DEPARTMENT: Planning

RECOMMENDED ACTION AND JUSTIFICATION:


Recommendation is based upon action taken by the Board of Supervisors on August 15, 2006.

Resolution contains determinations and findings based upon Board of Supervisors’ deliberation and discussion on August 15, 2006.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors conducted a noticed public hearing on June 13, 2006. The hearing was continued to August 15, 2006 for additional information. Formal action was taken by the Board of Supervisors on August 15, 2006, however a formal resolution with findings was not prepared until this date.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify text in resolution.

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: $

Draft Resolution

Source:

Internal Transfer

Unanticipated Revenue ______ 4/5’s vote

Transfer Between Funds ______ 4/5’s vote

Contingency ______ 4/5’s vote

( ) General ( ) Other

CLERK’S USE ONLY:

Res. No.: ___ Ord. No. ______

Vote – Ayes: ___ Noes: ___

Absent: ___ Approved

Minute Order Attached ( ) No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended

No Opinion

Comments:

Attest: MARGIE WILLIAMS, Clerk of the Board

County of Mariposa, State of California

By: Deputy

CAO: ___

Revised Dec. 2002


WHEREAS APN 018-040-002 is a 2,862.85 acre assessor's parcel encumbered by a Williamson Act Contract (Land Conservation Act Contract No. 71) for which a Notice of Non-Renewal has been recorded. Applications 2006-04, 08, 11, and a portion of 12 comprise a 864.21 acre portion of the 2,862.85 acre APN; and

WHEREAS APN 018-020-011 is an 8,433.71 acre assessor's parcel in a Williamson Act Contract (Land Conservation Act Contract No. 71) for which a Notice of Non-Renewal has been recorded. Applications 2006-05, 06, 07, 09, 10, and a portion of 12 comprise a 2,120 acre portion of the 8,433.71 acre APN; and

WHEREAS both of the existing APNs are in the Agriculture Exclusive (AE) land use and zoning designation. The property is located near White Rock Road and Highway 140 near the Merced/Mariroosa County line; and

WHEREAS on the 3rd day of February 2006, the Planning Director determined that:

1) Application Nos. 2006-04 through 2006-12, the applications for nine Certificates of Compliance, are a "project" pursuant to the California Environmental Quality Act (Section 15378, CEQA Guidelines and Section 21065, CEQA Statutes).

2) Application Nos. 2006-04 through 2006-12, together with the other applications for Certificates of Compliance which Redington Ranch LLC already submitted and which Redington Ranch LLC plans to submit for their other properties, may be considered multiple or phased projects pursuant to CEQA (Section 15165, CEQA Guidelines). Based upon pre-application meetings with planning staff, there are over 100 historic patent parcels within Redington Ranch LLC properties, for which submittal of applications for Certificates of Compliance are planned.
3) Review of all of Redington Ranch LLC’s applications for Certificates of Compliance is necessary to address CEQA implications of the project.

4) The project is not complete for processing until Redington Ranch LLC submits all of their applications for Certificates of Compliance; and

WHEREAS on the 13th day of February 2006, Redington Ranch LLC (by Morrison & Foerster LLP, Anne E. Mudge) (hereinafter referred to as appellant) submitted an appeal of the Planning Director’s determination regarding processing of the nine Certificate of Compliance applications and that appeal is known as Appeal No. 2006-69; and

WHEREAS a duly noticed Board of Supervisors public hearing was scheduled for the 13th day of June 2006; and

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

WHEREAS on the 13th day of June 2006, the Board of Supervisors did hold a public hearing on Appeal No. 2006-69 and considered all of the information in the public record, including the Staff Report packet, the Notice of Appeal, the comments of the appellant and the comments of the public; and

WHEREAS on the 13th day of June 2006, the Board of Supervisors continued the public hearing for Appeal No. 2006-69 to the 15th day of August 2006 at 2:00 p.m. or as soon thereafter as possible to give time to staff to address the legal issues raised; and

WHEREAS on the 15th day of August 2006, the Board of Supervisors did hold a continued public hearing on Appeal No. 2006-69 and considered staff comments concerning the legal issues associated with Appeal No. 2006-69.

NOW THEREFORE BE IT RESOLVED THAT the Board of Supervisors of the County of Mariposa does hereby uphold Appeal No. 2006-69 and reverses the Planning Director’s February 3, 2006 action relative to processing of the nine Certificate of Compliance applications.

BE IT RESOLVED THAT the Board of Supervisors makes the following determinations as part of their action to uphold Appeal No. 2006-69:

1. The nine unconditional Certificate of Compliance applications submitted by Redington Ranch LLC are not a project under CEQA. CEQA does not apply to processing of the Unconditional Certificate of Compliance applications submitted by Redington Ranch LLC under current controlling law.

2. The nine Certificate of Compliance applications, Nos. 2006-04 through 2006-12, together with other applications for Certificate of Compliance submitted by
the applicant, are not a multiple or phased project for purposes of CEQA under current controlling law.

3. The total number of unconditional Certificate of Compliance applications for the Redington Ranch LLC property does not change or affect the fact that individual applications are ministerial applications pursuant to CEQA.

