal, and Chair Aborn so directed. The hearing was closed.

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Cc: Steven W. Dahlem, County Counsel
   File
Board of Supervisors Meeting
Of October 13, 2009

SUMMARY AND RECOMMENDATIONS

Case: APPEAL NO. 2009-114

Case Name: Appeal of Planning Director's determination regarding a portion of Certificate of Compliance Application No. 2007-093 for twelve (12) "fractionalized" patents.

Location: The site is located at 871 Highway 140 near the Merced/Mariposa County Line

Appellants: Jeff Miller and Layne Clifton

Recommendation: Staff recommends the Board of Supervisors adopt a resolution with findings, denying the appeal and upholding the Planning Director's determination and findings.

Prepared by:

SARAH WILLIAMS
Deputy Director
Appeal Description Summary

On 6/1/07, an application for 34 Certificates of Compliance was received from Jeff Miller and Layne Clifton. The application was set up as Certificate of Compliance Application No. 2007-093. The project site was APN 016-080-002, a 4.333+ acre parcel. This APN is now a "retired" APN (new APNs have been assigned to this acreage by the Assessor’s Office).

On 9/15/08, following communication with the applicant about processing options, the Planning Director approved twenty-two (22) Certificates of Compliance for a portion of the acreage comprising APN 016-080-002. This was as requested by the applicant, in response to identified processing options. This approval represented action on a portion of Certificate of Compliance Application No. 2007-093. The basis of the action taken on the twenty-two certificates is that each "parcel" was created by patent (recorded grant deed) prior to the adoption of the Subdivision Map Act and each patent parcel is fully contained within the "project" parcel (APN 016-080-002). The twenty-two recognized parcels were "whole" patents all within the Miller/Clifton ownership; they remained intact as they were originally granted by the US Government. The twenty two Certificates of Compliance were recorded on 9/26/09, and new APNs were assigned by the Assessor/Recorder.

There were twelve (12) additional requests for Certificates of Compliance which were a part of the original Certificate of Compliance Application No. 2007-093, which were put on hold by the applicant, to allow additional time for research. These additional twelve (12) requests were for "fractionalized" patents. Only a portion of the originally granted patents (originally granted by the US Government) were within the Miller/Clifton ownership and they are thus "fractionalized". There is recent published appellate level case law which affects how "fractionalized" patents may be recognized, including through the Certificate of Compliance process.

On April 16, 2009, the applicant submitted additional information to the Planning Director to address the appellate level case law and these twelve additional requests for Certificates of Compliance for the "fractionalized" patents.

On 7/30/09 the Planning Director issued a letter to the applicant reviewing and responding to the additional information. The Planning Director stated he could not support issuance of unconditional Certificates of Compliance to the additional twelve (12) requests. The letter identified four processing options. This determination that the Planning Director could not support the requests as submitted, including the additional information submitted by the applicant, included findings.

The appellants appealed this determination to the Board of Supervisors.

Main Issues of Appeal
In order to understand the appellant's Grounds for Appeal, one must understand the Planning Director's determination.

In order to understand the Planning Director's determination, one must have a fundamental understanding of Certificates of Compliance.

Finally, in order to understand the Planning Director's determination and address the appeal issues, one must understand a published appellate level court case, The People v. Tehama County Board of Supervisors, et al., (2007) 147 Cal.App.4th 891 (hereinafter referred to as "the Tehama case").

CERTIFICATES OF COMPLIANCE

What is a Certificate of Compliance?

Provisions for Certificates of Compliance are established by state law, California Government Code Sections 66499.32 through 66499.35 (Subdivision Map Act). Provisions for Certificates of Compliance are also found in County Code, Section 16.32.050 (Subdivision Ordinance).

A certificate of compliance is a legal County document, recorded in Mariposa County Records, which confirms the parcel described was created in compliance with applicable County ordinances and state laws that regulate the subdivision of land. It provides notice to the property owner and future owners that the parcel is considered a legal parcel for development purposes. A parcel recognized as legally created by the recordation of a certificate of compliance may be sold with no further improvements.

When is a Certificate of Compliance Needed?

A property owner may submit an application for a certificate of compliance, to have the County officially determine if a parcel was created in compliance with applicable County ordinances and state laws regulating the subdivision of land.

- Sale of Property:

  Sometimes, a prospective purchaser or seller of a parcel needs such a determination in order to close a sale.

- Recognition of “Historic” Parcels (parcels created prior to subdivision regulation):

  Sometimes, a property owner requests certificates of compliance in order to recognize underlying "historic" parcels, which can then be adjusted through a lot line adjustment process or sold with no further requirements such as would be applied to a new subdivision.

US Patents, or grants from the Federal Government in the mid to late-1800's, are common "historic" parcels for which Certificates of Compliance are requested.
• **Subdivision Violations:**

A certificate of compliance is the remedy to solve subdivision violations, and sometimes a property owner will submit a certificate of compliance in order to rectify such a violation.

If the parcel was not created in compliance with subdivision requirements, a certificate of compliance results in an official determination of what is required of the property owner to bring the parcel into compliance.

• **Remainder of Parcel Map or Final Map**

The Subdivision Map Act allows a developer to designate a “remainder” of a subdivision. The remainder is not counted as a parcel for purposes of determining whether a project is a minor or major subdivision.

Subdivision improvements may be deferred for the remainder, until the time of development. A Certificate of Compliance is required for a remainder, prior to issuance of a development permit.

**THE TEHAMA CASE**

The Planning Director’s determination about fractionalized patents is based upon the Tehama case.

A full copy of this published case is available for review at the Planning Department upon request.

A summary of key provisions in the Tehama case relative to fractionalized patents is provided:

• Property owner KAKE owned approximately 3,300 acres in Tehama County.
• Property owned by KAKE known as Burr Valley Estates.
• Burr Valley Estates made up of all or part of seven different “sections”, numbered 4, 5, 9, 10, 15, 32, 33,
• Portions of case which address Williamson Act not discussed in this summary as they are not pertinent to Mariposa County Appeal No. 2009-114.
• KAKE applied for a Lot Line Adjustment for Burr Valley Estates in 1998 for 32 parcels. Lot Line Adjustment known as LLA 98-46. Project was processed and approved.
• Final documents recorded for (completing) Lot Line Adjustment for Burr Valley Estates were for 29 parcels.
• The Attorney General, the secretary of state Resources Agency and the director of Department of Conservation commenced legal action against county and property owner by filing complaint, alleging violations of the Subdivision Map Act (and other violations).
• Complaint alleged that property consisted of only 24 parcels before Lot Line Adjustment, and that Lot Line Adjustment process violated the Subdivision Map Act because it resulted in more than 24 parcels.
Primary issue for the *Tehama* case was “parcel counting”. How many parcels existed before the Lot Line Adjustment?

**Parcel counting is done by history of title.**

What is undisputed between all parties: Common ownership of separate contiguous parcels does not result in merger of those parcels.

What is undisputed between all parties: When two or more parcels that have been separately and distinctly described in an instrument of conveyance are subsequently conveyed together using a single consolidated legal description, those parcels are not merged into a single parcel absent an express statement by the grantor of the intent to do so in the instrument of conveyance.

Parcel counting in 5 of the 7 sections of Burr Valley Estates was not disputed.

Crux of the *Tehama* case was parcel counting in sections 10 and 34, where there were disputes about number of parcels which existed before Lot Line Adjustment.

Section 10 was originally comprised of four separate parcels created by federal patents.

By 1904, Charles Hesse owned two of the four parcels in section 10:
- One parcel consisting of the W¼ of the W½ of the section, and
- The other parcel consisting of the E½ of the SW¼ and the SE¼ of the NW¼ of the section.
- See Diagram Page 1 · Line A (diagram from certified copy of the *Tehama* case included as Attachment B) (“line letters” added to diagram for purpose of this staff report)

By 1904, G.C. Garrett and C.E. Tinkham owned the other two parcels in section 10
- One parcel consisting of the S½ of the NE¼ and the W½ of the SE¼ of the section, and
- the other parcel consisting of the E¼ of the SE¼ of the section.
- See Diagram Page 1 · Line A.

A county road (Ridge Road) ran through all four parcels, roughly east to west in the south half of section 10 (Shown in Diagram Page 1 – Lines B and C).

In 1904, a land exchange occurred (by three different deeds in section 10) (a fourth deed was for section 15) (See Diagram Page 1 · Line B for illustration of deeds). Deeds conveyed all of the land in section 10 south of Ridge Road to B.A. Bell, while Charles Hesse became the owner of all the land in section 10 north of Ridge Road that had been part of the four parcels. See Diagram Page 1 · Line C for property owned by Hesse following land exchange.

The land north of Ridge Road is a part of Burr Valley Estates. The issue is how many parcels Charles Hesse owned in section 10 following the 1904 land exchange.

Looking at the land exchange deeds in 1904, the first deed was executed on 1/7/1904. Garrett and Tinkham conveyed the parts of the two parcels they owned in section 10 that lay north of the Ridge Road to Charles Hesse by a single metes and bounds description that did not refer to the two existing parcels from which the land was taken.
- KAKE and the county contend that the number of parcels conveyed was two (the two parts of the original two patent parcels – referred to in the *Tehama* case as “fractional” patents).
The People contend the deed conveyed only a single new parcel — the parcel conveyed in the deed.

The appellate court agreed with The People. The deed conveyed one parcel.

See Diagram Page 2.

The reasons for this position by the court were stated as follows:

The reasoning states, “…As for the deed itself, there is nothing in it suggesting Garrett and Tinkham intended to convey two new fractional parcels to Charles Hosse, as opposed to a single new parcel. The deed contains a single metes and bounds description of what by all appearances is one tract of land….the deed does not make ‘any reference to the old patent parcel boundary that…divide[d] the original holdings of Tinkham and Garrett in section 10.’” (Emphasis added.)

“In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract. As stated in Miller & Lux, Inc., v. Secara, 193 Cal 755 [227 Pac. 171.], ‘Intention, whether express or shown by surrounding circumstances, is all controlling...” (Emphasis added.)

“Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances.” (Thompson v. Motor Road Co. (1890) 82 Cal. 497, 500.) (Emphasis added.)

Furthermore, the deed specifies that what is being conveyed is ‘all that certain lot and parcel of land’ which the deed then goes on to describe.’ (Italics and emphasis added.)

The Tehama case also addresses Civil Code 1093, the “antimerger” rule which provides as follows: “Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, ...or other instruments of conveyance or security documents, into a subsequent single deed, ... or other instrument of conveyance or security document (whether by means of an individual listing of the legal descriptions in a subsequent single instrument of conveyance or security document, or by means of a consolidated legal description comprised of more than one previously separate and distinct legal description), does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance of security document containing either the listing of or the consolidated legal description of the parcels so conveyed or secured thereby.”
• With regard to Civil Code 1093, the Tehama case states, "the county defendants would have us conclude that California common law provides (and has long provided) an antimerger rule identical to the one set forth in Civil Code section 1093, except that (unlike Civil Code section 1093) it applies to fractional parcels that have never before been described separately in any security document or instrument of conveyance. According to the county defendants, such a rule must exist (even though we have been given no evidence of it) because otherwise 'major landowners ... would routinely surrender their successor's ability to separately use and sell portions of their land, to their potentially severe financial detriment.'"

• Looking again at the land exchange deeds in 1904, the second deed was executed on 1/12/1904 (See Diagram Page 1, Line B). Hesse conveyed to B.A. Bell the parts of the two parcels he owned in the west half of section 10 lying south of Ridge Road. The portion he retained, north of Ridge Road, is what is at issue in the Tehama case. Hess was left with the remainder of each of the two patent parcels north of the road, in the west half (See diagram Page 1, Line C). In 1918, he and his wife conveyed that land, along with other land, to Albert Montgomery in a deed, with a description that did not retain any reference to the old patent parcel boundary (See Diagram Page 2).
  o KAKE counted this property as two parcels because there is no language of merger in the deed and therefore under Civil Code section 1093, the two preexisting parcels were not merged.
  o The People found that Civil Code section 1093 did not apply because the two parcels were never separately and distinctly described in any instrument of conveyance. Also, there was no basis to find that Civil Code section 1093 applies to fractional parcels that have not been described.
  o The appellate court agreed with The People. There is nothing but the description in the deed to determine Hesse's intent – to convey the one parcel actually described in the deed. The deed conveyed one parcel. See Diagram Page 2.

