DEPARTMENT: Planning

BY: Kris Schenk, Deputy Director
PHONE: 742-1215

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2006-69 with findings, upholding the Planning Director's determination that the application is incomplete, requiring all of the property owner's applications for certificates of compliance, and requiring execution of "copy" contracts for a parcel or parcels recognized through the certificate of compliance process as long as that parcel or group of parcels complies with the minimum acreage for entering into contract pursuant to Mariposa County policy.

Justification is provided in Memorandum to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors approved Agricultural Preserve Application No. 71 for the San Felipe Ranch and Contract No. 71 was recorded on March 1, 1978 in Volume 179 of Official Records at Page 682, Mariposa County Records.

A Notice of Non-Renewal for remaining portions of Contract No. 71 (now owned by Redington Ranch LLC) was recorded on February 2, 2006 as Document No. 2060706, Mariposa County Official Records.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Uphold appeal but modify the Planning Director's requirements.

Grant appeal, reversing the Planning Director determining and directing staff to process the applications which have been submitted to date. There will be portions of the ranch which are not covered by a legality determination and the Assessor will be unable to assign new APNs to the recorded certificates of compliance. Issuance of building permits to portions of ranch not within a certificate of compliance parcel will be affected.

| Financial Impact? ( ) Yes (X) No | Current FY Cost: $ | Annual Recurring Cost: $
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<td>Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded</td>
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Memorandum to the Board with Attachments:
A. Notice of Appeal
B. Land Conservation Act Contract No. 71
C. Correspondence

Res. No.: 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:

CAO: __________________________

Revised Dec. 2002
TO: KRIS SCHENK, Planning Director
FROM: MARGIE WILLIAMS, Clerk of the Board


THE BOARD OF SUPERVISORS OF MARIPosa COUNTY, CALIFORNIA

ADOPTED THIS Order on August 15, 2006

ACTION AND VOTE:

Kris Schenk, Planning Director;

BOARD ACTION: Kris Schenk, Planning Director, was present. Thomas P. Guarino, County Counsel, advised that this appeal involves applications for nine unconditional Certificates of Compliance filed by Redington Ranch on December 29, 2005. He advised that this opinion is being provided at the request of the Board of Supervisors and is intended to address the legal issues raised with respect to these applications. He noted that the appeal packet indicates that in part the concern over these applications is driven by the fact that Planning staff expects to receive over 100 applications for the Redington Ranch and has, in fact based on the packet, received approximately 60 more applications during this appeal process. There is also the concern by some and hope by others that the decision by the Board of Supervisors today will essentially resolve Certificate of Compliance issues with respect to how the County reviews and processes applications for such certificates. This is not entirely the case, as the Board's decision today will be binding only with respect to the nine Certificates of Compliance before it. It will provide policy and process guidance for County Planning with respect to other applications for unconditional Certificates of Compliance, and to the extent other applications that are similarly situated, and based on the facts of the particular certificate applied for, be of use as a precedent for processing other applications. What today's decision will not do is establish a rigid rule for applications for an unconditional Certificate of Compliance. This is because, not only are some
only are some applications factually different, Certificates of Compliance themselves are of different types. There are those that are issued as conditional Certificates of Compliance, this essentially means that the parcel for which the application is filed does not comply with the provisions of Government Code Section 66499.35 for issuance as an unconditional Certificate of Compliance, and there are those issued as unconditional Certificates of Compliance. The nine Certificates of Compliance at issue in this matter appear to be unconditional Certificates of Compliance; and therefore, this legal opinion is limited to such certificates.

County Counsel advised that with respect to these Certificates of Compliance, several issues have been raised. These range from legal issues to procedure and process issues as to whether legislative acts, such as the California Environmental Quality Act (CEQA) and the Williamson Act somehow restrict the issuance of these Certificates of Compliance.

Counsel stated he will address the procedural issues first.

