

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
ZONING ADMINISTRATOR
STAFF REPORT**



Agenda of: February 3, 2010
Item No.: 4.a.
Staff: Jason R. Hade

CERTIFICATE OF COMPLIANCE

FILE NUMBER: COC09-0017 / Swift

APPLICANT: Grayson Robert Swift and Charles Dane Swift

AGENT: Ed Keller, Keller & D'Agostini

REQUEST: Certificate of Compliance for 30-acre parcel created without benefit of a parcel or final map pursuant to Section 16.76.060 (G) Ordinance 4632. Parent parcel was created by decree of distribution on May 17, 1974.

LOCATION: North side of Fairplay Road, approximately 2.5 miles west of the intersection with E-16 in the Somerset/Fairplay area, Supervisorial District II. (Exhibit A)

APN: 094-130-11 (Exhibit B)

ACREAGE: 30 acres

GENERAL PLAN: Agricultural Lands – Agricultural District (AL-A) (Exhibit C)

ZONING: Planned Agricultural 20-Acre (PA-20) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines

RECOMMENDATION: Staff recommends the Zoning Administrator take the following actions:

1. Certify that the project is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines; and

2. Issue a Conditional Certificate of Compliance, subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

BACKGROUND: This application is a request for a certificate of compliance on Assessor's Parcel Number 094-130-11, which would acknowledge the County's acceptance of the parcel as legally created in accordance with the Subdivision Map Act and local subdivision ordinances. The County's issuance of a certificate of compliance on the parcel would allow development of the property consistent with the Planned Agricultural 20-Acre Zone District, which allows a single-family residence and accessory uses and structures.

Without the certificate of compliance the County cannot issue any development permits, including building permits. In this instance, the parcel would be issued a conditional certificate of compliance requiring specific conditions be completed prior to the issuance of an unconditional or clear certificate of compliance. The parcel cannot be developed until such time as a clear certificate of compliance is recorded.

Subsequent to this subject certificate of compliance application, the parcel owners applied for a certificate of compliance to recognize the parcel with the Surveyor's Office who referred the application to Planning Services since the property was the result of a division of land after March 4, 1972. Further, it was not completed under the guidelines of any local ordinance or with the benefit of a Parcel or Subdivision Map.

The parent parcel of the subject parcel requesting the COC was created on May 17, 1974 by Decree of Distribution to Cecelia Walsh recorded in Book 1262 at Page 336. On March 11, 1975, Cecelia Walsh sold approximately five acres to Edward Garcia in Book 1312 at Page 441. On April 22, 1975, Cecelia Walsh sold to Vern Pershing and Susan Swift the remaining 30 acres. As such, the subject parcel was created on April 22, 1975.

The applicant acquired the subject property on April 22, 1975. As such, the County may issue a conditional certificate of compliance and impose any conditions that would have been applicable to the division of the property at the time the applicant acquired interest in the properties pursuant to Government Code Section 66499.35(b).

STAFF ANALYSIS

Staff has reviewed the project for compliance with the County's regulations and requirements. An analysis of the proposal and issues for Zoning Administrator consideration are provided in the following sections.

Project Description: Certificate of Compliance for Assessor's Parcel Number 094-130-11, which would acknowledge the County's acceptance of the parcel as legally created in accordance with the Subdivision Map Act and local subdivision ordinances. The parcel would be served by a future well and onsite septic wastewater system. Access would be provided by Scorpi Road via a connection to Fairplay Road.

Site Description: The subject site lies at an elevation of approximately 2,100 feet above sea level and consists of undeveloped land.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	PA-20	AL-A	Agricultural Lands/Undeveloped
North	RE-5	RR-A	Rural Residential/Single-Family Residences
South	SA-10	AL-A	Agricultural Lands/Single-Family Residence
East	PA-20	AL-A	Agricultural Lands/Single-Family Residences
West	PA-20	AL-A	Agricultural Lands/Single-Family Residences

Discussion: The subject site is surrounded by single-family ranchettes and undeveloped land. Wineries are also located nearby.