• The Tehama case continues with an analysis of section 34.

Parcel Information

The subject parcel for the Certificate of Compliance Application and Appeal is 4,333+ acres, and was originally a part of the Chase Ranch owned by Harry Chase. This property is not (and has never been) in the Williamson Act. This 4,333+ acre property was a result of the division of the ranch among heirs, including Carmen Chase Miller, individually and as Trustee of the Howard W. Chase Trust.

The Certificate of Compliance applicants, Jeff Miller and Layne Clifton, are a brother and sister who inherited the 4,333+ acre property from their mother, Carmen Chase Miller.

This 4,333+ acre property was first described in a Grant Deed recorded on September 27, 1971 in the Volume 130 of Official Records at Page 376.
This deed reads as follows:

GRANT DEED

For value received,

PHILIP B. CHASE, a single man, THEODORA A. CHASE, a widow, HARRIETTE CHASE LEAVITT, a married woman, as her separate property, and THEODORA CHASE, PHILIP B. CHASE and HARRIETTE CHASE LEAVITT, as Testatorial Trustees under the Last Will and Testament of Percy B. Chase, deceased,

GRANT TO

TITLE INSURANCE AND TRUST COMPANY and CARMEN CHASE MILLER, as Co-Executors of the Last Will and Testament of Howard W. Chase, deceased, as to an undivided three-fourths (3/4) interest in the property hereby conveyed, and CARMEN CHASE MILLER, as her separate property as to an undivided one-fourth (1/4) interest in the property conveyed.

The property which is hereby conveyed is all of the right, title and interest of Grantors in and to that real property situate in the County of Mariposa, State of California, described as follows:

All that portion of land that lies in Township 6 South, Range 16 East and Township 7 South, Range 16 East, M.D.B. & M., Mariposa County, California described as follows:

Portion in Township 6 South, Range 16 East, M.D.B.&M., all of Sections 22, 27 and 34; the South 1/2 of Section 15; the southwest 1/4 of Section 14; the west 1/2 of Section 23; all of Section 35 that lies north of California State Highway 140; the West 1/2 of Section 26; and that portion of the southeast 1/4 of Section 26 described as follows:

Beginning at the southeast corner of said Section 26; thence North 01²12'29" East 1795.20 feet along the east line of said Section 26; thence N. 89°21'49" West 2630.00 feet to a point on the west line of the said southeast 1/4 of Section 26; thence South 01°20'41" West 1770.76 feet to a point on the south line of said Section 26; thence S. 88°50'10" East 2631.18 feet to the point of beginning.

That portion in Township 7 South, Range 16 East, M.D.B.& M.

All of Sections 2, 3 and 10 that lies north and west of California State Highway 140.

Containing an area of 4333 acres, more or less.

DATED: July 2, 1971.

PHILIP B. CHASE

THEODORA A. CHASE

HARRIETTE CHASE LEAVITT

As Testamentary Trustees under
The Last Will and Testament of
Percy B. Chase, deceased
Planning Director Action – 9/2008

The Planning Director reviewed Certificate of Compliance Application No. 2007-93. A map of the Patents for the Certificate of Compliance is included as an attachment to this packet (Attachment C). Twenty-two (22) patents are fully contained within the boundary of (retired) APN 016-080-002. Twelve (12) patents are partially within and partially outside of the boundary of (retired) APN 016-080-002. Details of the Planning Director’s review of the application are included in a letter to the applicant dated 9/5/08 (included as Attachment D).

In an action on a portion of the application, the Planning Director approved the request to recognize all whole patents (22 total whole patents) which were contained within the applicants’ parcel (APN 016-080-002). This action was taken on September 15, 2008. There was no appeal of this action.

This action was based upon some of the issues in the court case above, including:

1. Common ownership of separate contiguous parcels does not result in merger of those parcels.

2. When two or more parcels that have been separately and distinctly described in an instrument of conveyance (such as the original Federal Patents) are subsequently conveyed together using a single consolidated legal description (recorded as Grant Deed Volume 30, Official Records, Page 376), those parcels are not merged into a single parcel absent an express statement by the grantor of the intent to do so in the instrument of conveyance.

The Planning Director provided the applicant a copy of the *Tehama* case which impacts how fractionalized patents may be recognized, and explained why action could not be taken on the twelve fractionalized patents with the information available in the file. Decisions of every division of the courts of appeal are binding on all superior courts of the state.

The Grant Deed which was presumed (at that time) to have “fractionalized” the patents, recorded as Grant Deed Volume 30, Official Records, Page 376, transferred the property using a metes and bounds description. There is nothing in the deed which suggests intent to convey fractional parcels, as opposed to a single new parcel.

The applicant requested additional time to research the issue.

Applicant Information – 4/2009

The applicant provided additional information to the Planning Director in April 2009 to support his request for recognizing the 12 fractionalized patents as separate legal parcels. This correspondence is included in the Appeal packet (Attachment E). The justification includes:
• The family attorney's position regarding the preparation of the legal description to transfer this portion of the family property, using a simplified legal description at the time of the deed recordation listed above.

• The family attorney informed the applicant (Miller) that there were no legal ramifications to describing the real property in this simplified manner.

• The family attorney informed the applicant (Miller) that the divided patents would become two separate parcels and not be merged with the adjoining existing parcels.

• All other persons and family members present during this discussion, including the family attorney, are deceased or incapacitated.

• The applicant stated this information should be sufficient expression of the intent of the parties at the time of the transfer to meet the requirements for the issuance of Certificates of Compliance to the fractionalized patents.

**Planning Director Action – 7/2009**

The Planning Director reviewed the additional information submitted by the applicant in April, 2009. The Planning Director did not support the request to recognize the fractionalized patents based upon the additional information submitted. The Planning Director stated:

1. The *Tehama* case concludes, “In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract...”

2. You have presented you and your family attorney's position. It is not clear if this position is consistent with that of the grantor, who was deceased at the time of the preparation of the grant deed. You indicate that the “process of division”, which took over 10 years, was very contentious.

3. The position of your family's attorney was correct, at the time it was stated. The appellate level case law has changed the Planning Director's review of Certificate of Compliance applications involving fractional patents. The County no longer recognizes fractional patents as legally created, unless there was a clearly established “intention of the parties” at the time of their creation. Decisions of courts of appeal are binding. We have considered a separate recorded grant deed (describing the fractionalized portion) as establishing intent. We would also consider information contained in the recorded grant deed as establishing intent (should it specify or clearly reference the individual patents or fractionalized portions of the patents). However, the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, as written and recorded (as stated above) does not describe or list an intent other than to transfer one property of 4,333 acres.
The correspondence is attached to this packet (Attachment F).

Grounds for Appeal and Appeal Procedures

Submittal and processing of appeals is governed by Mariposa County Resolution No. 92-525, as amended, dated 2/14/95.

The focal point of the appeal is the “Statement of Grounds” (also referred to as “grounds for appeal”), which is the appellant’s statement of the reasons why the decision or determination is being appealed. The statement of grounds must include information or documentation which supports their position. Staff analyzes the statement of grounds in the appeal staff reports.

Other processing provisions contained within this resolution include:

1. An appeal shall be limited to those issues clearly raised by any interested party through the public review and/or hearing process for the finding or decision being appealed, or to new information which was not and could not have been available at the time the finding or decision was made.

2. Evidence considered at the hearing on the appeal shall be limited to the issues clearly identified in the Notice of Appeal, with amendments or supplements as permitted.

Staff notes that the applicant requested the right to submit additional reasons for appeal and amendments or supplements to the appeal. This information must be submitted no later than twenty-five (25) days prior to the hearing date. No additional information was submitted prior to twenty-five (25) days prior to the hearing date (with the hearing date scheduled for Tuesday, October 13th, 2009, the deadline for submitting additional information was 5:00 p.m. Friday, September 18th, 2009). The appellant may still address the response to appeal issues as presented in this staff report.

The remainder of this staff report reviews the appellant’s ground for appeal, and provides the basis for staff’s recommended action on the appeal.

Discussion of Grounds for Appeal Issues

Appeal Issues – In his Statement of Grounds of Appeal, one of the appellants states the following (the entire Notice of Appeal is included as an Attachment to this report) (Attachment G):

1. The California appellate case relied upon the Planning Director requires extrinsic evidence to be accepted to provide the intent of the parties.

2. Relying solely on a recorded deed to establish intent is erroneous.
3. Requiring a standard of a “clearly established intention of the parties at the time of fractional parcels creation” for deeds prior to the California Appellate Case...is in error. Only evidence establishing the intent of the parties is required under that case.

4. Stating that the Grantor was deceased at the time the deed was executed so his intent cannot be established is in error. The individual who signed the deed also had an individual interest in the subject property as well as being the legal representative of the deceased owner of a partial interest in the subject property. That person’s intent is the controlling consideration.

5. The extrinsic evidence that has been provided to the Planning Director is sufficient to explain the intent of the parties as to the preservation of the “fractional portions of parcels” as individual parcels.

6. Jeff Miller, son of Carmen Chase Miller, personally took the patents to the family attorney for incorporation into the division deeds. During a meeting with the attorney, Carmen Miller and Jeff Miller, the family attorney informed:

   - Using the simplified legal descriptions would not affect or abolish the individual patents.
   - There were no legal ramifications to describing the real property in this matter and that property owners were not giving up any legal rights regarding the patents whatsoever.
   - The divided patents would become two separate parcels and not be merged with the adjoining existing parcels.

This is the expectation and intent of Carmen Chase Miller in execution of the division deeds for herself and as Executrix/Trustee.

7. Brown v. Tehama County discussed Civil Code section 1093, which “concerns only those situations where one party is conveying entire pre-existing parcels in a consolidated description” and “does not apply to situations where portion of pre-existing parcels, never before described separately, are being conveyed.”

8. It is illogical to assert that there was no intention to merge whole patents but there was an intention to merge “fractional portion of patents” within the same deed.

9. The extrinsic evidence of the intent of the parties to preserve both the whole patents and the partial patents as separate parcels has been provided and should be used to carryout the intent of the parties.

Staff Discussion and Response to Appeal Issues

Relative to these appeal issues, staff provides the following responses:
1. The recorded grant deed which first described the 4,333+ acre property, Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, used a simple metes and bounds description and did not list out individual patents or fractionalized patents within the property. There is no intent established in the recorded grant deed other than to convey one whole property.

2. It is appropriate to recognize the whole patents within the 4,333+ acre property based upon specific issues identified and discussed in the Tehama case, including:

   a. Common ownership of separate contiguous parcels does not result in merger of those parcels.

   b. When two or more parcels that have been separately and distinctly described in an instrument of conveyance (the original Federal Patents) are subsequently conveyed together using a single consolidated legal description (Grant Deed Volume 30, Official Records, Page 376), those parcels are not merged into a single parcel absent an express statement by the grantor of the intent to do so in the instrument of conveyance.

3. The Tehama case is not exactly the same as the Appeal case. One cannot simply conclude Appeal Issue 8 above. The Tehama case uses a full history of title to arrive at its conclusion. Additionally:

   a. The Tehama case evaluated (by parcel counting) grant deeds which conveyed two fractionalized patents together (in one deed).

   b. The Tehama case also evaluated (by parcel counting) a grant deed which conveyed two fractionalized patents together with other property in one grant deed. However there isn't information in the Tehama case which tells us how parcel counting was conducted for the other property in that one grant deed.

   c. The issue for the Appeal is parcel counting within one grant deed (4,333+ acres) which conveyed multiple (twelve) fractionalized patents together with multiple (twenty-two) whole patents.

   d. The Tehama case doesn't conclude or direct a local agency “what” to do with a fractionalized patent which may be “left over” following issuance of a Certificate of Compliance to a whole patent (such as is the case for Certificate of Compliance No. 2007-093). This is because the Tehama case was about parcel counting before and after a Lot Line Adjustment. The Tehama case was not about processing Certificate of Compliance applications for whole and fractionalized patents. However, the Tehama case is very clear in its conclusion that, if there isn’t a separate deed which conveys a fractionalized patent separately or if there isn’t some clearly established intention of the parties to create a separate parcel, a fractionalized patent isn’t a separate parcel. If a
fractionalized patent isn’t a separate parcel, it isn’t eligible for an unconditional Certificate of Compliance. The Planning Director considers the whole of the case in his action.