Redington Ranch challenges the Board of Supervisors’ authority to hear this matter. In footnote 11 at page 22, circle page 33 of the packet, it states in part “In the alternative, Redington Ranch avers that the Board of Supervisors is without jurisdiction to hear an appeal from the Planning Director’s determination…” Other than the footnote, buried very deep in the submittal, Redington Ranch and no one else in support of or in opposition has substantively argued or further raised this issue. He advised that it is his opinion that the Board of Supervisors has express authority to hear the matter. The appeal in this case is according to the Planning Department memo of June 2, 2006, at circle page 2 of the packet, “governed by Mariposa County Resolution 92-525.” The procedures with respect to appeals, pursuant to the resolution specifically state in part “If the appeal is from a decision of a land division, lot line adjustment or certificate of compliance…” the appeal must be filed within 10 days. This is express authority for the Board to hear the appeal. Redington Ranch also filed its appeal in part pursuant to other applicable provisions of the law, circle page 17 of the appeal packet. This in County Counsel’s opinion is consent to the process. Accordingly, jurisdiction is vested in the Board.

A second procedural issue has arisen based on a letter sent to the Board of Supervisors with respect to whether the hearing should be reopened. This letter is dated June 28, 2006, from the Farm Bureau. While this letter to County Counsel’s knowledge was not sent to the appellants by the Farm Bureau, he has furnished them with a copy. The applicable Rules of Procedure provide for a formal sequence of events that include the following: Step 1, opening of the meeting; Step 2, staff presentation, including Board of Supervisors questions; Step 3, appellant presentations and evidence and speakers in support; Step 4, opponents presentation and evidence and speakers in opposition; Step 5, rebuttal by the appellant; Step 6, clarification by Board of Supervisors and staff response to questions raised in the public process; Step 7, staff procedural issues including additional staff research or information; and Step 8, deliberation. Counsel stated he has reviewed a transcript of the proceedings as well as the actual tapes. The following occurred: The Chairman stated that after Ms. Cole spoke that he intended to close the public portion of what was essentially step 4, the presentation of speakers in opposition. Counsel for the appellants, Ms. Mudge indicated that she desired rebuttal, step 5. Staff (Kris Schenk, Planning Director) responded to Board of Supervisors’ questions, that was step 6. During the discussion, Supervisor Turpin asked a question; and Mr. Starchman, appellant’s counsel was allowed to speak, As he recalled, Mr. Starchman vigorously asserted that he was part of the process and not the public. This could be considered either further rebuttal by the appellant or argument by counsel. If it is considered as further rebuttal, then it would have been the Chair permitting a reversion to step 5 of the process. If not, it would simply be argument, albeit out of order by counsel for the appellant. Staff’s discussion continued, step 6. Then there was a discussion with the Board’s Counsel, himself, step 7, asking for time to conduct further research for today’s presentation. Permission was then requested of the Board to let Counsel for the Board ask the Planning Commission to delay their proceedings. Then Counsel for the Board mentioned that the Board would be in its deliberation phase as the next step, but no action was taken
would be in its deliberation phase as the next step, but no action was taken by the Board to begin deliberations. This would be consistent with waiting for today's requested opinion. Counsel advised that this sequence of events is important because the Board by its own rules shall reopen the public portion of the hearing if new evidence is taken and the public is to be allowed to address such evidence. He stated it is generally understood that an attorney's argument does not equal evidence. Mr. Starchman had mentioned in his comments the emotions of the situation, that the parcels were under the Williamson Act, the rockslide, and Agriculture Exclusive zoning, all matters previously discussed both in opposition and in support of the application. He stated that it is his opinion that Mr. Starchman's statements do not appear to equal evidence that would require reopening of the public portion of the hearing. It is therefore his opinion that the Board of Supervisors is not required to reopen the hearing under the mandatory provisions of its Rules of Procedure. Should the Board desire to reopen the hearing in some manner, the rules provide that there must be a motion and a vote by the Board to alter those procedures.

