

DEPARTMENT: Planning

BY: Sarah Williams, Deputy Director
PHONE: 742-1215

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt Resolution Granting Appeal No. 2009 with findings.

OR

Adopt Resolution Denying Appeal No. 2009-114 with findings.

(NOTE: Board to take ONE of above actions only.)

- Justification to deny appeal was provided in Staff Report to Board of Supervisors prepared for public hearing conducted on November 3, 2009.
- Discussion regarding granting appeal occurred at the public hearing on November 3, 2009.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

- 10/13/09: Public hearing scheduled. Continued by Board at request of Farm Bureau and concurrence of appellant.
- 11/3/09: Board took initial action at public hearing on Appeal No. 2009-114. Action was to grant appeal and reverse Planning Director's action. However, no formal resolution was prepared for action. Board directed staff to bring back resolution with findings.
- 12/1/09: Staff scheduled draft resolution to grant appeal for Board's consideration. County Counsel requested matter be continued. Board continued item to 12/15/09.
- 12/15/09: Board considered draft resolution to grant appeal. Board acted to reopen the public portion of the hearing and continued hearing to 1/19/10.
- 1/19/10: Continued hearing to be conducted.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify findings. Continue hearing for additional information.

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 _____ 4/5's vote
 Transfer Between Funds _____ 4/5's vote
 Contingency _____ 4/5's vote
 () General () Other

Memo to Board with Attachments:
 A. Draft Resolution with Findings Denying Appeal
 B. Draft Resolution with Findings Granting Appeal
 C. Board Minute Orders (10/13, 11/3, 12/1, 12/15/09)
 D. Vicinity Map
 E. Board Resolution 97-3
 F. Referenced County Code Sections
 G. Public Input

CLERK'S USE ONLY:

Res. No.: 10-37 Ord. No. _____
 Vote - Ayes: 3 Noes: _____
 Absent: _____
 () Approved
 (X) Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments:

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

CAO: 



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN
LYLE TURPIN
JANET BIBBY
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board ~~WILLIAMS~~

SUBJECT: APPEAL NO. 2009-114, CERTIFICATE OF COMPLIANCE – FRACTIONALIZED PARCELS/MILLER AND CLIFTON
Res. 10-37

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on January 19, 2010

ACTION AND VOTE:

2:02 p.m. Kris Schenk, Planning Director;

Adopt a Resolution for Action on 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 Near the Merced/Mariposa County Line) Continued from December 15, 2009

BOARD ACTION: Chair Cann advised that the public hearing is reopened as directed by the Board (on December 15, 2009). Kris Schenk advised of the options available to the Board for action. Sarah Williams, Deputy Planning Director, provided the staff report and reviewed the events and issues for this matter. Staff responded to questions from the Board relative to consolidation of certificates of compliance; status of other appeals relating to the subject property; definition of certificate of compliance; whether there was anything in the research to show intent for the fractionalized parcels; relative to the applicant being able to provide additional information; relative to the *Tehama* case and fractionalized parcels; whether there are any documents that define the fractionalized parcels; whether there was any discussion or explanation of why the boundary lines were drawn in straight lines on the grant deeds creating small parcels; whether the surrounding land is under Williamson Act; and relative to the assignment of Assessor Parcel Numbers (APN).

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

Appellants Presentation:

Jeff Miller held up a stack of documents that he brought, including abstracts of titles, court cases, and patents; and he advised that he was told that these were not needed by Planning. He advised that the only evidence he has relative to the creation of the fractionalized parcels is the oral testimony that he has given. He referred to the Board's appeal policies and functions of the Board relative to duties and operating procedures; and he advised that he does not feel that the

appeal procedures allow for a public hearing to be reopened, and he objects on those grounds. He expressed concern with the resolution process for this matter – he noted that Planning had a formal resolution prepared for one available action by the Board and not the other. He feels that leaves the appellants with the risk of having to go through two hearings. He feels that the Board made its decision on November 3rd and that the hearing cannot be reopened. If he is wrong on this matter, he feels that the resolution should be adopted at the end of the hearing and not at a later date. He noted that MERG's appeal was received after the Board's decision on November 3rd; and he feels that this process exceeds the existing appeal procedures as no new information was received. He noted that the Board's rules do not call for sworn testimony and he feels those procedures should be reviewed. He feels MERG's role is to discuss policy and land use issues, and that the issuance of certificates of compliance is a ministerial act. He referred to the testimony at the original hearing relative to his involvement with his family's business, and he advised that he is willing to provide sworn testimony. Supervisor Cann clarified his statement at the December 15, 2009 hearing relative to the testimony being uncollaborated and unsworn. Mr. Miller responded to questions from the Board relative to the intent when the property boundaries were established; and he advised that his family had lands in several counties and it was a long process. The boundaries in Mariposa County were drawn based on the productivity of the fields, value of the acreage and where the fence lines were to be placed. He advised of his request of the attorney to write separate deeds for each parcel, and the attorney advised him that it was not necessary – they were separate parcels as divided. He advised of the change in the property for the Lasgoity ranch; and he advised of his previous discussion with the Assessor's Office relative to APNs for the parcels. He responded to questions relative to applying the *Tehama* case and setting precedence; and he stated he feels that it applies to matters where the parties were deceased. He feels it will be very rare for someone in his situation to be alive and able to advise of the discussions that were held with the attorney on the intent.

Staff responded to questions from the Board relative to consideration of the patents and the issue of intent. Steve Dahlem, County Counsel, responded to a question from the Board relative to the issue of reopening the public hearing; and he advised that the Board did not take final action on November 3, 2009 on this matter.