4. Technically, the Planning Director has not “denied” the Certificate of Compliance applications for the fractionalized patents. The Planning Director stated he could not support the applications as submitted to issue unconditional Certificates of Compliance, including the additional information submitted. The Planning Director provided the applicants with processing options.

5. The Planning Director has not been provided a full history of title for the fractionalized patents within the 4,333+ acre subject property. Three (3) of the twelve (12) fractionalized patents share a boundary with the Redington Ranch (which historically was the San Felipe Ranch and also the Cunningham Ranch). These Ranches were not a part of the original Chase Ranch according to Assessor’s Maps which date back to 1955. Consequently, these patents would not have been “fractionalized” by the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County Records.

6. With regard to admission of extrinsic evidence, staff notes text from the Tehama case. “Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances.” (Emphasis added.)

Staff understands this text to mean that the words of a grant deed must be considered together with the extrinsic evidence. Whatever extrinsic evidence is submitted it is not considered without consideration of the calls of the deed. Staff notes that there is nothing included in the grant deed which would indicate that the fractionalized patents are or were intended to be conveyed as separate parcels.

7. With regard to Appeal Issue 4, “Stating that the Grantor was deceased at the time the deed was executed so his intent cannot be established is in error. The individual who signed the deed also had an individual interest in the subject property as well as being the legal representative of the deceased owner of a partial interest in the subject property. That person’s intent is the controlling consideration.”

Staff notes text from the Tehama case. “Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances.” (Emphasis added.)
Staff also notes the following text: “In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract…” (Emphasis added.)

Staff would read these sentences and understand that “contracting parties”, “them”, “the parties”, and “their intent” are plural, covering both the grantor and the grantee. Staff agrees that a grantee’s intent is to be considered, but believes that the Tehama case demands that the grantees intent be considered together with the grantor’s intent.

The appellant has provided information to the county about his mother’s intent when she received the property. However there has been no information provided, other than the description in the grant deed, to establish the intent of the grantor.

8. The applicant’s information about his mother’s expectation and intent in execution of the division deeds (as identified in Appeal Issue 6) is not supported information.

9. A recorded grant deed is record evidence.

10. With regard to Appeal Issue 7, the Tehama case addresses Civil Code 1093 and fractional patents: “...the county defendants would have us conclude that California common law provides (and has long provided) an antimerger rule identical to the one set forth in Civil Code section 1093, except that (unlike Civil Code section 1093) it applies to fractional parcels that have never before been described separately in any security document or instrument of conveyance. According to the county defendants, such a rule must exist (even though we have been given no evidence of it) because otherwise ‘major landowners ... would routinely surrender their successor’s ability to separately use and sell portions of their land, to their potentially severe financial detriment.’”

This is a discussion which is provided to justify the court’s conclusion made on the grant deed from Tankham and Garrett to Hesse, for that portion of the eastern ½ of section 10 north of Ridge Road, in which 2 fractionalized patents were granted.

11. The position of the family’s attorney was correct, as the appellant has stated, at the time it was stated. The Tehama case law has changed the Planning Director’s review of Certificate of Compliance applications involving fractional patents. Upon the publishing of this appellate case, the County no longer recognizes fractional patents as legally created, unless there was a clearly established “intention of the parties” at the time of their creation (decisions of the courts of appeal are binding on all superior courts of the state).
Recommended Action:

Staff recommends that the Board of Supervisors adopt a resolution:

1) Denying Appeal No. 2009-114 based on findings;

2) Upholding the Planning Director’s determination as written in correspondence dated July 30, 2009 that there is not sufficient evidence to support the issuance of unconditional Certificates of Compliance to twelve (12) fractionalized patents within Certificate of Compliance Application No. 2007-93; these fractionalized patents are identified on the Patent Map for the project site as “Parcels” 3, 5, 8, 18, 19, 27, 29, 30, 31, 32, 33 and 34; and

3) Finding that three of the processing options for the twelve (12) fractionalized patents, as previously described to the applicants, are appropriate.

Effect of Recommended Action:

The effect of the recommended action to deny the appeal and uphold the Planning Director’s action is that:

Unconditional Certificates of Compliance would not be issued to the twelve (12) fractionalized patents as requested by the applicants and appellants.

The applicants and appellants have three processing options for consideration (previously identified in Planning’s correspondence dated July 30, 2009):

Option 1

The applicants could provide Planning with an individual grant deed which shows that the applied for Certificate of Compliance portions of the patents were actually conveyed separately in accordance with applicable state and local subdivision requirements in effect at the time of the conveyance.

Option 2

The applicants could amend their application and request that these acreages be combined with an adjacent legal parcel for which a Certificate of Compliance has already been recorded (one of the other twenty-two certificates).

Option 3

If the applicants do nothing or if the applicants direct Planning to process the application as submitted, Planning would recommend recording Conditional Certificates of Compliance to these acreages, as Planning does not have information to enable recordation of unconditional
Certificates of Compliance. The conditions to be recommended would be those relating to subdivision requirements.

Attachments:

A. Vicinity Map
B. Diagrams from court case (pages 1 and 2 only)
C. Illustration of Patents for Certificate of Compliance Application (labeled Patent Map)
D. Mariposa Planning correspondence dated September 5, 2008
E. Jeff Miller correspondence dated April 7, 2009
F. Mariposa Planning correspondence dated July 30, 2009
G. Notice of Appeal No. 2009-114; Jeff Miller and Layne Clifton, appellants
H. Draft Board of Supervisors Resolution
PROJECT VICINITY MAP

PROJECT TYPE: Appeal No. 2009-114
APPELLANTS: Jeff Miller and Layne Clifton
APN'S: 016-080-003, 016-080-004, 016-080-005, 016-080-006,
016-080-007, 016-080-008, 016-080-009, 016-080-010, 016-080-011,
016-080-004, 016-080-005, 016-080-006, 016-080-007, 016-080-008,
& 016-060-014

MAP CREATED ON: SEPTEMBER 21, 2009
DATA SOURCE: PARCEL MAP FROM MARIPOSA COUNTY ASSESSOR'S MAP,
JUNE 2009 UPDATE
MAP CREATED BY: EE MERIAM, GIS TECHNICIAN

MARIPOSA COUNTY PLANNING DEPARTMENT
PO BOX 2039 5100 BULLION STREET
MARIPOSA, CALIFORNIA 95338-2039
209.966.5151 FAX 209.742.5024
MARIPOSAPLANNING@MARIPOSACOUNTY.ORG
HTTP://WWW.MARIPOSACOUNTY.ORG/PLANNING

MARIPOSA COUNTY MAKES NO WARRANTY REGARDING THE ACCURACY OF THE GIS OR THE ANALYSIS AND CONCLUSIONS RESULTING FROM USING OUR GIS DATA.
Attachment B
SECTION 3 10 & 15 190- to 1944

ONE PARCEL

ONE PARCEL

VESTEE 1904:
C. HESSE

15

APRIL 1913 FROM
HESSE to
J.W. RICHELIEU
77 Deeds 34

AUG 1918 FROM
HESSE to
A. N. MONTGOMERY
96 Deeds 164

AUG 1918 FROM
RICHELIEU to
A. N. MONTGOMERY
96 Deeds 165

JUNE 1944
DECREE OF DISTRIBUTION
TO F. G. MONTGOMERY
163 O.R. 292

Page 2 of Diagram
Attachment C
Attachment D
September 5, 2008

Jeff Miller and Layne Clifton
871 Highway 140
Le Grand, CA 95333

RE: Status of Certificate of Compliance No. 2007-093; 871 Highway 140

Dear Jeff and Layne,

This correspondence applies to our review of your application for Certificates of Compliance for your property on 871 Highway 140; APN 016-080-002. You have requested thirty-four Certificate of Compliance applications (Certificate of Compliance Application No. 2007-093).

Based on our parcel legality research and the information you provided in your application, we are able to find clear justification for issuing certificates to twenty-two (22) of the requested thirty-four (34) parcels. In other words, there is adequate justification for our processing for twenty-two of the parcels, and we would be able to issue your Certificates of Compliance for these twenty-two parcels. However, for the other twelve requested Certificates of Compliance, we will need direction from you about potentially including the acreage with an adjacent parcel, unless there is additional information which you are able to provide to establish its legality.

Let me explain:

Parcel 1

This is an approximately 160 acre parcel created by US Patent recorded in Book T of Patents at Page 106 Mariposa County Records, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 2
This is an approximately 160 acre parcel created by US Patent recorded in Book N of Patents at Page 435 Mariposa County Records, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 3

You have requested recognition of a 120 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 431 Mariposa County Records. The 120 acre portion is within your property. The 40 acre portion is outside of your property.

This 120 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 120 acre portion is a grant deed which shows that this 120 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 120 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 120 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 4

This is an approximately 120 acre parcel was created by US Patent recorded in Book T of Patents at Page 107 Mariposa County Records, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 5

You have requested recognition of an 80 acre portion of a 120 acre parcel originally created by US Patent recorded in Book S of Patents at Page 441 Mariposa County Records. The 80 acre portion is within your property. The 120 acre portion is outside of your property.

This 80 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 80 acre portion is a grant deed which shows that this 80 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 80 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 80 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 6
This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 437, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 7

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 296, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 8

You have requested recognition of a 40 acre portion of a 160 acre parcel originally created by US Patent recorded in Book O of Patents at Page 181 Mariposa County Records. The 40 acre portion is within your property. The 120 acre portion is outside of your property.

This 40 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 40 acre portion is a grant deed which shows that this 40 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 40 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 40 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 9

This is an approximately 40 acre parcel was created by US Patent recorded in Book T of Patents at Page 298, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 10

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 548, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 11

This is an approximately 160 acre parcel was created by US Patent recorded in Book M of Patents at Page 372, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 12
This is an approximately 40 acre parcel was created by US Patent recorded in Book T of Patents at Page 321, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 13

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 80, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 14

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 434, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 15

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 286, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 16

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 76, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 17

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 285, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 18

You have requested recognition of an approximately 140 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 74 Mariposa County Records. The approximately 140 acre portion is within your property. The approximately 20 acre portion is outside of your property.

This 140 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 140 acre portion is a grant deed which shows that this 140 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.
We would either consider your proposal to merge this 140 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 140 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 19

You have requested recognition of an approximately 20 acre portion of a 40 acre parcel originally created by US Patent recorded in Book S of Patents at Page 168 Mariposa County Records. The approximately 20 acre portion is within your property. The other 20 acre portion is outside of your property.

This 20 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 20 acre portion is a grant deed which shows that this 20 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 20 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 20 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 20

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 82, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 21

This is an approximately 160 acre parcel was created by US Patent recorded in Book N of Patents at Page 152, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 22

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 284, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 23

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 156, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 24
This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 71, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 25

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 287, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 26

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 155, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 27

You have requested recognition of a less than 160 acre portion of a 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 157 Mariposa County Records. The less than 160 acre portion is within your property. The other portion is outside of your property (southerly of the highway).

This less than 160 acre portion is what we consider to be a "fractionalized" portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this less than 160 acre portion is a grant deed which shows that this acreage was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this less than 160 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this acreage was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 28

This is an approximately 160 acre parcel was created by US Patent recorded in Book P of Patents at Page 282, which is wholly contained within your property. We are prepared to approve a Certificate of Compliance for this parcel.

Parcel 29

You have requested recognition of an approximately 420 acre portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 152 Mariposa County Records. The approximately 20 acre portion is within your property. The other 20 acre portion is outside of your property.
This 420 acre portion is what we consider to be a "fractionalized" portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 420 acre portion is a grant deed which shows that this 420 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 420 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 420 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 30

You have requested recognition of an approximately 80 acre portion of an 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 153 Mariposa County Records. The approximately 80 acre portion is within your property. The other 80 acre portion is outside of your property.