Counsel then stated he would move to the substantive legal issues he has identified from the submittals, and he stated the Board is free to ask others and he will do his best to answer. He advised that the Planning Director identified four determinations which are appealed by Redington Ranch, and other issues have also been raised. He stated he has identified the following general areas and will address his comments in this order:

1) that the nine certificates are a project under CEQA;
2) that applications 2006-04 and 2006-12, together with other applications for Certificates of Compliance may be considered a multiple or phased project;
3) review of all Certificates of Compliance is necessary to address CEQA; and
4) the project is not complete for processing.

He advised that the following issues were also raised during the appeal:

5) Whether the number of Certificates of Compliance triggers CEQA by converting them from a ministerial act if they are ministerial to Certificates of Compliance, that would be discretionary.
6) That Section 2.520.C.7 of the Mariposa County Environmental Review Policy allows the certificates to be determined by County regulation to be discretionary rather than ministerial.
7) Does the Williamson Act restrict the issuance of the nine unconditional Certificates of Compliance that were applied for?
8) Does the issuance of the Certificate of compliance constitute a "division" under paragraph 11 of the controlling contract, so that new contracts are required to be executed?

Counsel further stated that in order to answer these questions, it is necessary to examine the law applicable to the requested certificates. At issue are nine unconditional Certificates of Compliance. Government Code Section 66499.35 sets forth the requirements necessary for an applicant to obtain a Certificate of Compliance. As stated in the case of Lakeview Meadows Ranch v. the County of Santa Clara, a 1994 decision, under Government Code Section 66499.35, once the County determines the property complies with the provisions with the Subdivision Map Act and local ordinances, the local agency, in this case the County shall cause the Certificate of Compliance to be filed for record with the Recorder in the County for which the real property is located. While there is not a great deal of case law on this specific issue, the authority reviewed is controlling. The authors of several leading treatises are in agreement that the County must issue the certificates once the requirements of Government Code Section 66499.35 are met. He advised that the
advised that the treatises that he is referring to are Curtins Land Use and Planning Law, Longtions, California Land Use by Miller and Starr on California Real Property and the continuing education of the Bar treatise entitled the California Subdivisions Map Act. These are all leading treatises in the area and used by both courts and staff in making a determination. The nature of the “shall” command in Government Code Section 66499.35, that is whether the action of issuance is one that is discretionary or ministerial, is answered by reviewing the language of the controlling statute in this matter. This section defines and proscribes the duties to be performed in evaluating an application for a Certificate of Compliance with both precision and certainty so as to leave little or nothing to the exercise of discretion or judgment. This interpretation of the statute and what is considered “ministerial” is consistent with an opinion rendered by legislative counsel during legislative deliberations over Assembly Bill 889, which in part created Public Resource Code Section 21080 which deals with the scope of CEQA with respect to ministerial and discretionary projects. Legislative counsel in those discussions defined a ministerial act as one that, with respect to the performance of which a public officer can exercise no discretion, such as an act or duty as may be prescribed by some existing law which it is incumbent upon the official to perform precisely as laid down by the law. This history regarding exempting ministerial acts is contained in the 1987 case of the Friends of Westwood, Inc. v. the City of Los Angeles.