Access: Access to the subject site would be provided by Scorpi Road via a connection to Fairplay Road. Construction of the driveway encroachment from the access roadway would require an encroachment permit from the Department of Transportation (DOT).

Fire: The Pioneer Fire Protection District submitted project comments dated October 5, 2009 which recommend several conditions of approval for the project. However, most of the recommendations are not applicable until a building permit is applied for. Additionally, because the applicant acquired the parcel in 1975, only those conditions that would have been applicable to the land division on that time may be imposed.

Land Use Compatibility: As discussed above, the site is surrounded by residential and agricultural land uses. Potential future development of the parcel under the PA-20 zone district development standards would authorize similar residential and agricultural uses. Therefore, staff finds the proposed project is compatible within the context of the surrounding land uses pursuant to General Plan Policy 2.2.5.21.

Water/Wastewater Disposal: The parcel would be served by a future well and onsite septic wastewater system. The Environmental Management Department reviewed the request and had no comments or concerns.

GENERAL PLAN

This project is consistent with all applicable policies of the adopted 2004 El Dorado County General Plan. Findings for consistency with the General Plan are provided in Attachment 2. The policies and issues that affect this project are discussed below:

Policy 2.2.1.2 states that this designation is applied to lands described in Policy 8.1.1.8. A maximum of two residential dwellings used to support the agriculture use are allowed. The AL designation may be applied in Rural Regions only.

Discussion: As the subject site is undeveloped and located within a Rural Region, the request would be consistent with Policy 2.2.1.2.

Policy 2.2.2.2 indicates that the minimum residential parcel size for lands containing choice agricultural soils within an Agricultural (-A) District shall be twenty (20) acres or the minimum lot size established by the underlying land use designation, whichever is greater.

Discussion: The subject site is 30 acres and would be therefore consistent with Policy 2.2.2.2.

Policy 2.2.5.21 directs that new development be compatible with the surrounding land uses.

Discussion: Under the AL-A land use designation and PA-20 zone district, the site would be authorized to develop agricultural and residential uses consistent with the surrounding agricultural and residential land uses. As such, the request would be consistent with Policy 2.2.5.21.

Policy 6.2.3.2 directs that the applicant demonstrate that adequate access exists, or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.

Discussion: Adequate roadway access would be required prior to building permit issuance. The request would also require the submittal and approval of a fire safe plan subject to approval by the Pioneer Fire Protection District and CAL FIRE prior to issuance of a clear Certificate of Compliance.

Conclusion: As discussed above, staff finds that the certificate of compliance, as requested, is consistent with significant applicable policies of the County General Plan. Findings for consistency with the General Plan are provided in Attachment 2.

Zoning: The subject parcel is zoned Planned Agricultural 20-acre (PA-20) which permits a minimum parcel size of 20 acres. All future development on the parcel would be subject to the development standards contained in Section 17.36.110 through 17.36.160 of the County Code. The project parcel size is 30 acres and meets the minimum parcel size requirement.

Conclusion: As discussed above, staff finds that the project can be found to be consistent with the PA-20 Zone District and that the necessary findings can be made to support the request for a Certificate of Compliance. Zoning consistency findings are contained within Attachment 2.

Authority to Issue a Conditional Certificate of Compliance: Section 16.76.050 of County Code states that the Subdivision Map Act requires conditional certificates of compliance to be issued on certain types of parcels which were created in violation of the Subdivision Map Act. A local agency may impose any conditions that would have been applicable to the division of the

property at the time the current owner(s) acquired his or her interest, except that where the current owner(s) was involved in the initial land division violation, then the local agency may impose any conditions that would be applicable to a current division of the property. The current owners received title on April 22, 1975. Section 16.44.120, Design Criteria of the El Dorado County Code establishes the design criteria and improvements made and installed in conjunction with the approval of maps. The project would be conditioned by the El Dorado County Department of Transportation and Planning Services for those criteria as applicable to the subject request.