This 80 acre portion is what we consider to be a "fractionalized" portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 80 acre portion is a grant deed which shows that this 80 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 80 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 80 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 31

You have requested recognition of an approximately 40 acre portion of an 80 acre parcel originally created by US Patent recorded in Book P of Patents at Page 325 Mariposa County Records. The approximately 40 acre portion is within your property. The other 40 acre portion is outside of your property.

This 40 acre portion is what we consider to be a "fractionalized" portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this 40 acre portion is a grant deed which shows that this 40 acres was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this 40 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this 40 acres was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 32

32
You have requested recognition of a less than 1 acre triangular portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 322 Mariposa County Records. The less than 1 acre portion is within your property. The other 39+ acre portion is outside of your property.

This less than 1 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this less than 1 acre portion is a grant deed which shows that this acreage was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this acreage was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 33

You have requested recognition of a less than 1 acre triangular portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 151 Mariposa County Records. The less than 1 acre portion is within your property. The other 479+ acre portion is outside of your property.

This less than 1 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this less than 1 acre portion is a grant deed which shows that this acreage was actually conveyed separately in accordance with applicable state and local subdivision requirements.

We would either consider your proposal to merge this piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this acreage was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Parcel 34

You have requested recognition of a less than 40 acre portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 306 Mariposa County Records. The less than 40 acre portion is within your property. The other portion is outside of your property (southerly of the highway).

This less than 40 acre portion is what we consider to be a “fractionalized” portion of the original patent, which is not recognized as the basis for issuing a Certificate of Compliance, based upon recent case law. What we need in order to approve this less than 40 acre portion is a grant deed which shows that this acreage was actually conveyed separately in accordance with applicable state and local subdivision requirements.
We would either consider your proposal to merge this less than 160 acre piece with any of the other adjacent parcels, or we would consider any additional information you might find which shows that this acreage was actually conveyed separately, in accordance with applicable state and local subdivision requirements.

Grant Deed Vol. 30, Official Records, Page 376, Mariposa County Records

Please note that we have a copy of the above referenced grant deed, which transferred an area of 4,333 acres as a result of the last will and testament of Howard W. Chase in 1971. This grant deed is not sufficient, based on recent case law, to provide a legal separation of those fractional parcels listed above (Parcel 3, Parcel 5, Parcel 8, Parcel 18, Parcel 19, Parcel 27, Parcel 29, Parcel 30, Parcel 31, Parcel 32, Parcel 33 and Parcel 34), as the deed doesn't establish an intention of the parties to create a legal separation of the individual patent parcels.

Conclusion

In conclusion, I will need additional information from you now regarding the parcels listed above for which we have requested additional information for your proposal. If you find additional information you would like me to consider, please provide that to me. For example, you may be able to do conduct some kind of chain of title research, such as for that area in the northeast corner of your property, and locate an individual grant deed for the 120 acre portion of US Patent N-451 which is within your property (if one of your relatives obtained that separately in the past).

If you are unable to locate this grant deed (or others, for the other fractionalized patents), or if you are unable to spend time conducting this research now, please let me know to which adjacent parcel you would like to include these pieces. We will process a refund for the twelve Certificates of Compliance which were not issued.

A final option is the issuance of conditional Certificates of Compliance to some of these twelve fractionalized patents. We would establish conditions, which would be linked to subdivision requirements, tied to the time the boundary of the parcel was created.

If you have any questions regarding this correspondence or our research, please contact me at 742-1216.

If I am not available, you may also contact Deputy Director Sarah Williams at 742-1215.

Sincerely,

Kris Schenk
Director
Attachment E
Jeff Miller  
871 Hwy 140  
Le Grand, CA 95333  
(209) 382-1622  
Fax (209) 382-0937  
smill@att.net

Mariposa Planning  
5100 Bullion Street  
P. O. Box 2039  
Mariposa, CA 95338

Attn: Sarah Williams  
Re: Miller/Clifton Historic Parcel Applications  
"Fractional parcels" 3, 5, 8, 18, 19, 27, 30, 31, 32, 33, and 34

Dear Sarah,

I have reviewed the court case Brown v. Tehama County Board of Supervisors, et al, which you had previously sent me regarding the establishment of historic parcels in regard to the "fractional parcels" listed above. My understanding of the conclusions of that case is that the intent of the parties is controlling in determining the existence of historic parcels.

My understanding of your department's objection to the recognition of the above referenced "fractional parcels" is that their creation and conveyance was done in a single deed which used general section numbers and not specifically the patent descriptions when my family separated our undivided interests, citing Grant Deed Volume 30, Official Records, Page 376, Mariposa County Records, and which we have continued to use for consistency and convenience since the early 1970's.

The discussions for the division of the Chase family properties began in the late 1950's and involved real property located in Mariposa, Merced and Los Angeles Counties. The process of division took over 10 years and was very contentious. There were several agreements and sets of division documents prepared based on said agreements which were never executed at the last minute.

When the last set of deeds was prepared to make the final division of the Mariposa
County property, I loaned the patents which I had in my possession to our attorney H. Spencer St. Clair to prepare the deeds consistent with those legal descriptions. When I reviewed the final deeds and discovered that the patent descriptions had not been used I questioned him about it. He informed me:

1. That this had been such a contentious and long procedure to arrive at this division of the properties and there had been so many previous sets of documents refused at the last minute that he was concerned with the possibility of making an error in any of the legal descriptions using the patents which could be used to halt the division process again so he concluded it was better to use the section descriptions for simplicity.

2. That using the simplified legal description would not affect or abolish the individual patents.

3. That there were no legal ramifications to describing the real property in this manner, and that we were not giving up any legal rights regarding the patents whatsoever.

4. That the divided patents would become two separate parcels and not be merged with the adjoining existing parcels.

Based upon this assertion and relying on our attorney’s statements, the generalized legal description of the Mariposa property was used, and once recorded with the County of Mariposa has continued to be used for consistency for transfers within my family. It was never our intention to yield any legal rights or to merge individual parcels into a greater whole. Where portions of prior individual patents were divided in the family division of the Mariposa property it was our intention to keep them as separate legal parcels and not to merge them with any others.

Unfortunately, my parents who were present during this discussion and our attorney Mr. St. Clair have all passed away since that time and I am the only person who was present during that discussion who is still available. Also, my great-aunt and cousins who were involved with the property division in the 1950’s-1970’s are either deceased or incapacitated at this time.

This should be a sufficient expression of the intent of the parties at the time of the land division to meet the requirements for the establishment of the “fractional parcels” as individual historic parcels.

Very truly yours,

[Signature]
Attachment F
July 30, 2009

Jeff Miller
871 Highway 140
Le Grand, CA 95333

RE: Review of Correspondence on Certificate of Compliance Application No. 2007-93 regarding Fractional Portions of Original Patents

Dear Jeff,

Thank you for your April 7, 2009 correspondence, which provides your response to the County’s position regarding the “fractional” portions of original patents, identified in your Certificate of Compliance Application No. 2007-93. These “fractional” portions were described in the County’s correspondence to you dated September 5, 2008. The September 5, 2008 correspondence describes twelve (12) fractional portions of patents, and twenty two (22) whole patents within your property (for which Certificate of Compliance have already been approved and recorded).

Following the September 5, 2008 correspondence, you had requested additional time to conduct research regarding the published appellate court case and the twelve (12) “fractionalized” portions of original patents you’d requested in your application as follows:

Parcel 3

You requested recognition of a 120 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 431 Mariposa County Records. The 120 acre portion is that which is within your property. The 40 acre portion is outside of your property.

Parcel 5

You requested recognition of an 80 acre portion of a 120 acre parcel originally created by US Patent recorded in Book S of Patents at Page 441 Mariposa County Records. The 80
acres portion is that which is within your property. The 40 acre portion is outside of your property.

Parcel 18

You requested recognition of a 40 acre portion of a 160 acre parcel originally created by US Patent recorded in Book O of Patents at Page 181 Mariposa County Records. The 40 acre portion is that which is within your property. The 120 acre portion is outside of your property.

Parcel 19

You requested recognition of an approximately 140 acre portion of a 160 acre parcel originally created by US Patent recorded in Book N of Patents at Page 74 Mariposa County Records. The approximately 140 acre portion is that which is within your property. The approximately 20 acre portion is outside of your property.

Parcel 27

You requested recognition of a less than 160 acre portion of a 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 157 Mariposa County Records. The less than 160 acre portion is that which is within your property. The other portion is outside of your property (southerly of the highway).

Parcel 29

You have requested recognition of an approximately 420 acre portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 152 Mariposa County Records. The approximately 20 acre portion is within your property. The other 20 acre portion is outside of your property.

Parcel 30

You requested recognition of an approximately 80 acre portion of a 160 acre parcel originally created by US Patent recorded in Book P of Patents at Page 153 Mariposa County Records. The approximately 80 acre portion is that which is within your property. The other 80 acre portion is outside of your property.

Parcel 31

You requested recognition of an approximately 40 acre portion of an 80 acre parcel originally created by US Patent recorded in Book P of Patents at Page 325 Mariposa.
County Records. The approximately 40 acre portion is that which is within your property. The other 40 acre portion is outside of your property.

Parcel 32

You requested recognition of a less than 1 acre triangular portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 322 Mariposa County Records. The less than 1 acre portion is that which is within your property. The other 39+ acre portion is outside of your property.

Parcel 33

You requested recognition of a less than 1 acre triangular portion of a 480 acre parcel originally created by US Patent recorded in Book P of Patents at Page 151 Mariposa County Records. The less than 1 acre portion is that which is within your property. The other 479+ acre portion is outside of your property.

Parcel 34

You requested recognition of a less than 40 acre portion of a 40 acre parcel originally created by US Patent recorded in Book P of Patents at Page 306 Mariposa County Records. The less than 40 acre portion is that which is within your property. The other portion is outside of your property (southerly of the highway).

Grant Deed Vol. 30, Official Records, Page 376, Mariposa County Records

We have a copy of the above referenced grant deed, which transferred an area of 4,333 acres as a result of the last will and testament of Howard W. Chase in 1971. In our September 5, 2008 correspondence, we state that this grant deed is not sufficient, based on recent published appellate level case law, to provide a legal separation of the fractional portions of patents listed above (Parcel 3, Parcel 5, Parcel 8, Parcel 19, Parcel 19, Parcel 27, Parcel 29, Parcel 30, Parcel 31, Parcel 32, Parcel 33 and Parcel 34), as the deed doesn’t establish an “intention of the parties” to create a legal separation of the individual patent parcels.

This deed reads as follows

GRANT DEED

For value received,

PHILIP B. CHASE, a single man, THEODORA A. CHASE, a widow, HARRIETTE CHASE LEAVITT, a married woman, as her separate property, and THEODORA CHASE, PHILIP B. CHASE and HARRIETTE CHASE LEAVITT, as Testamentary Trustees under the Last Will and Testament of Percy B. Chase, deceased,

GRANT TO

TITLE INSURANCE AND TRUST COMPANY and CARMEN CHASE MILLER, as Co-Executors of the Last Will and Testament of Howard W. Chase, deceased, as to an undivided three-fourths (3/4) interest in the property hereby conveyed, and CARMEN CHASE MILLER, as her separate property as to an undivided one-fourth (1/4) interest in the property conveyed.
The property which is hereby conveyed is all of the right, title and interest of Grantors in and to that real property situate in the County of Mariposa, State of California, described as follows:

All that portion of land that lies in Township 6 South, Range 16 East and Township 7 South, Range 16 East, M.D.B. & M., Mariposa County, California described as follows:

Portion in Township 6 South, Range 16 East, M.D.B. & M., all of Sections 22, 27 and 34; the South 1/4 of Section 15; the southwest 1/4 of Section 14; the west 1/2 of Section 23; all of Section 15 that lies north of California State Highway 140; the West 1/2 of Section 26; and that portion of the southeast 1/4 of Section 26 described as follows:

Beginning at the southeast corner of said Section 26; thence North 01°12'29" East 1795.20 feet along the east line of said Section 26; thence N. 89°21'49" West 2630.00 feet to a point on the west line of the said southeast 1/4 of Section 26; thence South 01°20'41" West 1770.76 feet to a point on the south line of said Section 26; thence S. 86°50'10" East 2634.18 feet to the point of beginning.