Therefore his conclusion and opinion is that the issuance of an Unconditional Certificate of Compliance with respect to the nine certificates in this case would be a ministerial act. He advised that if it is determined that the patent for the property complies with the statutory process the Certificate of Compliance must be issued. He advised that this conclusion is supported by and is in fact the legal conclusion of the following precedents: the 1993 case of Findleton v. The Board of Supervisors of El Dorado County, Hunt v. County of Shasta, and Attorney General Opinion Number 91-105. He advised that because the act is one that is ministerial, the questions under CEQA are also resolved. He stated that it is clear from case law and the Public Resources Code where the CEQA statutes are located that ministerial projects are exempt. To the extent a project falls within a statutory exemption, it is not subject to CEQA even if it has the potential to significantly affect the environment, and this is supported by the case of Communities for a Better Environment v. California Resources Agency. Because there is controlling state statutory authority, local regulations cannot in this case supersede state law. He advised that the Planning Director is correct when he refers to the 1987 case of Friends of Westwood v. City of Los Angeles for the proposition that a local official has the right to exercise discretion under local development codes. However, to the extent local regulation would conflict with state statute, the use of a local ordinance in such a manner is not supported by his research. The Command of the California State Constitution at Article 11, Section 7, is clear that the authority to enact ordinances and rules such as those at issue here is only to the extent they do not conflict with state law. The decision of the Third Appellate District in the case of Friends of Davis v. City of Davis supports this conclusion. He stated that while the Planning Director is correct about the conclusion of the Westwood Case, because the case involved an exercise of discretion with respect to a local ordinance, it is not in his opinion, controlling in this matter. Rather, he opined that the provisions of the California Constitution that prohibit applying a local regulation contrary to controlling state law would rule in this case.

Counsel advised that another issue before the Board is how the Williamson Act affects the issuance of an unconditional Certificate of Compliance. He noted that this issue is not one that was originally raised by either the Planning Department or the appellant in initial submittals; however, it is one that has been extensively briefed and argued and he has researched the issue. He stated that it is important to note that the land for which the unconditional certificates are requested is subject to patents that existed well before the Williamson Act contract was in place for the underlying parcels. Therefore, he believes that the status of the underlying patent parcels is that they existed prior to the contract. That they are subject to the restrictions of the Williamson Act cannot be disputed and in fact is admitted by the appellants. Even if the Board
determines that the unconditional certificates requested in this case should be issued, the certificate issued would convey no land development rights and would contain the following language:

"This parcel is enforceably restricted by a Land Conservation Act (LCA) Contract Recorded as Document No. 87-0674, 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. 87-0674. 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. This certificate of compliance merely certifies that a separate parcel exists, the County makes no warranty regarding its potential development." He advised that it is his understanding from his research that this is the language that has consistently appeared on Certificates of Compliance.

Therefore, Counsel advised that the Williamson Act limitations remain in place and no development rights are conferred by the mere issuance of the unconditional certificate. A patent parcel recognized through the certificate of compliance process would carry the Williamson Act burdens for the term of the contract including any subsequent sale or conveyance. Because no rights contrary to the contract would be created, it is his opinion that the Williamson Act does not affect the issuance of an unconditional Certificate of Compliance. He noted that the issue has also been raised that paragraph 11 of the Williamson Act Contract in this case requires the issuance of a contract with identical terms for each certificate. In fact the statement that "in the event the land under this contract is divided" an identical contract to that for the original parcel must be executed by the owner — lends itself at first reading to an interpretation that such contracts could be required for the parcels which would appear, with their own (APNs) Assessor Parcel Numbers, on the parcel map of the County.

Counsel advised that the appellants cited in their power point presentation Attorney General Opinion 75-80 and this opinion deals with whether a city may close a street in its jurisdiction where it intersects with another county's boundary. Based on his research, he believes that they intended to refer to a 1992 opinion of the Attorney General at 74 Opinions Attorney General, page 278, which discusses whether a county may require a new contract upon subdivision of land or impose new terms upon the subdivision of land. While the opinion of the Attorney General could be helpful, it is his opinion that because the county has acted to specifically restrict the application for a Certificate of Compliance in the newer Williamson Act contracts, to interpret the issuance of an unconditional Certificate of Compliance under the older version as a division would be inconsistent with the prior legislative acts of the Board. As an independent basis for his opinion, he relied on the previous analysis with respect to the Williamson Act which in effect leads to the conclusion that no new division of land occurs when an unconditional certificate is issued for a patent parcel which predates the creation of the contract.

