

DEPARTMENT: Planning

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

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2010-44 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 five (5) parcels within Section 3 of the property.

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

Staff Report to the Board with Exhibits:
A. Vicinity Map
B. April 16th 2010 Planning Director Determination
C. Notice of Appeal No. 2010-44; Miller and Clifton
D. Information of Certificates of Compliance
E. Summary Information on "the Tehama Case"
F. Information about the Public Land Survey System
G. Draft Board of Supervisors Resolution

CLERK'S USE ONLY:

Res. No.: 10-356 Ord. No. _____
Vote - Ayes: 4 Noes: 0
Absent: _____
mm Approved
6 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: [Signature]

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 10-356

A resolution denying Appeal No. 2010-44 with findings, and upholding the Planning Director's determination regarding the "Crane Deed and a Foreclosure Sale List" for APN 016-080-016; 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 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); 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 of the requested thirty-four certificates, 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 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 Certificates of Compliance; and

WHEREAS, this position of the Planning Director regarding "fractionalized" patents was based upon 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"); 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 application for twenty-two Certificates of Compliance was approved by the Planning Director on the 15th day of September 2008 and Certificates of Compliance were recorded on the 26th day of September 2008; 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 the 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 Certificates of Compliance to the fractionalized patents; and

WHEREAS, an appeal of the Planning Director’s July 30th 2009 determination was received from Jeff Miller and Layne Clifton and that appeal is known as Appeal No. 2009-114 and was made to the Board of Supervisors; and

WHEREAS, during processing of Appeal No. 2009-114, property owner Jeff Miller submitted an application for Building Permit No. 28614 to construct a garage near his existing residence, located on one of the fractionalized patents; and

WHEREAS, because no action had yet been taken on Appeal No. 2009-114, and a Certificate of Compliance had not yet been recorded for the fractionalized patents, Building Permit No. 28614 could not be authorized by Mariposa Planning due to parcel legality issues; and

WHEREAS, on the 1st day of December 2009 the property owner submitted an application for a “Consolidated” Certificate of Compliance to combine the acreage of Parcel 29 listed above, “fractionalized” Patent P-152, with “whole” Patent P-282 for which a Certificate of Compliance had already been issued; and

WHEREAS, the “Consolidated” Certificate of Compliance was intended by the property owner and applicant Jeff Miller to be a temporary solution to enable the issuance of Building Permit No. 28614, pending resolution of Appeal No. 2009-114; and

WHEREAS, on the 4th day of December 2009 the Planning Director approved the application for the “Consolidated” Certificate of Compliance and a Certificate of Compliance was recorded as Document No. 2084113, Mariposa County Records on the 8th day of December 2009; and

WHEREAS, as a result of the recordation of the Certificate of Compliance, the Planning Director authorized the issuance of Building Permit No. 28614, also on the 8th day of December 2009; and

WHEREAS, on the 23rd day of December 2009 an appeal of the Planning Director’s actions to approve the “Consolidated” Certificate of Compliance, to record the Certificate of Compliance and to authorize the Building Permit was received from MERG (Mariposans for the Environment and Responsible Government), and the appeal was assigned a file number Appeal No. 2009-169; and

WHEREAS, during processing of Appeal No. 2009-169, the Board of Supervisors took action to deny Appeal No. 2009-114 at a continued public hearing on the 19th day of January, 2010 upholding the Planning Director's determination dated July 30th, 2009 regarding the twelve "fractionalized" patents; and

WHEREAS, a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-169 was scheduled for the 2nd day of March 2010; and

WHEREAS, on the 2nd day of March 2010 the Board of Supervisors continued the public hearing until the 27th day of April 2010 at 2:30 p.m. or as soon thereafter as possible; and

WHEREAS, during processing of Appeal No. 2009-169, on the 16th day of April, 2010, the Planning Director took formal review action regarding the "Crane Deed and Foreclosure Sale List", information submitted by the property owner; and

WHEREAS, the Planning Director could not find that the information submitted by the property owner supports the request to have five Certificates of Compliance issued for that portion of Section 3 located within APN 016-080-016; and