That portion in Township 7 South, Range 16 East, M.D.B. & M.

All of Sections 2, 3 and 10 that lies north and west of California State Highway 140.

Containing an area of 4333 acres, more or less.

DATED: July 2, 1971.

PHILIP B. CHASE

THEODORA A. CHASE

HARRIETTE CHASE LEAVITT As Testamentary Trustees under The Last Will and Testament of Percy B. Chase, deceased

April 2009 Correspondence / Applicant Response to September 2008 Information

In your April 2009 correspondence, you described in detail your family attorney's position regarding the preparation of the legal description to transfer your portion of the family property, using a simplified legal description at the time of the deed recordation listed above. Your correspondence is attached. You state that your family attorney informed you that there were no legal ramifications to describing the real property in this simplified manner. You state that your family attorney informed you that the divided patents would become two separate parcels and not be merged with the adjoining existing parcels.

In your April 2009 correspondence, you state that all other persons and family members present during this discussion, including the family attorney, are deceased or incapacitated.

In your April 2009 correspondence, you state that this information should be sufficient expression of the intent of the parties at the time of the transfer to meet the requirements for the issuance of Certificates of Compliance to the fractionalized patents.

County Review and Conclusion
The Planning Director has considered the additional information you submitted in April. Please be advised that the Planning Director stands by his position as described in the September 4, 2008 correspondence regarding the Certificate of Compliance applications for the fractional patents. The Planning Director does not support the Certificate of Compliance applications as submitted based upon the following:

1. The published Appellate level decision Brown v. Tehama County Board of Supervisors concludes, "In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract..."

2. You have presented you and your family attorney's position. It is not clear if this position is consistent with that of the grantor, who was deceased at the time of the preparation of the grant deed. You indicate that the "process of division", which took over 10 years, was very contentious.

3. The position of your family's attorney was correct, at the time it was stated. Appellate level case law is binding, and it has changed the legal status of review of Certificate of Compliance applications involving fractional patents. Upon the publishing of this appellate case, the County is no longer able to recognize fractional patents as legally created, unless there was a clearly established "intention of the parties" at the time of their creation. We have considered a separate recorded grant deed (describing the fractionalized portion) as establishing intent. We would also consider information contained in the recorded grant deed as establishing intent (should it specify or clearly reference the individual patents or fractionalized portions of the patents). However, the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, as written and recorded (as stated above) does not describe or list an intent other than to transfer one property of 4,333 acres.

Options

At this time, based on the information available, I have identified the following options for processing of these fractional patents:

Option 1

Based on published appellate case law, you could provide us with an individual grant deed which shows that the applied for Certificate of Compliance portions of the patents were actually conveyed separately in accordance with applicable state and local subdivision requirements in effect at the time of the conveyance.

Option 2

You could amend your application and request that these acreages be combined with an adjacent legal parcel for which a Certificate of Compliance has already been recorded (one
of the other twenty-two certificates – however the parcel configuration most makes sense from a management perspective).

Option 3

You could provide us with other information that we do not currently have available in the office, relative to any of the information in this correspondence.

Option 4

If you do nothing or if you direct us to process the application as submitted, our only choice would be to recommend recording Conditional Certificates of Compliance to these acreages, as we do not have information (in the file today) to enable us to record unconditional Certificates of Compliance. The conditions we would recommend would be those relating to subdivision requirements.

Appeal Rights

You may appeal this determination to either the Planning Commission or the Board of Supervisors. If you wish to appeal this determination, you must submit a Notice of Appeal form within ten (10) calendar days of the date of decision to either the Clerk of the Board of Supervisors or the Planning Commission Secretary. Attached is a Notice of Appeal Form. This form must be submitted by 5:00 p.m. on Monday, August 10th, 2009.

If you have any questions regarding this correspondence, please contact me at 742-1215.

If I am not available, you may also contact Director Kris Schenk at 742-1216.

Sincerely,

[Signature]

Sarah Williams
Director

CRRR / Attachment: Notice of Appeal form and Appeals Information Handout

7007 2680 0002 4433 5745

Cc (without attachment):
Kris Schenk, Planning Director
Steve Dahlem, County Counsel
Attachment G
MARIPOSA PLANNING
NOTICE OF APPEAL

APPELLANT / CONTACT PERSON

NAME ____________________________

MAILING ADDRESS ________________________________

DAY TELEPHONE NUMBER ________________________________

☐ Check this box if the appeal form is being filed by additional appellants. Attach list with
name, address, and signatures of appellants. You may designate two persons on the list
to receive copies of all correspondence and staff reports related to the appeal. The list
must contain a statement which states the person signing the list has reviewed the Notice
of Appeal form.

☒ Check this box if appellant is also the application or permit applicant for the finding or
decision being appealed.

APPEAL BODY

Decision, finding, or determination is being appealed to

☐ PLANNING COMMISSION (Submit appeal form to Planning Director)

☒ BOARD OF SUPERVISORS (Submit appeal form to Clerk of the Board of Supervisors)

DECISION BODY

Decision, finding, or determination being appealed was made by

☒ PLANNING DIRECTOR ________________________________

☐ PLANNING COMMISSION ________________________________

☐ OTHER COUNTY COMMISSION OR BODY ________________________________ (Name)

Date of Decision ________________________________

July 30, 2009
DECISION, FINDING, OR DETERMINATION BEING APPEALED (Attach copy of decision/findings)

APPLICATION NUMBER OR TYPE OF PERMIT CERTIFICATE OF COMPLIANCE A# P = 2007-93

OTHER (Specify)

SPECIFIC CONDITIONS, FINDINGS, AND/OR PORTIONS OF DECISION OR DETERMINATION BEING APPEALED

DECLINE RECOGNITION OF 12 "FRACTIONAL" PORTIONS OF PARCELS

STATEMENT OF GROUNDS OF APPEAL

(If additional space is needed, attach additional sheets to Notice of Appeal form. The grounds of appeal must clearly state those issues or portions of the finding, decision, or determination being appealed. The Board of Supervisors or Planning Commission will consider only those issues which are raised in the appeal form.)

SEE ATTACHED.
Check this box if you request the right to submit additional reasons for appeal and amendments or supplements to the appeal. This additional information must be submitted no later than twenty five (25) calendar days prior to the hearing date of the appeal.

[Signature]
SIGNATURE OF APPELLANT

[Date]  
AUGUST 7, 2009  
DATE
The issues:

1. The California Appellate case relied upon by the Planning Director requires extrinsic evidence to be accepted to prove the intent of the parties.

2. Relying solely on a recorded deed to establish intent is erroneous.

3. Requiring a standard of a “clearly established intention of the parties at the time of [fractional parcels] creation” for deeds prior to the California Appellate Case Brown v. Tehama County Board of Supervisors, is in error. Only evidence establishing the intent of the parties is required under that case.

4. Stating that the Grantor was deceased at the time the deed was executed so his intent cannot be established is in error. The individual who signed the deed also had an individual interest in the subject property as well as being the legal representative of the deceased owner of a partial interest in the subject property. That person’s intent is the controlling consideration.

4. The extrinsic evidence that has been provided to the Planning Director is sufficient to explain the intent of the parties as to the preservation of the “fractional portions of parcels” as individual parcels.

A request for Certificates of Compliance on 34 parcels was filed with the Mariposa County Planning Department. The Mariposa Planning Director granted Certificates of Compliance for 22 “whole” patents but denied Certificates of Compliance on 12 “fractional portions of patents” citing the California Appellate case of Brown v. Tehama County Board of Supervisors as the basis for his denial. All of these “whole” and “fractional portions” were described in a single deed as a single 4,333 acre parcel using sections, metes and bounds.

In his denial letter dated July 30, 2009, he stated:

“1. The published Appellate level decision Brown v. Tehama County Board of Supervisors concludes, “In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract....”

3. “The position of your family’s attorney was correct, at the time it was stated. Appellate level case law is binding, and it has changed the legal status of review of Certificate of Compliance applications involving fractional patents. Upon the publishing of this appellate case, the County is no longer able to recognize fractional patents as legally created, unless there was a clearly established “intention of the parties” at the time of their creation. We have considered a separate recorded grant deed (describing the fractionalized portion) as establishing intent. We would also consider information contained in the recorded grant deed as establishing intent (should it specify or clearly
reference the individual patents or fractionalized portions of the patents). However, the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, as written and recorded (as stated above) does not describe or list an intent other than to transfer one property of 4,333 acres.

The subject property was originally part of the Chase Ranch owned by Harry Chase. The property was ultimately divided among his heirs, including Carmen Chase Miller, individually and as Trustee of the Howard W. Chase Trust.

The background information provided to the Planning Department in support of the granting of the 12 “fractional portions of patents” included a letter from Jeff Miller, son of Carmen Chase Miller, describing the circumstances surrounding the preparation of the Grant Deed. At the time the division deeds were created, Jeff Miller personally took the patents then in his family’s possession to the family attorney for incorporation into the division deeds. My mother, Carmen Chase Miller, who owned a portion of the subject property individually and who was also the Executrix of the estates of her parents Howard W. Chase and Gladys Chase, and also the Trustee for the Howard W. Chase Trust, was present during this meeting. Our family attorney informed us:

1. That using the simplified legal descriptions would not affect or abolish the individual patents.

2. That there were no legal ramifications to describing the real property in this manner, and that we were not giving up any legal rights regarding the patents whatsoever.

3. That the divided patents would become two separate parcels and not be merged with the adjoining existing parcels.”

This was the expectation and intent of Carmen Chase Miller in executing the division deeds for herself and as Executrix/Trustee.

The Planning Director has acknowledged: “The position of your family’s attorney was correct, at the time it was stated.” He further stated “…It is not clear if this position is consistent with that of the grantor, who was deceased at the time of the preparation of the grant deed.”

Carmen Miller, for herself and as the Executor/Trustee for her parents, was a party to the land division, signed the Grant Deed relying on the attorney’s statements, with this understanding and intent.

Under the Brown v. Tehama County, etc. case, the court stated on page 20, “Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed.”
Brown v. Tehama County, etc., page 23 discussed Civil Code section 1093, enacted in 1986, which "concerns only those situations where one party is conveying entire pre-existing parcels in a consolidated description" and "does not apply to situations where portions of pre-existing parcels, never before described separately, are being conveyed." The court concluded this Civil Code section did not apply to deeds conveying portions of pre-existing parcels.

The ultimate conclusion of the court was "the intention of the parties is the controlling consideration." Page 26

Extrinsic evidence of the intention of the parties has been provided to the Planning Director but he erroneously deemed it insufficient.

It is illogical to assert there was no intention to merge whole patents but there was an intention to merge "fractional portions of patents" within the same deed. Merge which fractional portions with which whole portions? Or merge some fractional portions together into a "new" parcel?

The extrinsic evidence of the intent of the parties to preserve both the whole patents and the partial patents as separate parcels has been provided and should be used to carry out the intent of the parties. Certificates of Compliance should be granted as to the 12 "fractional portions of patents" based on the intent of the parties.
Attachment H
STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS  

Resolution  
No. ____  

A resolution denying Appeal No. 2009-114, and upholding the Planning Director’s determination and findings regarding a portion of Certificate of Compliance Application No. 2007-093 for “fractionalized” patents on (retired) APN 016-080-002; a 4333+ acre parcel located at 871 Highway 140 near the Merced/Mari­posa County line.