4. Certificate of Compliance Application Nos. 2006-04, 2006-05, 2006-06, 2006-07, 2006-08, 2006-09, 2006-10, 2006-11, and 2006-12 for nine historic patent parcels within portions of Assessors Parcel Number (APN) 018-040-002 and APN 018-020-011 are complete for processing without any additional CEQA review requirements. The Planning Director is directed to commence review and processing of the applications according to all other pertinent requirements of the Government Code, and other applicable law and policy, including routine processing requirements relative to constructive notice regarding Williamson Act provisions (see Paragraph 10 in Findings below).

5. Section 2.520.C.7 of the Mariposa County Environmental Review policy is not consistent with the limitations of the California State Constitution and is not governing.

6. Williamson Act Contract No. 71, which encumbers the subject property, does not restrict issuance of the nine unconditional Certificates of Compliance for which applications were submitted.


8. The applicant shall comply with all requirements of the application process to ensure there is adequate information for review of the parcel history data to support the requested Certificate of Compliance.

9. The nine applications for Certificates of Compliance at issue are to be processed based on this decision and as required by the Government Code and applicable law.

BE IT FURTHER RESOLVED THAT the Board of Supervisors makes the following findings in support of their action to uphold Appeal No. 2006-69:

1. The action by the Board of Supervisors on Appeal No. 2006-69 is binding only with respect to the nine Certificate of Compliance applications which are the subject of Appeal No. 2006-69.
2. The action by the Board of Supervisors on Appeal No. 2006-69 may be used as policy and guidance to the Planning Director with respect to processing of other similar applications for unconditional Certificates of Compliance.

3. The Board of Supervisors has jurisdiction to hear and act upon this appeal and all appeal issues for Appeal No. 2006-69.

4. Based upon consideration of the record for the portion of the public hearing conducted on the 13th day of June 2006, the Board of Supervisors is not required pursuant to the mandatory provisions of its Rules of Procedure to reopen the public portion of the public hearing during the continued hearing conducted on the 15th day of August 2006.

5. As stated in the case of Lakeview Meadows Ranch v. the County of Santa Clara, under Government Code Section 66499.35, once the County determines a property for which an Unconditional Certificate of Compliance has been submitted complies with the provisions of the Subdivision Map Act and local ordinance, the County shall cause the Certificate of Compliance to be filed for record with the County Recorder.

6. The Government Code defines the duties to be performed in evaluating an application for Certificate of Compliance.

7. Local regulations cannot supersede state law.

8. Williamson Act contract provisions and restrictions apply to patent parcels for the term of the contract, including any subsequent sale or conveyance, and a Certificate of Compliance conveys no land development rights to those parcels. Because no rights contrary to the contract are created the Williamson Act contract does not restrict the issuance of unconditional Certificates of Compliance.

9. Pursuant to Paragraph 11 of the standard Mariposa County Williamson Act Contract, no new “division of land” occurs when an unconditional Certificate of Compliance is issued for a patent parcel which predates the execution of the Williamson Act contract.

10. The Board of Supervisors finds it appropriate as has been the practice of the County to record constructive notice language on the face of Certificates of Compliance for historic patent parcels under contract to inform property owners about contract requirements and to advise that not all parcels may be developable pursuant to contract restrictions. Appropriate constructive notice language, which has been routinely required by Mariposa County, is as follows:

“This parcel is enforceably restricted by a Land Conservation Act (LCA) Contract Recorded as Document No. ____, Mariposa County Records. This Contract limits use of the parcel to agricultural and compatible uses. Occupancy of residences on this parcel is restricted to persons directly engaged in the agricultural operations on site. Pursuant to the contract
provisions, the agricultural use must be profitable except under uncontrollable circumstances. This parcel was found to be in compliance with Mariposa County’s policies for implementing the California Land Conservation Act because it was a part of an agricultural operation involving multiple adjacent parcels. Should this individual parcel be conveyed separately to another owner in the future, the new owner is advised: This individual parcel has not been reviewed and approved by Mariposa County in accordance with Mariposa County’s policies for implementing the California Land Conservation Act, including the specific terms and restrictions of the Land Conservation Act Contract Recorded as Document No. _____ . Such restrictions may include a prohibition against building a single-family dwelling or the imposition of conditions as may be required by the Mariposa County General Plan. The County makes no guarantee a house can be constructed on this parcel, nor guarantees any other permits or entitlements. This certificate of compliance merely certifies that a separate parcel exists, the County makes no warranty regarding its potential development.”

ON MOTION BY Supervisor Pickard, seconded by Supervisor Fritz, this resolution is duly passed and adopted this twelfth day of September, 2006 by the following vote:

AYES: Stetson, Turpin, Bibby, Fritz, Pickard

NOES: None

EXCUSED: None

ABSTAIN: None

[Signature]
Lee Stetson, Chairman
Mariposa County Board of Supervisors

ATTEST:

[Signature]
MARGIE WILLIAMS
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM

[Signature]
THOMAS P. GUARINO
County Counsel