WHEREAS, on the 26th day of April 2010 an appeal of the Planning Director's action on the "Crane Deed and Foreclosure Sale List" was made to the Board of Supervisors and that appeal is known as Appeal No. 2010-44; and

WHEREAS, on the 27th day of April 2010, the Board of Supervisors denied Appeal No. 2009-169, upholding the Planning Director's actions in December 2009 to approve a "consolidated" Certificate of Compliance, to record a Certificate of Compliance, and to authorize issuance of Building Permit No. 28614; and

WHEREAS, processing of Appeal No. 2010-44 was conducted pursuant to Mariposa County Resolution No. 10-42; and

WHEREAS, a duly noticed Board of Supervisors public hearing to consider Appeal No. 2010-44 was scheduled for the 13th day of July 2010; 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. 2010-44 on the 13th day of July 2010 and considered all of the information in the public record, including the Staff Report packet, a draft Board Resolution with Findings Denying Appeal No. 2010-44, correspondence and testimony presented by the public concerning the Planning Director Determination, the Notice of Appeal, and the comments of the property owner and appellant.

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Supervisors of the County of Mariposa does hereby deny Appeal No. 2010-44;

BE IT FURTHER RESOLVED THAT, the Board of Supervisors of the County of Mariposa does hereby uphold the Planning Director's determination as written in correspondence dated the 16th day of April, 2010 that there is not sufficient evidence to support the issuance of unconditional Certificates of Compliance to five (5) parcels within Section 3.

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

1. The description of property which is used in the 1926 Crane to Chase deed uses the aliquot part of a legal section to describe the land transferred.
2. The description of property in the 1926 grant deed from Crane to Chase is a conventional way of describing property. Just because the description identifies different portions of the property in a "list" does not indicate an intention that each aliquot part was intended, by the grantor, to become a separate legal parcel by this grant deed.
3. To evaluate the property owner's position regarding Section 3 and to consider intent, it is important to look at the entire legal description for the 1926 Crane deed.
4. The legal description in the Crane deed conveying the 7,613.37 acres (more or less) combines large acreages in the description. The legal description breaks out areas by common township, range and section, and uses:
 - 8 whole sections (which are 640 acres each) when an entire section in a particular township and range is transferred (6 whole sections are actually listed in one line of the description), including Sections 25, 26, 27, 34, 35, 36 in T6S, R16E, and Sections 1 and 2 in T7S, R16E),
 - 5 half sections (which are 320 acres each),
 - 1 quarter section (160 acres),
 - 2 half quarter section and quarter section combination (120 acres each),
 - 5 half quarter sections (80 acres each), and
 - 1 quarter quarter section (40 acres) when only a portion of a whole section in a particular township and range is conveyed.
5. The portions of the legal description in the Crane Deed which do not list whole aliquot parts in the description are the three portions of the half quarter section or the quarter quarter sections in Sections 3 and 10 which are divided by the State Highway.

A valid reason why the legal description for Section 3 (and Section 10) was written as contained in the Crane Deed is due to the location of the State Highway, because the State Highway bisected portions of the aliquot parts of the legal description in a given quarter section.

For example, in the SE 1/4 of Section 3, the E 1/2 is a full aliquot part and can be described as such. However, in the same SE 1/4 of Section, the W 1/2 is not a full aliquot part because it is only that portion north of the State Highway which is conveyed. Consequently, the legal description "broke up" these two portions of the SE 1/4 of Section 3.

Similarly, for the SW 1/4 of Section 3, the N 1/2 is a full aliquot part and can be described as such. However, the S 1/2 of Section 3 is not a full aliquot part because only that portion north of the State Highway was conveyed. Consequently, the legal description "broke up" these two portions of the SW 1/4 of Section 3.

The whole of the North 1/2 of Section 3 was conveyed (both the NE 1/4 and the NW 1/4 were conveyed together).

In fact, using portions of the aliquot parts to describe that portion of Section 3 conveyed by the Crane deed would be the only way to describe the land without an on-site survey of this portion of Section 3.