WHEREAS Certificate of Compliance Application No. 2007-093 was submitted on the 1st day of June, 2007 by Jeff Miller and Layne Clifton; and

WHEREAS the application requested thirty-four (34) Certificates of Compliance for acreage known as APN 016-080-002, a 4,333 acre property located at 871 Highway 140 near the Merced/Mari­posa County line (within Mariposa County), hereinafter referred to as “subject property”; and

WHEREAS the Planning Director wrote a letter on the 5th day of September, 2008 which stated that he could support issuance of unconditional Certificates of Compliance for twenty-two (22) of the requests, as they were for “whole” patents within the subject property; and

WHEREAS the Planning Director correspondence written on the 5th day of September, 2008 stated that twelve (12) of the requested Certificates of Compliance were for “fractionalized” patents and there was not adequate justification provided with the application materials to support issuance of unconditional Certificate of Compliance; and

WHEREAS this position of the Planning Director regarding “fractionalized” patents was based upon recently published state appellate case law; and

WHEREAS the applicant requested that the Planning Director take action on the twenty-two requests, and “hold” the twelve requests for “fractionalized” patents in order that he could conduct additional research on this matter; and

WHEREAS the applicant submitted a letter on the 7th day of April, 2009 which provided his justification for issuance of unconditional Certificates of Compliance to the twelve fractionalized patents remaining within Certificate of Compliance Application No. 2007-093; and

WHEREAS the Planning Director considered this additional information; and
WHEREAS the Planning Director's determination regarding the additional information provided for the fractionalized patents was provided to the applicant in correspondence dated the 30th day of July, 2009; and

WHEREAS the Planning Director was still unable to support the issuance of unconditional Certificate of Compliance; and

WHEREAS this determination included findings and options for continued processing of the application; and

WHEREAS an appeal of the Planning Director's determination was received from Jeff Miller and Layne Clifton and that appeal was complete for processing on the 12th day of August, 2009; and

WHEREAS that appeal is known as Appeal No. 2009-114 (Appeal); and

WHEREAS Appeal No. 2009-114 was made to the Board of Supervisors; and

WHEREAS processing of Appeal No. 2009-114 was conducted pursuant to Mariposa County Resolution No. 02-525 as amended; and

WHEREAS a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-114 was scheduled for the 13th day of October 2009; and

WHEREAS a Staff Report addressing the Notice of Appeal was prepared pursuant to local administrative procedures; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2009-114 on the 13th day of October, 2009 and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public concerning the Planning Director Determination and Findings, the Notice of Appeal, and the comments of the appellant.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby:

1. Deny Appeal No. 2009-114; and

2. Uphold the Planning Director's determination as written in correspondence dated the 30th day of July, 2009 that there is not sufficient evidence to support the issuance of unconditional Certificates of Compliance to twelve (12) fractionalized patents within Certificate of Compliance Application No. 2007-93; these fractionalized patents are identified on the "Patent Map" for the project site as "Parcels" 3, 5, 8, 18, 19, 27, 29, 30, 31, 32, 33 and 34; and

BE IT FURTHER RESOLVED THAT the Board of Supervisors action is based upon the following findings:
1. The recorded grant deed which first described the 4,333+ acre property, Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, used a simple metes and bounds description and did not list out individual patents or fractionalized patents within the property. There is no intent established in the recorded grant deed other than to convey one whole property.

2. It is appropriate to recognize the whole patents within the 4,333+ acre property based upon specific issues identified and discussed in the published appellate level court case, The People v. Tehama County Board of Supervisors, et al., (2007) 147 Cal.App.4th 891 (hereinafter referred to as “the Tehama case”):
   a. Common ownership of separate contiguous parcels does not result in merger of those parcels.
   b. When two or more parcels that have been separately and distinctly described in an instrument of conveyance (the original Federal Patents) are subsequently conveyed together using a single consolidated legal description (Grant Deed Volume 30, Official Records, Page 376), those parcels are not merged into a single parcel absent an express statement by the grantor of the intent to do so in the instrument of conveyance.

3. The Tehama case is not exactly the same as the Appeal. One cannot simply conclude Appeal Issue 8 (which states, “It is illogical to assert that there was no intention to merge whole patents but there was an intention to merge “fractional portion of patents” within the same deed.”). The Tehama case uses a full history of title to make its conclusion. Additionally:
   a. The Tehama case evaluated (by parcel counting) grant deeds which conveyed two fractionalized patents together (in one deed).
   b. The Tehama case also evaluated (by parcel counting) a grant deed which conveyed two fractionalized patents together with other property in one grant deed. However there isn’t information in the Tehama case which tells us how parcel counting was conducted for the other property in that one grant deed.
   c. The issue for the Appeal is parcel counting within one grant deed (4,333+ acres) which conveyed multiple (twelve) fractionalized patents together with multiple (twenty-two) whole patents.
   d. The Tehama case doesn’t conclude or direct a local agency “what” to do with a fractionalized patent which may be “left over” following issuance of a Certificate of Compliance to a whole patent (such as is the case for Certificate of Compliance No. 2007-093). This is because the Tehama case was about counting parcels before and after a Lot Line Adjustment. The Tehama case was not about processing Certificate of Compliance applications for whole and fractionalized patents. However, the Tehama case is very clear in its conclusion that, if there isn’t a separate deed which conveys a fractionalized
patent separately or if there isn't some clear established intention of the parties to create a separate parcel, a fractionalized patent isn't a separate parcel. If a fractionalized patent isn't a separate parcel, it isn't eligible for an unconditional Certificate of Compliance. The Planning Director considers the whole of the case in his action.

4. Technically, the Planning Director has not “denied” the Certificate of Compliance applications for the fractionalized patents. The Planning Director stated he could not support the applications as submitted to issue unconditional Certificates of Compliance, including the additional information submitted. The Planning Director provided the applicants with processing options.

5. The Planning Director has not been provided a full history of title for the fractionalized patents within the 4,333+ acre subject property. Three (3) of the twelve (12) fractionalized patents share a boundary with the Redington Ranch (which historically was the San Felipe Ranch and also the Cunningham Ranch). These Ranches were not a part of the original Chase Ranch according to Assessor’s Maps which date back to 1955. Consequently, these patents would not have been “fractionalized” by the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County Records.

6. With regard to admission of extrinsic evidence, staff notes text from the Tehama case. “Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances.” (Emphasis added.)

Staff understands this text to mean that the words of a grant deed must be considered together with the extrinsic evidence. Whatever extrinsic evidence is submitted is not considered without consideration of the calls of the deed. Staff notes that there is nothing included in the grant deed which would indicate that the fractionalized patents are or were intended to be conveyed as separate parcels.

7. With regard to Appeal Issue 4, “Stating that the Grantor was deceased at the time the deed was executed so his intent cannot be established is in error. The individual who signed the deed also had an individual interest in the subject property as well as being the legal representative of the deceased owner of a partial interest in the subject property. That person’s intent is the controlling consideration.”

Staff notes text from the Tehama case. “Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances.” (Emphasis added.)
Staff also notes the following text: "In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract..." (Emphasis added.)

Staff would read these sentences and understand that "contracting parties", "them", "the parties", and "their intent" are plural, covering both the grantor and the grantee. Staff agrees that a grantee’s intent is to be considered, but believes that the case demands that the grantee’s intent be considered together with the grantor’s intent.

The appellant has provided information to about his mother’s intent when she received the property. However there has been no information provided, other than the description in the grant deed, to establish the intent of the grantor.

8. The applicant’s information about his mother’s expectation and intent in execution of the division deeds (as identified in Appeal Issue 6) is not supported information.

9. A recorded grant deed is record evidence.

10. With regard to Appeal Issue 7, the Tehama case addresses Civil Code 1093 and fractional patents: "...the county defendants would have us conclude that California common law provides (and has long provided) an antimerger rule identical to the one set forth in Civil Code section 1093, except that (unlike Civil Code section 1093) it applies to fractional parcels that have never before been described separately in any security document or instrument of conveyance. According to the county defendants, such a rule must exist (even though we have been given no evidence of it) because otherwise ‘major landowners ... would routinely surrender their successor’s ability to separately use and sell portions of their land, to their potentially severe financial detriment.’"

This is a discussion which is provided to justify the court’s conclusion made on the grant deed from Tankham and Garrett to Hesse, for that portion of the eastern 1/2 of section 10 north of Ridge Road, in which 2 fractionalized patents were granted.

11. The position of the family’s attorney was correct, as the appellant has stated, at the time it was stated. The Tehama case law has changed the Planning Director’s review of Certificate of Compliance applications involving fractional patents. Upon the publishing of this appellate case, the County no longer recognizes fractional patents as legally created, unless there was a clearly established “intention of the parties” at the time of their creation (decisions of the courts of appeal are binding on all superior courts of the state).

BE IT FURTHER RESOLVED THAT the Board of Supervisors finds that the following three options exist for the applicant with respect to the processing of the twelve (12)
Certificates of Compliance for the fractionalized patents submitted under Certificate of Compliance Application No. 2007-093:

Option 1

The applicants could provide Planning with an individual grant deed which shows that the applied for Certificate of Compliance portions of the patents were actually conveyed separately in accordance with applicable state and local subdivision requirements in effect at the time of the conveyance.

Option 2

The applicants could amend their application and request that these acreages be combined with an adjacent legal parcel for which a Certificate of Compliance has already been recorded (one of the other twenty-two certificates).

Option 3

If the applicants do nothing or if the applicants direct Planning to process the application as submitted, Planning would recommend recording Conditional Certificates of Compliance to these acreages, as Planning does not have information to enable recordation of unconditional Certificates of Compliance. The conditions to be recommended would be those relating to subdivision requirements.

BE IT FINALLY RESOLVED THAT the denial of Appeal No. 2009-114 is based upon the discussion of Appeal Issues as contained in the Staff Report to the Board of Supervisors which is hereby incorporated into this resolution by reference.

ON MOTION BY Supervisor _____, seconded by Supervisor _____, this resolution is duly passed and adopted this ____ day of October, 2009 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAIN:

Brad Aborn, Chairman
Mariposa County Board of Supervisors

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ATTEST:

Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

Steven W. Dahlem
County Counsel
INTEROFFICE MEMORANDUM

October 9, 2009

To: Board of Supervisors
   Rick Benson, CAO
   Steve Dahlem, County Counsel
   Margie Williams, COB

From: Marie

Re: October 13, 2009 Appeal #2009-114, Item #4.

Jeff Miller asked that you receive a copy of this deed to include with your information for Item #4 on the October 13th Agenda.

Attachment
The petition for instructions of TITLE INSURANCE AND TRUST COMPANY and CARMEN CHASE MILLER, as Executors of the Last Will and Testament of Howard W. Chase, deceased, Danielson & St. Clair by R. Spencer St. Clair, Esq. appearing as attorneys for petitioners, coming on regularly to be heard the 7th day of May, 1971, before the HONORABLE NORMAN R. DOWDS in Department 11 of the above entitled Court located at 111 South Hill Street, Los Angeles, California, the Court, after examining the petition and hearing the evidence, finds that due notice of the hearing of such petition has been given as required by law, that all of the allegations of the petition are true, and that it is for the advantage and best interest of said estate that the petitioners enter into the Agreement to Partition Real Property substantially as attached to the petition as Exhibit "A" and further execute such documents and take such steps as may be necessary or advisable to complete the partition, NOW, THEREFORE,

THE COURT HEREBY ORDERS that Title Insurance and Trust Company and Carmen Chase Miller, as Co-Executors of the Last Will and
Testament of Howard W. Chase, deceased, be and they hereby are
authorized, empowered and directed to execute on behalf of this
estate a written agreement substantially in the form of that
attached as Exhibit "A" to the Petition for Instructions filed
herein, and that they be further authorized, empowered and
directed to execute and deliver such documents and take such
steps as may be necessary or advisable to carry out the terms
of that agreement.

THE COURT FURTHER ORDERS that said Co-Executors be and they
hereby are authorized to make, execute and deliver a Grant Deed
conveying to Philip B. Chase; Theodora A. Chase; Harriette Chase
Leavitt; and Theodore A. Chase, Philip B. Chase and Harriette
Chase Leavitt as Testamentary Trustees under the Last Will and
Testament of Percy B. Chase, deceased, the estate's undivided
one-third (1/3) interest in all that property in the County of
Mariposa, State of California, particularly described as follows:

All that portion of Township 6 South, Range 16
East; Township 7 South, Range 16 East; Township
6 South, Range 17 East and Township 7 South,
Range 17 East, N.D.B. & M., Mariposa County,
California described as follows:

Portion in Township 6 South, Range 16 East. All
of Sections 24, 25, and 36; the South 1/2 of
Section 13; the East 1/2 of Section 23; the
Southeast 1/4 of Section 14; All of Section 35
that lies south of California State Highway 140;
and a portion of Section 26 described as follows:

Beginning at the Northeast corner of said Section
26; thence S. 01°12'29" West 3563.16 feet along
the east line of said Section 26; thence N. 89°
21'49" West 2630.00 feet to a point on the west
Line of the east 1/2 of said Section 26; thence
N. 01°20'41" East 3522.92 feet along said West
Line of the East 1/2 of Section 26 to the North
1/4 corner of Section 26; thence N. 89°45'09"
East 2621.89 feet to the point of beginning.