Counsel provided the following answers to the original questions that were posed at the beginning of his presentation, and he opined as follows:

1) That the nine certificates are a project under CEQA. He advised that it is opinion that they are not.
2) That applications 2006-04 and 2006-12, together with other applications for Certificates of Compliance are a multiple or phased project for purposes of CEQA. He advised that it is opinion that they do not.
3) Review of all Certificates of Compliance is necessary to address CEQA. He advised that it is his opinion that CEQA is not applicable to these certificates under current controlling law.

4) That the project is not complete for processing. He advised that this issue does not appear to be an issue at this time as the appellants have in effect already submitted the majority of the applications the Planning Director requested. He stated it is important to note that the Planning Director has a right to request information he believes is reasonably necessary to review a project or to process an application. Therefore, because the information requested has essentially been submitted through subsequent events after the original filing of the appeal, the Board could determine that this requirement of the Planning Director has already been met.

5) Whether the number of Certificates of Compliance triggers CEQA by converting them from a ministerial act to certificates that would be discretionary. He advised that it is his opinion that the number of applications in this case does not affect such a conversion.
6) That Section 2.520.C.7 of the Mariposa County Environmental Review Policy allows the certificates to be determined by County regulation to be discretionary rather than ministerial. He advised that it is his opinion that this regulation does not affect such a conversion due to the limitations of the Government Code and California State Constitution.
7) Does the Williamson Act restrict the issuance of the nine unconditional Certificates of Compliance that were applied for? He advised that it is opinion that it does not.
8) Does the issuance of the unconditional Certificate of Compliance constitute a “division” under paragraph 11 of the controlling contract, so that new contracts are required to be executed? He advised that it is opinion that this issuance does not affect a division. It is merely recognition of a pre-existing parcel.

Counsel advised that this concludes his analysis, and he advised that this would be the appropriate time for the Board to ask questions of staff.

Supervisor Bibby referenced a section in the minutes for the hearing (June 13, 2006) where the Deputy Planning Director talked about determining the legal existence as a legal parcel and not just a portion, that recognizing these in piece meal may create problems with remainders; and she asked if the Planning Director has information as to whether there are any problems and whether the applications would create boundary issues, or whether there would be a remainder. Kris Schenk advised that his recollection is that there may be three certificates where there were questions about the legal exceptions, the remainder pieces. He feels that they have the information for the remaining applications that have been submitted so that they could process the applications without substantial further questions. Supervisor Bibby asked whether they are complete applications or whether there is any follow-up information that Planning needs regarding the legality of the applications, i.e., the record and history of the patents. Counsel advised that only the nine certificates are before the Board today that the Planning Director can comment on. But he stated that if we presuppose that the Board were to find today that this matter goes back to the Planning Director for issuance of the certificates, all that would happen is that he would apply the process established by the Government Code and each of those applications would have to pass muster according to the provisions of the Government Code for issuance of the certificates. The Board’s decision today would not result in a mandatory direction that the certificates be issued because of the timing and the posture in which this appeal comes to the Board – the appeal comes to the Board because the applications haven’t been processed all of the way through because of these other concerns. If these other concerns don’t apply to the nine certificates,
nine certificates, then the Planning Director, and probably with this decision as guidance, would look to process the balance of any applications according to the requirements of the Government Code. Supervisor Bibby advised that she wanted to make sure that the applicants understand that the Board is not saying today that these are definitely legal, that review still needs to be verified through Planning. Counsel advised that this could be a part of the Board’s findings today. Supervisor Bibby asked County Counsel to summarize his analysis for the general public relative to the issues of whether the parcels are in existence and that CEQA doesn’t apply because they are already there and they can’t be denied. Counsel stated he does not believe that the Planning Department has completed its review of all nine certificates to state whether they were legally pre-existing historic parcels. That would depend on reading the patents, following the steps with the statute, applying the statutory requirements for that determination; and they will get either an unconditional or a conditional certificate if they are so entitled. That review has not been undertaken to date and the decision of whether they get a conditional or unconditional certificate is not on appeal before the Board today. The Board’s decision today includes whether or not, based on the law and the material presented, it feels the Planning Director can apply CEQA as a basis to review the certificates. Supervisor Bibby asked County Counsel to clarify the language he read relative to the requirements for compliance with all state laws, in addition to contracts, and County ordinances that appears on the Certificates of Compliances. Counsel advised that what he read is in part from the Certificates of Compliances that the County issues, and that was provided by the Planning Department and it came up as a part of the evidence submitted to the Board. He believes that the statute also permits just such a statement on Certificates of Compliances and it has been a long-standing practice. He does not know if it would apply to a conditional certificate, but that is what is currently with unconditional certificates. Supervisor Bibby asked for confirmation that without a doubt, on a normal Certificate of Compliance that is unconditioned, that language should appear putting everyone on notice that it will still have to comply with Williamson Act Contracts, state laws, as well as County ordinances, and that the parcel may not be developable depending on the circumstances on a case-by-case basis. Counsel advised that the evidentiary testimony before the Board in the hearing process is that the statement appears on all unconditional certificates that are issued.