6. The 1926 Crane deed does not reference the "underlying" patents. The legal description in the 1926 Crane deed does not mirror or coincide with any of the "underlying" patent boundaries.
7. The 1926 Crane deed conveyed a portion of Section 3 in T7S, R16E which was south of Highway 140. This is noted in response to the property owner's 10/21/09 e-mail supposition that, if the intent were not to create separate parcels, the legal description could simply have stated "all of Section 3 north and west of the Mariposa Lateral of the State Highway".
8. The Planning Director's conclusion that the legal description in the Crane deed which uses fractional or aliquot parts of a legal section to describe the land transferred is a conventional way of describing land in a legal description and does not by itself create separate legal parcels, is supported by the judicial analysis in the *Tehama* case. Pages 28 through 30 of the *Tehama* case contain an analysis and conclusion regarding Charles Hesse's disposition of what remained in the West half of Section 10 after his 1904 conveyance to Bell of land south of Ridge Road. Following the conveyance to Bell, Hesse retained portions of two patents in the West half of Section 10. The legal description in the grant deed in which Hesse later conveyed these two fractionalized patents (along with other land) to Albert Montgomery used a fractional or aliquot part of a legal section. Relative to the West half of Section 10, the legal description in the Hess to Montgomery deed described this area as follows:

...the West half of the Northwest quarter (W 1/2 of NW 1/4), the Southeast quarter of the Northwest quarter (SE 1/4 of NW 1/4), the Southeast quarter of the Northwest quarter (SE 1/4 of NW 1/4), the North half of the Southwest quarter (N 1/2 of SW 1/4), and all that part of the South half of the Southwest quarter (S 1/2 of SW 1/4), lying North of the Ridge Road in Section Ten (10).

There is no discussion or reference in the *Tehama* case (and no position by defendants) that each aliquot part of the legal description above (portion of the description) is made a separate parcel by this legal description-listing convention. Rather, the discussion and analysis in the *Tehama* case focuses on the old patent parcel boundaries within the deed area. Furthermore, this analysis addresses the deed reference to "all of lots and parcels" and explains the plural reference by the fact that in addition to conveying the land in this section (Section 10), Hesse also conveyed other parcels in other sections. The Crane deed is similar in that it references "all those certain lots, pieces or parcels of land". The Crane deed conveyed many other parcels in other sections (previously separately and distinctly described in an instrument of conveyance, such as a patent).

9. Staff does not understand the appeal statements, *Section 2 contained parts of two fractional parcels and was described as one whole parcel instead of 2 separate parcels. The only section which was not described as a single parcel, and that easily could have been described in this fashion, was Section.3"*

Section 2 was conveyed as a full section. Section 3 could not have been described as a single parcel, unless a metes and bounds description of just that section was used (which would not have been conventional). Section 22 was conveyed as three "parts". The N 1/2 of Section 22 was conveyed, together with the SE 1/4 and then a portion of the SW 1/4 (excepting the SW 1/4 of the SW 1/4).

10. In his appeal issues, the property owner identifies his testimony at a prior public hearing regarding his family's intentions. Action on Appeal No. 2009-114 was taken by the Board of Supervisors and the action on the prior appeal is final. Appeal No. 2009-114 is a separate matter from Appeal No. 2010-44. The record for Appeal No. 2009-114 is not a part of this action or public hearing.
11. Staff carefully considers submittals made for Certificate of Compliance applications on a case by case basis. Staff must consider State law and published appellate level court cases in evaluation of a Certificate of Compliance application.

BE IT FINALLY RESOLVED THAT, the denial of Appeal No. 2010-44 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.

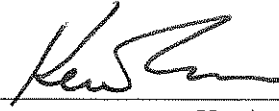
ON MOTION BY Supervisor Bibby, seconded by Supervisor Aborn, this resolution is duly passed and adopted this 13th day of July, 2010 by the following vote:

AYES: Aborn, Bibby, Cann, and Allen

NOES: Turpin

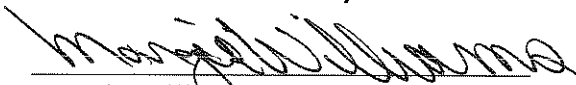
EXCUSED: None

ABSTAIN: None



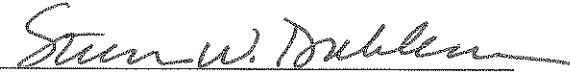
Kevin Cann, Chairman
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM:



Steven W. Dahlem
County Counsel