Portion in Township 7 South, Range 16 East,
N.D.B. & M. All of Section 1; that portion of
Section 2 that lies southeast of California State
Highway 140; that portion of the East 1/2 of the
Southeast 1/4 of Section 3 that lies south and
east of California State Highway 140.
Portion of Township 6 South, Range 17 East, M.D.B.
& M., Lot 4 of Section 18; Lots 1,2,3, and 4 of
Section 19; the West 1/2 of Section 30; the West
1/2 of Section 31.

Portion in Township 7 South, Range 17 East, Lots
3, 4, and 5 of Section 6.

Containing an area of 5417 acres, more or less.

Said deed to be delivered in an exchange for a deed executed by
Philip B. Chase; Theodora A. Chase; Harriette Chase Leavitt;
and Theodora A. Chase, Philip B. Chase and Harriette Chase
Leavitt as Testamentary Trustees under the Last Will and Testament
of Percy B. Chase, deceased, conveying an undivided five-ninths
(5/9) interest in the real property in the County of Mariposa,
State of California, particularly described as follows, to Title
Insurance and Trust Company and Carmen Chase Miller, as Co-
Executors of the Last Will and Testament of Howard W. Chase,
deceased, as to an undivided three-fourths (3/4) interest, and
to Carmen Chase Miller, individually, as to an undivided one-
fourth (1/4) interest:

All that portion of land that lies in Township 6
South, Range 16 East and Township 7 South, Range
16 East, M.D.B. & M., Mariposa County, California
described as follows:

Portion in Township 6 South, Range 16 East,
M.D.B. & M., all of Sections 22, 27 and 31; the
South 1/2 of Section 15; the southwest 1/4 of
Section 14; the west 1/2 of Section 23; all of
Section 25 that lies north of California State
Highway 140; the West 1/2 of Section 26; and
that portion of the southeast 1/4 of Section 26
described as follows:

Beginning at the southeast corner of said Section
26; thence North 01°12'29" East 1795.20 feet along
the east line of said Section 26; thence N. 89°21'49"
West 2630.00 feet to a point on the west line of the
said southeast 1/4 of Section 26; thence South 01°20'41"
West 1770.76 feet to a point on the south line of
said Section 26; thence S. 88°50'18" East 2634.18
feet to the point of beginning.

That portion in Township 7 South, Range 16 East,
M.D.B. & M.,

//

//
All of Sections 2, 3, and 10 that lies north and west of California State Highway 140.

Containing an area of 4333 acres, more or less.

Dated: \[6-1\], 1971.


NORMAN R. DOWDS
JUDGE OF THE SUPERIOR COURT
For value received, 

TITHE INSURANCE AND TRUST COMPANY and CARMEN CHASE MILLER, 
as Co-Executors of the Last Will and Testament of Howard N. 
Chase, deceased, and CARMEN CHASE MILLER, individually, 

GRANT TO 

PHILIP B. CHASE, a single man, as to an undivided 36.4% 
interest in the property hereby conveyed; THEODORA A. CHASE, 
a widow, as to an undivided 19.0% interest in the property 
hereby conveyed; HARRIETTE CHASE LEAVITT, a married woman, 
as her separate property, as to an undivided 36.4% interest 
in the property hereby conveyed; and THEODORA A. CHASE, 
PHILIP B. CHASE and HARRIETTE CHASE LEAVITT, as Testamentary 
Trustees under the Last Will and Testament of Percy B. Chase, 
decesed, as to an undivided 8.4% interest in the property 
hereby conveyed. 

The property which is hereby conveyed is all of the right, 
title and interest of Grantors in and to that real property 
situate in the County of Mariposa, State of California, 
described as follows: 

All that portion of Township 6 South, Range 16 
East; Township 7 South, Range 16 East; Township 
6 South, Range 17 East and Township 7 South, 
Range 17 East, M.D.B. & M., Mariposa County, 
California described as follows: 

Portion in Township 6 South, Range 16 East. All 
of Sections 24, 25, and 36; the south 1/2 of 
Section 13; the East 1/2 of Section 23; the 
Southeast 1/4 of Section 14; All of Section 35 
that lies south of California State Highway 140; 
and a portion of Section 26 described as follows: 

Beginning at the Northeast corner of said Section 
26; thence S. 01°12'29" West 3563.16 feet along 
the east line of said Section 26; thence N. 89° 
21'49" West 2630.00 feet to a point on the west 
line of the east 1/2 of said Section 26; thence 
N. 01°20'41" East 3522.92 feet along said West 
line of the East 1/2 of Section 26 to the North 
1/4 corner of Section 26; thence N. 89°42'09" 
East 2621.89 feet to the point of beginning. 

Portion in Township 7 South, Range 16 East, 
M.D.B. & M., All of Section 1; that portion of 
Section 2 that lies southeast of California State 
Highway 140; that portion of the East 1/2 of the 
Southeast 1/4 of Section 3 that lies south and 
east of California State Highway 140.
Portion of Township 6 South, Range 17 East, M.D.B. & M., Lot 4 of Section 18; Lots 1, 2, 3, and 4 of Section 19; the West 1/2 of Section 30; the West 1/2 of Section 31.

Portion in Township 7 South, Range 17 East. Lots 3, 4, and 5 of Section 6.

Containing an area of 5417 acres, more or less.

This deed is made pursuant to an Order Instructing Co-Executors in the Matter of the Estate of Howard W. Chase, deceased, in Case No. P-562,875 in the Superior Court of the State of California for the County of Los Angeles, dated June 1, 1971, a certified copy of which order is recorded contemporaneously herewith in the Office of the County Recorder of the county in which the real property being conveyed is located.

Dated: July 13, 1971.

TITLE INSURANCE AND TRUST COMPANY
and CARMEN CHASE MILLER, as
co-executors of the Last Will and
Testament of Howard W. Chase,
deceased.

TITLE INSURANCE AND TRUST COMPANY,
a California corporation

By
By

CARMEN CHASE MILLER
Co-Executors

CARMEN CHASE MILLER
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On July 16, 1971, before me, the undersigned, a Notary Public in and for said County, personally appeared Neville Compton, known to me to be Vice-President, and M. Keyes, known to me to be Assistant Secretary of the corporation that executed the within instrument, individually and as Co-Executors of the estate of Mrs. Delma J. Henson, whose name is subscribed to the within instrument and acknowledged to me that she executed the same. WITNESSES: my hand and official seal.

[Signature]

Delma J. Henson

Name (Typed or Printed)

(Official Seal)

Delma J. Henson
Commission Expires June 8, 1979

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On July 16, 1971, before me, the undersigned, a Notary Public in and for said County, personally appeared Carmen Chase Miller, known to me to be the person whose name is subscribed to the within instrument, individually and as Co-Executors of the estate of Mrs. Delma J. Henson, whose name is subscribed to the within instrument and acknowledged to me that she executed the same. WITNESSES: my hand and official seal.

[Signature]

Delma J. Henson

Name (Typed or Printed)

(Official Seal)

Delma J. Henson
Commission Expires June 8, 1979
STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS  

Resolution No. ______

A resolution denying Appeal No. 2009-114, and upholding the Planning Director's determination and findings regarding a portion of Certificate of Compliance Application No. 2007-093 for "fractionalized" patents on (retired) APN 016-080-002; a 4333+ acre parcel located at 871 Highway 140 near the Merced/Mariaposa County line  

WHEREAS Certificate of Compliance Application No. 2007-093 was submitted on the 1st day of June, 2007 by Jeff Miller and Layne Clifton; and  

WHEREAS the application requested thirty-four (34) Certificates of Compliance for acreage known as APN 016-080-002, a 4,333 acre property located at 871 Highway 140 near the Merced/Mariaposa County line (within Mariposa County), hereinafter referred to as "subject property"; and  

WHEREAS the Planning Director wrote a letter on the 5th day of September, 2008 which stated that he could support issuance of unconditional Certificates of Compliance for twenty-two (22) of the requests, as they were for "whole" patents within the subject property; and  

WHEREAS the Planning Director correspondence written on the 5th day of September, 2008 stated that twelve (12) of the requested Certificates of Compliance were for "fractionalized" patents and there was not adequate justification provided with the application materials to support issuance of unconditional Certificate of Compliance; and  

WHEREAS this position of the Planning Director regarding "fractionalized" patents was based upon recently published state appellate case law; and  

WHEREAS the applicant requested that the Planning Director take action on the twenty-two requests, and "hold" the twelve requests for "fractionalized" patents in order that he could conduct additional research on this matter; and  

WHEREAS the applicant submitted a letter on the 7th day of April, 2009 which provided his justification for issuance of unconditional Certificates of Compliance to the twelve fractionalized patents remaining within Certificate of Compliance Application No. 2007-093; and  

WHEREAS the Planning Director considered this additional information; and  

WHEREAS the Planning Director's determination regarding the additional information provided for the fractionalized patents was provided to the applicant in correspondence dated the 30th day of July, 2009; and
WHEREAS the Planning Director was still unable to support the issuance of unconditional Certificate of Compliance; and

WHEREAS this determination included findings and options for continued processing of the application; and

WHEREAS an appeal of the Planning Director's determination was received from Jeff Miller and Layne Clifton and that appeal was complete for processing on the 12th day of August, 2009; and

WHEREAS that appeal is known as Appeal No. 2009-114 (Appeal); and

WHEREAS Appeal No. 2009-114 was made to the Board of Supervisors; and

WHEREAS processing of Appeal No. 2009-114 was conducted pursuant to Mariposa County Resolution No. 02-525 as amended; and

WHEREAS a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-114 was scheduled for the 13th day of October 2009; and

WHEREAS a Staff Report addressing the Notice of Appeal was prepared pursuant to local administrative procedures; and

WHEREAS on the 13th day of October 2009, the public hearing was continued to the 3rd day of November 2009; and

WHEREAS the Board of Supervisors did hold a public hearing on Appeal No. 2009-114 on the 3rd day of November, 2009 and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public concerning the Planning Director Determination and Findings, the Notice of Appeal, and the comments of the appellant.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby:

1. Deny Appeal No. 2009-114; and

2. Uphold the Planning Director's determination as written in correspondence dated the 30th day of July, 2009 that there is not sufficient evidence to support the issuance of unconditional Certificates of Compliance to twelve (12) fractionalized patents within Certificate of Compliance Application No. 2007-93; these fractionalized patents are identified on the "Patent Map" for the project site as "Parcels" 3, 5, 8, 18, 19, 27, 29, 30, 31, 32, 33 and 34; and

BE IT FURTHER RESOLVED THAT the Board of Supervisors action is based upon the following findings:

1. The recorded grant deed which first described the 4,333+ acre property, Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County records, used a simple metes and bounds description and did not list out individual patents or fractionalized
patents within the property. There is no intent established in the recorded grant deed other than to convey one whole property.

2. It is appropriate to recognize the whole patents within the 4,333+ acre property based upon specific issues identified and discussed in the published appellate level court case, The People v. Tehama County Board of Supervisors, et al., (2007) 147 Cal.App.4th 891 (hereinafter referred to as "the Tehama case"):  

a. Common ownership of separate contiguous parcels does not result in merger of those parcels.

b. When two or more parcels that have been separately and distinctly described in an instrument of conveyance (the original Federal Patents) are subsequently conveyed together using a single consolidated legal description (Grant Deed Volume 30, Official Records, Page 376), those parcels are not merged into a single parcel absent an express statement by the grantor of the intent to do so in the instrument of conveyance.