Counsel clarified the hearing procedures with regard to the deliberation phase. Supervisor Bibby asked whether County Counsel has received any information that would open the hearing back up to public input, including the information received during public presentations this date. Counsel advised that he provided his opinion on the letter that he is aware of, i.e., Farm Bureau letter of June 28th; and the fact that someone came in this morning during public presentations and tried to attack the process of these proceedings, was in his opinion an inappropriate attempt to try and get the issue to the Board. He has not included it in his review. The appropriate process would have been to petition the Board through the process and that has not been done. He only responded to the letter because it was copied to him and it wasn’t provided to the appellants, and he wanted to assist the Board in providing due process throughout this hearing. He stated the Board could take action to reopen the hearing, but he does not see any requirement for the Board to take any more public comment. Motion by Bibby to reopen the public input portion to new facts that the Board hasn’t received before, anything pertaining to those specific issues regarding CEQA, the application, and historic parcels if there is evidence that we have not received to date. Counsel clarified that the Board should only reopen the hearing if additional evidence had been received during the process for which an opportunity to respond had not been given. Supervisor Bibby asked whether staff has received any new information. Counsel advised that whether or not staff has received new submittals, they are not part of the matters currently before the Board for appeal. Supervisor Turpin asked for clarification that there are no development rights guaranteed with an application for a Certificate of Compliance. Kris Schenk advised that is correct. Supervisor Turpin clarified that with the notice of non-renewal for the Redington Ranch, at the end of the contract (19 years remaining) the land is still zoned as Agriculture Exclusive; and his understanding is that if someone applies for a permit, they still need to comply with all requirements. Kris Schenk advised that
comply with all requirements. Kris Schenk advised that all requirements would need to be met under the Agriculture Exclusive zone and the General Plan and any other regulatory requirements that would apply. Supervisor Turpin asked whether in recent history, this Board or any other Board has allowed Agriculture Exclusive zoning to be changed. Kris Schenk advised that he is not aware of any conversion of Agriculture Exclusive zoned land in recent history in the County. Supervisor Bibby asked for clarification that this is in no way vesting that Williamson Act contract, that is a separate issue, and the same way with the development, and separate before the Board today is merely the Certificate of Compliance and the application as to whether CEQA applies or not. In other words, we will not hear from the applicant down the road should Williamson Act contracts be amended as a County policy. Counsel advised that any Williamson Act contract in the County to the extent that you are able to amend it is a separate issue and is not being appealed today. The appellants contend that the Williamson Act issues are not properly a part of this process as they did not constitute one of the four basic reasons that the Planning Director gave and they proceeded to argue those issues. The Planning Director stated that, based on his analysis, the Williamson Act does not impact the decision as to whether an unconditional certificate is issued. The appellants would be subject to any future rules and regulations that are appropriately enforceable against them. However, if they have non-renewed, and that fact is before the Board, it is unlikely that you could mandatorily force them into the new version of the contract that is coming down the road. But if they voluntarily enter into that contract, like anyone else, they would be subject to what they have agreed to. Supervisor Bibby asked if this would also apply to development requirements as they are amended and for permits or entitlements that are applied for. Counsel advised that to the extent any new requirements would apply, they would apply. This hearing today doesn’t include those issues. Supervisor Bibby stated she wanted to make sure that it is clear on the record and for the applicants that those issues are totally separate. Chairman Stetson asked Supervisor Bibby if she is withdrawing her previous motion, and she responded in the affirmative based on the clarification received from County Counsel.

