STATE OF CALIFORNIA
COUNTY OF MARIPOSA
Planning Commission

Resolution
No. 2007-007

A resolution denying Appeal No. 2006-314 and upholding the Planning Director's approval of nine Certificate of Compliance Applications for Redington Ranch LLC; Application Nos. 2006-04, 2006-05, 2006-06, 2006-07, 2006-08, 2006-09, 2006-10, 2006-11, and 2006-12

WHEREAS on the 29th day of December 2005, Redington Ranch LLC (hereinafter referred to as applicant) submitted applications for nine Certificates of Compliance to the Planning Department; Application Nos. 2006-04, 2006-05, 2006-06, 2006-07, 2006-08, 2006-09, 2006-10, 2006-11, and 2006-12. The applications requested recognition of nine historic patent parcels within portions of Assessors Parcel Number (APN) 018-040-002 and APN 018-020-011; 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 planned to submit, 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) submitted an appeal to the Board of Supervisors 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 for Appeal No. 2006-69 was scheduled for the 13th day of June 2006; 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; 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; and

WHEREAS on the 15th day of August 2006, the Board of Supervisors did hold a continued public hearing and took preliminary action to uphold Appeal No. 2006-69, reversing the Planning Director's February 3, 2006 action relative to processing of the nine Certificate of Compliance applications; and

WHEREAS on the 12th day of September 2006, the Board of Supervisors took formal action to uphold the Appeal No. 2006-69, adopting Resolution No. 06-426 and making the following determinations:

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.

7. The action to issue an unconditional Certificate of Compliance as requested by 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 is not a new "division of land" pursuant to Paragraph 11 of Land Conservation Act Contract No. 71.

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; and

WHEREAS Board of Supervisors Resolution No. 06-426 included the following findings:

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"; and

WHEREAS this action by the Board of Supervisors, Resolution No. 06-426, was the final action by the County of Mariposa and this action was not the subject of a legal challenge; and

WHEREAS based on the Board of Supervisor's action on Appeal No. 2006-69, including the Board's determinations and findings and the specific direction to the Planning Director, and based on review of the nine applications pursuant to the Subdivision Map Act, on the 9th day of October 2006, the Planning Director approved unconditional certificates of compliance for Certificate of Compliance Application Nos. 2006-04 through 2006-12; and

WHEREAS on the 19th day of October 2006 MERG / Thomas P. Infusino submitted an appeal of the Planning Director's decision to approve the nine Certificate of Compliance applications and that appeal is known as Appeal No. 2006-314; and

WHEREAS a duly noticed Planning Commission public hearing was scheduled for Appeal No. 2006-314 for the 15th day of December 2006; and

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

WHEREAS on the 15th day of December 2006 the Planning Commission did hold a public hearing on Appeal No. 2006-314 and considered all of the information in the public record, including the Staff Report packet, the Notice of Appeal, the comments of the appellant, the comments of the applicant, and the comments on the public; and

WHEREAS substantial additional information was submitted to the Planning Commission by the appellant at the public hearing on the 15th day of December 2006; and

WHEREAS in order to give staff time to review the additional material submitted to determine if they are appropriate admissible, the Planning Commission continued the public hearing to the 23rd day of February 2007 at 9:00 a.m. or as soon thereafter as possible; and

WHEREAS a supplemental staff packet was prepared for the Planning Commission for the continued public hearing on the 23rd day of February 2007 and that information included a memorandum to the Planning Commission, all additional correspondence received since the 15th day of December 2006, and the entire Staff Report packet prepared for the public hearing on the 15th day of December 2006; and

WHEREAS on the 23rd day of February 2007, the Planning Commission did hold a continued public hearing on Appeal No. 2006-314 and considered all of the information in the public record, including the Staff Report packet prepared for the continued hearing, the comments of the appellant, the comments of the applicant, and the comments on the public.

NOW THEREFORE BE IT RESOLVED THAT the Planning Commission of the County of Mariposa does hereby deny Appeal No. 2006-314 and uphold the Planning Director's approval of Certificate of Compliance Application Nos. 2006-04, 2006-05, 2006-06, 2006-07, 2006-08, 2006-09, 2006-10, 2006-11, and 2006-12.

BE IT FURTHER RESOLVED THAT the Planning Commission makes the following findings in support of their action to deny Appeal No. 2006-314:

1. Nine separate legal parcels do exist based upon information and findings in the Planning Director's approval action for the Certificate of Compliance applications No. 2006-04 through 2006-12 incorporated herein by reference. The applicant is entitled to nine unconditional Certificates of Compliance based upon state law and evidence in the record.

2. There has been no legal or factual argument submitted to support the appellant's position that approval of unconditional Certificates of Compliance is in appropriate for the subject nine Certificate of Compliance applications.

3. State law pertaining to Certificates of Compliance does not recognize "intent" as a relevant factor in determining whether or not to grant a conditional or unconditional Certificate of Compliance.

4. The applicability of Williamson Act Contract No. 71 to Certificate of Compliance Application Nos. 2006-04 through 2006-12 has already been addressed by the Mariposa County Board of Supervisors on a separate unchallenged appeal.

5. Mariposa County has no authority to compel the applicant for Certificate of Compliance Application No. 2006-04 through 2006-12 to file an application for a conditional Certificate of Compliance or a tentative subdivision map.

6. The applicability of CEQA to the processing of unconditional Certificate of Compliance applications has already been addressed by the Mariposa County Board of Supervisors on a separate unchallenged appeal.

7. State law supersedes local processing manuals, should a local processing manual be out of date.

ON MOTION BY Commissioner Hagan, seconded by Commissioner Ross, this resolution is duly passed and adopted this 23rd day of February, 2007 by the following vote:

AYES: Hagan, Ross, Rudzik, Skyrud, and DeSantis

NOES: None

EXCUSED: None

ABSTAIN: None

Robert Rudzik, Chairman
Mariposa County Planning Commission

ATTEST:

CAROL SUGGS
Planning Commission Secretary