3. The Tehama case is not exactly the same as the Appeal. One cannot simply conclude Appeal Issue 8 (which states, "It is illogical to assert that there was no intention to merge whole patents but there was an intention to merge "fractional portion of patents" within the same deed."). The Tehama case uses a full history of title to makes its conclusion. Additionally:

a. The Tehama case evaluated (by parcel counting) grant deeds which conveyed two fractionalized patents together (in one deed).

b. The Tehama case also evaluated (by parcel counting) a grant deed which conveyed two fractionalized patents together with other property in one grant deed. However there isn't information in the Tehama case which tells us how parcel counting was conducted for the other property in that one grant deed.

c. The issue for the Appeal is parcel counting within one grant deed (4,333+ acres) which conveyed multiple (twelve) fractionalized patents together with multiple (twenty-two) whole patents.

d. The Tehama case doesn't conclude or direct a local agency "what" to do with a fractionalized patent which may be "left over" following issuance of a Certificate of Compliance to a whole patent (such as is the case for Certificate of Compliance No. 2007-093). This is because the Tehama case was about counting parcels before and after a Lot Line Adjustment. The Tehama case was not about processing Certificate of Compliance applications for whole and fractionalized patents. However, the Tehama case is very clear in its conclusion that, if there isn't a separate deed which conveys a fractionalized patent separately or if there isn't some clear established intention of the parties to create a separate parcel, a fractionalized patent isn't a separate parcel. If a fractionalized patent isn't a separate parcel, it isn't eligible for an unconditional Certificate of Compliance. The Planning Director considers the whole of the case in his action.
4. Technically, the Planning Director has not "denied" the Certificate of Compliance applications for the fractionalized patents. The Planning Director stated he could not support the applications as submitted to issue unconditional Certificates of Compliance, including the additional information submitted. The Planning Director provided the applicants with processing options.

5. The Planning Director has not been provided a full history of title for the fractionalized patents within the 4,333+ acre subject property. Three (3) of the twelve (12) fractionalized patents share a boundary with the Redington Ranch (which historically was the San Felipe Ranch and also the Cunningham Ranch). These Ranches were not part of the original Chase Ranch according to Assessor's Maps which date back to 1955. Consequently, these patents would not have been "fractionalized" by the Grant Deed recorded in Volume 30 of Official Records at Page 376, Mariposa County Records.

6. With regard to admission of extrinsic evidence, staff notes text from the Tehama case. "Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances." (Emphasis added.)

Staff understands this text to mean that the words of a grant deed must be considered together with the extrinsic evidence. Whatever extrinsic evidence is submitted is not considered without consideration of the calls of the deed. Staff notes that there is nothing included in the grant deed which would indicate that the fractionalized patents are or were intended to be conveyed as separate parcels.

7. With regard to Appeal Issue 4, "Stating that the Grantor was deceased at the time the deed was executed so his intent cannot be established is in error. The individual who signed the deed also had an individual interest in the subject property as well as being the legal representative of the deceased owner of a partial interest in the subject property. That person's intent is the controlling consideration."

Staff notes text from the Tehama case. "Extrinsic evidence is always admissible to explain the calls of a deed for the purpose of their application to the subject-matter, and thus to give effect to the deed. In construing a doubtful description in a grant, the court must assume as nearly as possible the position of the contracting parties, and consider the circumstances of the transaction between them, and then read and interpret the words used in the light of these circumstances." (Emphasis added.)

Staff also notes the following text: “In the construction of boundaries, the intention of the parties is the controlling consideration. Whenever possible, a court should place itself in the position of the parties and ascertain their intent, as in the case of any contract...” (Emphasis added.)

Staff would read these sentences and understand that "contracting parties", "them", "the parties", and "their intent" are plural, covering both the grantor and the grantee. Staff agrees that a grantee’s intent is to be considered, but believes that the case demands that the grantee’s intent be considered together with the grantor’s intent.
The appellant has provided information to about his mother's intent when she received the property. However there has been no information provided, other than the description in the grant deed, to establish the intent of the grantor.

8. The applicant's information about his mother's expectation and intent in execution of the division deeds (as identified in Appeal Issue 6) is not supported information.

9. A recorded grant deed is record evidence.

10. With regard to Appeal Issue 7, the Tehama case addresses Civil Code 1093 and fractional patents: "...the county defendants would have us conclude that California common law provides (and has long provided) an antimerger rule identical to the one set forth in Civil Code section 1093, except that (unlike Civil Code section 1093) it applies to fractional parcels that have never before been described separately in any security document or instrument of conveyance. According to the county defendants, such a rule must exist (even though we have been given no evidence of it) because otherwise 'major landowners ... would routinely surrender their successor's ability to separately use and sell portions of their land, to their potentially severe financial detriment.'"

This is a discussion which is provided to justify the court's conclusion made on the grant deed from Tankham and Garrett to Hesse, for that portion of the eastern 1/2 of section 10 north of Ridge Road, in which 2 fractionalized patents were granted.

11. The position of the family's attorney was correct, as the appellant has stated, at the time it was stated. The Tehama case law has changed the Planning Director's review of Certificate of Compliance applications involving fractional patents. Upon the publishing of this appellate case, the County no longer recognizes fractional patents as legally created, unless there was a clearly established "intention of the parties" at the time of their creation (decisions of the courts of appeal are binding on all superior courts of the state).

BE IT FURTHER RESOLVED THAT the Board of Supervisors finds that the following three options exist for the applicant with respect to the processing of the twelve (12) Certificates of Compliance for the fractionalized patents submitted under Certificate of Compliance Application No. 2007-093:

**Option 1**

The applicants could provide Planning with an individual grant deed which shows that the applied for Certificate of Compliance portions of the patents were actually conveyed separately in accordance with applicable state and local subdivision requirements in effect at the time of the conveyance.

**Option 2**

The applicants could amend their application and request that these acreages be combined with an adjacent legal parcel for which a Certificate of Compliance has already been recorded (one of the other twenty-two certificates).
Option 3

If the applicants do nothing or if the applicants direct Planning to process the application as submitted, Planning would recommend recording Conditional Certificates of Compliance to these acreages, as Planning does not have information to enable recordation of unconditional Certificates of Compliance. The conditions to be recommended would be those relating to subdivision requirements.

BE IT FINALLY RESOLVED THAT the denial of Appeal No. 2009-114 is based upon the discussion of Appeal Issues as contained in the Staff Report to the Board of Supervisors which is hereby incorporated into this resolution by reference.

ON MOTION BY Supervisor ______, seconded by Supervisor ________, this resolution is duly passed and adopted this _____ day of October, 2009 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAIN:

___________________________________________________________
Brad Aborn, Chairman
Mariposa County Board of Supervisors

ATTEST:

___________________________________________________________
Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:

___________________________________________________________
Steven W. Dahlem
County Counsel
Margie Williams

From: Sarah Williams
Sent: Tuesday, October 13, 2009 11:47 AM
To: Cottoncrk@aol.com
Cc: Cathie Pierce (E-mail); Margie Williams; Steve Dahlem; Kris Schenk; Rita C. Kidd; Kathleen Crookham (kncrookham@att.net)
Subject: RE: Appeal # 2009-114

Dear Tony,

At their meeting this morning, the Board of Supervisors continued the public hearing on Appeal No. 2009-114 to Tuesday, November 3, 2009 at 3 p.m. or as soon thereafter as possible.

Thank you for your interest in this matter.

Sarah Williams
Mariposa County Planning
742-1215
Cc: Cathie Pierce, Farm Bureau
Margie Williams, Clerk of the Board
Steve Dahlem, County Counsel
Kris Schenk, Planning Director
Rita Kidd
Kathleen Crookham

From: Cottoncrk@aol.com [mailto:Cottoncrk@aol.com]
Sent: Sunday, October 11, 2009 11:16 AM
To: Brad Aborn; Jbibby@elite.net; Lyle Turpin; Jim Allen; Kevin Cann
Cc: Kris Schenk; Sarah Williams
Subject: Appeal # 2009-114

Dear Board of Supervisors,

In regard to Appeal # 2009-114, "Appeal of Planning Director's determination regarding a portion of Certificate of Compliance Application No. 2007-093 for twelve "fractionalized" patents", please be advised that the Mariposa County Farm Bureau only recently (October 7, 2009 to be exact) received notice of this appeal that is being included on the October 13th BOS agenda. I would like to respectfully request the tabling of this agenda item to October 27, so that my Farm Bureau board may have the opportunity to discuss this matter at our October 20th board meeting and thus be prepared to make comments if needed. Please note that I am unable to make this Tuesday's meeting due to prior commitments, therefore, should this appeal remain on the Tuesday agenda, I would like to stress the Farm Bureau's strong support to uphold the Planning Director's determinations and findings.

Respectfully submitted,

MARIPosa COUNTY FARM BUREAU

Tony Toso
President

10/19/2009
November 3, 2009

Mariposa County Board of Supervisors
5100 Bullion Street
Mariposa, CA 95338

RE: Appeal of Planning Director’s Determination Regarding Compliance Application No. 2007-093 for 12 Fractionalizer

Mariposa has a resource that has attracted the attention of investors - local tax dollars in broadening its tourism base, a very resource that will keep these tourism dollars coming. The wide-spread practice began in Mariposa until the time that review in early 2007, over 500 old patents had been reconsidered, some of which are in the under 20 acre range. Many more are.

Just think about that as ownership changes and runs across the landscape over the long term.

From 2006 to the present, MERG has submitted consistent commentary on the County’s practice of issuing certificates of compliance on patents – lines drawn on a map by bureaucrats in Washington, D.C. in the late 1800s, without regard for topography or usability. MERG’s position on this practice has included legal positions that the County’s past practices may have actually violated the State’s land use laws. Mariposa County is not alone in this practice, though more recently many counties have significantly refined their process and fees relative to recognition of practical matters of administrative cost, zoning ordinance limitations and environmental damage.

Before recognition of these old patented parcels, Mariposa was involved in the practice of recognizing gift deeds. Over time the legitimacy of gift deeds was challenged. The practice of seeking ways to create plots of acreage that could be sold separately without complying with local zoning ordinances or the local subdivision laws and standards continued. This evolved into applications for certificates of compliance (CoC) for parcels that haven’t been recognized as individual parcels, in some cases, for more than 100 years. The net result is the same. These break up, primarily, agricultural lands into parcel acreages that effectively establish sub-standard parcel sizes within the A-E zone without CEQA review, or application of current Mariposa County Subdivision Ordinance requirements.
These parcels have been taxed, over time, however, as though they are acreage within larger tracts of land. Property owners have not paid taxes on the smaller parcel fair market value...i.e., a 40 acre parcel fair market value is greater per acre than the same identical block or acreage within a single 3000 acre tract. There is, for example, one .7 acre parcel that was recognized in the early days of this practice in Mariposa County. There were three boundaries that were contiguous at their corners, a single 120 acre patent. Based on Mariposa County’s interpretation at the time, these three boundaries were determined to be non-contiguous and, therefore, instead of one 120 acre parcel, three forty-acre parcels received individual certificates of compliance. When this was pointed out to County Counsel Guarino, he noted: “We can’t go back and fix that!”

These concerns are shared by other Counties with large agricultural tracts, particularly grazing lands. In the case of Humboldt County and Tehama County, for example, these counties have taken local cases to the Appellate Court level. Case law is evolving in this arena, in part changing the mechanics of “counting parcels.” As the public has become more aware of the practical result of this methodology of recognizing parcels that have not had to meet zoning and subdivision requirements, a court of public opinion is growing that the practice needs limitations.

For instance, there is some protection when such patent boundaries exist within a land conservation contract (Williamson Act), via amendments to State law. Government Code now states: “Regarding breach situations – 51250- After January 1, 2004, for purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or, pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision.” Essentially, this states that the mere existence of a recognized patent does not mean it is now excluded from the limits of the contract, or the breach provisions of AB1492. To our knowledge, one property owner in Mariposa County has been required to merge parcels to create the minimum parcel acreage within the A-E zone in order to get a building permit; and the General Plan contains language that directs that the county will implement new policy in this regard.

With regard to the current appeal it is incumbent upon the Board of Supervisors, the Planning Commission and the Ag Advisory Committee to recognize that case law has and is changing the practice of granting CoCs on patented lands. It is MERG’s recommendation that the Board of Supervisors should deny the appeal, and uphold the Planning Director’s determination relative to these 12 fractionalized parcels on the basis of the facts presented in the staff report.

Sincerely,

/s/ John P. Brady, Chairman Pro Tempore