Chairman Stetson advised that the Board is in the deliberation phase of the hearing. (M)Pickard, (S)Fritz, Res. 06-388 was adopted upholding the appeal; finding that there is enough information to begin processing the nine Certificates of Compliance; and that they should move forward without any CEQA review, and with continuing to use the current language in the Certificates relative to patent parcels under contract with Williamson Act for Certificates of Compliance that are issued. Supervisor Bibby asked for clarification on the record that the current language that provides notice to the property owner and future owners will remain in the Certificates of Compliance; and that this section is a binding notice/disclaimer that the property may not be developable – there will be a set of criteria that would need to be met when a permit is applied for. Counsel responded that is correct. Supervisor Turpin clarified that the issuance of a Certificate of Compliance does not guarantee or ensure that those development rights will be there. Counsel advised that was his opinion. Supervisor Bibby stated she feels that this is also the opinion of many counties that this is a separate review. Supervisor Pickard stated he agreed and he noted that this does not open the door to development on any of those parcels; they will still need to be processed with any future application for building permit or otherwise. He commented on the importance of the Williamson Act and how it is enforced and that the requirements are upheld. He feels that the public should walk away from this meeting realizing that the Board followed a process as outlined that it must follow relative to processing the Certificates of Compliance. He feels that the County needs to continue to diligently look at the Williamson Act issues as well as the General Plan in preserving ag land and the rural character of the County. Supervisor Bibby commented that Planning is still going through the process of reviewing the applications to determine whether they are legal parcels and tracking the history of them, and that the applicant will still need to cooperate with that process and provide whatever information is necessary for the Planning Department; and she clarified that the law is what it is and we may not like it. She personally looks at these as creating problems into the future as well as with Williamson Act, so she hopes that we can enforce the Williamson
Williamson Act and do careful reviews as far as the legality of the parcels to ensure that they were legally created as the parcels may qualify for a building permit in the future. She complimented the Planning Department for being very careful in these matters. Supervisor Stetson commented on the intensely concerned citizens in this process that are looking for mechanisms that can slow the process of the degradation of our landscapes. This is a growing and urgent concern on the part of many people to maintain the quality of our landscapes, and he applauds that effort. Ayes: Unanimous.

Counsel advised that the next step in the process is for staff to prepare a formal resolution for a future agenda for processing. He clarified the motion as he understood it to be as follows – the findings are that the Planning Director’s determination is overturned and the appellant upheld; that these matters will be sent back to the Planning Director for processing; that it is the Board’s finding that the CEQA review process is not applicable; that the patent parcels when they are processed must still comply with the requirements of the Subdivision Map Act; that the language contained in the certificates is found to be applicable to unconditional certificates that will be issued in this case; that the Williamson Act is not a restriction on the issuance of an unconditional Certificate of Compliance because it is simply recognizing the existence of an underlying pre-existing parcel; and that the applicant must comply with the process in order to do whatever is necessary to obtain the completion of the Certificates of Compliance. Supervisor Pickard confirmed that this clarifies the motion. Supervisor Bibby asked for clarification that County Counsel advised that there is no assurance that these parcels are developable. Counsel advised that is what it says in the language in the certificate and that is the language that will be included so that in effect will achieve that end. He advised that these would be the findings and direction, to be phased as articulately as possible, in the formal resolution. Chairman Stetson advised that unless there were any objections, the clarified motion is agreed to.

Cc: Tom Guarino, County Counsel
    File