Opponents Presentation:

Rita Kidd, MERG Board member, advised that they have been interested and involved in the decision making relative to historic parcels for a number of years. They completed a Public Records Act review and they were actively involved in questioning the recordation of parcels South of Highway 140. Their interest is in regard to the County's practice of issuing unconditional certificates of compliance. She referred to the *Tehama* case and previous testimony by Mr. Miller relative to foreclosures and deeding of properties and being able to have a complete chain of title of the parcels. She feels that the boundary lines were drawn because the attorney did not know about patents or didn't understand that he was violating the Subdivision Map Act. She referred to the previous testimony about the deed not being provided and the uncollaborated testimony. She advised that she prepared a complete transcript of the November 3rd proceedings and questioned the Board accepting the oral testimony. She referred to an appeal submitted in 2006 which addressed the issue of unconditional certificates of compliance. She advised that the State law allows for merger of parcels of substandard size. She referred to the history of the *Tehama* case and the subsequent full publication of the case. She recommended that the Board abide by Planning's first recommendation to deny the appeal, and she noted that this does not preclude Mr. Miller from coming forward with additional records for consideration.

Rebuttal:

Jeff Miller advised that the attorney did not draw the parcel boundary lines – his family did, and he does not feel that the Subdivision Map Act was violated as this was not subject to the Act. He provided input relative to the fractionalized parcels.

The public portion of the hearing was closed and the Board commenced with deliberations. Staff responded to questions from the Board relative to the fractionalized parcels on the other side of the boundary; approval of fractionalized parcels prior to the *Tehama* case and whether the subject parcels would have met the thresholds previous to the *Tehama* case; and relative to the title search process. (M)Aborn, (S)Bibby, Res. 10-37 was adopted denying Appeal No. 2009-114 with findings. Further deliberation was held, and Supervisor Turpin clarified that the option is still

available for further consideration of this matter. Ayes: Aborn, Bibby, Cann; Noes: Turpin, Allen.
The hearing was closed.

Cc: File

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 10-37

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 a recently 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"); 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 fractionalized patents are the following "parcel numbers" from the application diagram:

"Parcel 3" - 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;

"Parcel 5" - 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;

"Parcel 8" - 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;

"Parcel 18" - 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;

"Parcel 19" - 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;

"Parcel 27" - 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;

"Parcel 29" - 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;

"Parcel 30" - 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;

"Parcel 31" - 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;

"Parcel 32" - 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;

"Parcel 33" - 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;

“Parcel 34” - 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; and

WHEREAS the Planning Director was still unable to support the issuance of unconditional Certificate of Compliance to the fractionalized patents; 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. 97-3; 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, a draft Board Resolution with Findings Denying Appeal No. 2009-114, testimony presented by the public concerning the Planning Director Determination and Findings, the Notice of Appeal, and the comments of the appellant; and

WHEREAS the Board of Supervisors did take action on the 3rd day of November, 2009; the Board of Supervisors adopted Resolution No. 2009-537 preliminarily granting Appeal No. 2009-114 and reversing the Planning Director Determination, and directed staff to bring back a formal Resolution with findings supporting this action; and

WHEREAS pursuant to County Code Section 17.132.040.B and County Code Section 17.136.020, the decision of the Board of Supervisors shall be rendered by formal resolution; pursuant to County Code Section 17.132.040.C, the Board of Supervisor’s decision on the 3rd day of November 2009 cannot be considered “rendered” or final until a formal resolution with findings is adopted; and

WHEREAS on the 1st day of December 2009, staff prepared and scheduled a Resolution with Findings Granting Appeal No. 2009-114 for the Board of Supervisors consideration; and

WHEREAS the Board of Supervisors considered the information provided in the Board packet; and

WHEREAS on the 1st day of December 2009 the Board of Supervisors continued their consideration of the Resolution Granting Appeal No. 2009-114 until the 15th day of December 2009 to consider additional correspondence regarding the resolution; and

WHEREAS on the 15th day of December 2009 the Board of Supervisors discussed their procedural options, re-opened the public portion of the public hearing on Appeal No. 2009-114 hearing, and continued the hearing to the 19th day of January 2010; and

WHEREAS on the 19th day of January 2010 the Board of Supervisors did hold a continued public hearing on Appeal No. 2009-114 and considered all of the information in the public record, including the additional information provided in the memorandum to the Board of Supervisors, the two optional updated draft Board Resolutions with Findings, additional public input, 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.

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 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 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 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 fractionalized patents. Upon the publishing of this appellate case, the County no longer recognizes fractionalized 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 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.

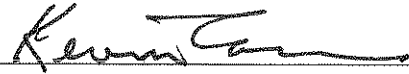
ON MOTION BY Supervisor Aborn, seconded by Supervisor Bibby, this resolution is duly passed and adopted this 19th day of January, 2010 by the following vote:

AYES: Aborn, Cann, and Bibby

NOES: Turpin and Allen

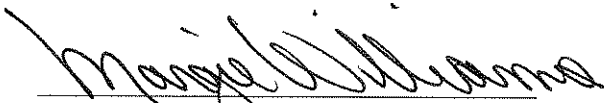
EXCUSED: None

ABSTAIN: None



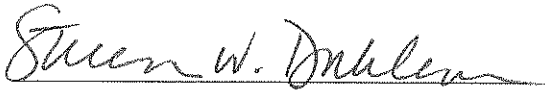
Kevin Cann, Chairman
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:



Steven W. Dahlem
County Counsel