ENVIRONMENTAL REVIEW

This project has been found to be exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines stating that “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” As such, the proposed legalization of one parcel through the certificate of compliance process is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Pursuant to Resolution No. 240-93, a \$50.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Location Map
Exhibit B	Assessor’s Parcel Map Page
Exhibit C	General Plan Land Use Map
Exhibit D	Zoning Map

ATTACHMENT 1
CONDITIONS OF APPROVAL
CERTIFICATE OF COMPLIANCE

File Number COC09-0017

I. PROJECT DESCRIPTION

1. This Certificate of Compliance is based upon and limited to compliance with the project description, the Zoning Administrator hearing exhibits marked Exhibit A through D, and conditions of approval set forth below. Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

The project description is as follows:

Certificate of Compliance for Assessor's Parcel Number 094-130-11 which will acknowledge the County's acceptance of the parcel as legally created in accordance with the Subdivision Map Act and local subdivision ordinances.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County.

II. PROJECT CONDITIONS OF APPROVAL

Planning Services

2. In the event that previously unknown cultural resources are discovered during construction, operations shall stop in the immediate vicinity of the find and a qualified archaeologist shall be consulted to determine whether the resource requires further study. The qualified archeologist shall make recommendations on the measures to be implemented to protect the discovered resources, including but not limited to excavation of the finds and evaluation of the finds, in accordance with § 15064.5 of the CEQA Guidelines. Cultural resources could consist of, but are not limited to, stone, bone, wood, or shell artifacts or features, including hearths, structural remains, or historic dumpsites.
3. If human remains are encountered during earth-disturbing activities within the project area, all work in the adjacent area shall stop immediately and the El Dorado County Coroner's office shall be notified. If the remains are determined to be Native American

in origin, both the Native American Heritage Commission (NAHC) and any identified descendants shall be notified by the coroner and recommendations for treatment solicited (CEQA Guidelines § 15064.5; Health and Safety Code § 7050.5; Public Resources Code §§ 5097.94 and 5097.98).

4. The applicant shall be required to pay Park-in-Lieu fee of \$150.00 payable to El Dorado County, pursuant to El Dorado County Subdivision Ordinance Chapter 16.12.090. Check shall be submitted to the Development Services Department. A receipt showing compliance with this condition shall be submitted by the applicant to the Planning Services prior to issuance of a clear Certificate of Compliance.
5. All fees associated with the Certificate of Compliance shall be paid prior to issuance of a clear Certificate of Compliance.
6. In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action.

The applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval by El Dorado County of the Certificate of Compliance.

County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

Department of Transportation

7. Encroachment Permit: The applicant shall obtain an encroachment permit from DOT and shall construct the driveway encroachment from the access roadway leading to the parcel onto Fairplay Road to the provisions of County Design Standard 103B-1. The improvements shall be completed to the satisfaction of DOT prior to issuance of a clear Certificate of Compliance.
8. Offer of Dedication (In Fee): The applicant shall irrevocably offer to dedicate in fee, 30 feet-of-right of way along the entire frontage of Fairplay Road as determined by DOT, prior to issuance of a clear Certificate of Compliance. This offer will be accepted by the County.

Pioneer Fire Protection District

9. A fire safe management plan, acceptable to the Pioneer Fire Protection District and the California Department of Forestry and Fire Protection, shall be prepared and implemented. A letter of compliance with this condition shall be submitted by the fire district to Planning Services prior to issuance of a clear Certificate of Compliance.

ATTACHMENT 2
FINDINGS

FILE NUMBER COC09-0017

FINDINGS FOR APPROVAL

1.0 CEQA FINDINGS

- 1.1 The Zoning Administrator has determined that the proposed project will have no significant impact on the environment and is exempt from CEQA pursuant to 15302(b) of the CEQA Guidelines.
- 1.2 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department - Planning Services at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 ADMINISTRATIVE FINDINGS

- 2.1 The issuance of the Conditional Certificate of Compliance for APN 094-130-11 meets the requirements of the *Subdivision Map Act* and *County Code Title 16* because the County is verifying that the parcel has sufficient access, safety and ability to support residential and agricultural uses. Further, the County is ensuring that a legitimate transfer took place and with an accurate legal description.

3.0 GENERAL PLAN CONSISTENCY FINDINGS

- 3.1 The proposed Certificate of Compliance, as conditioned, is consistent with the Agricultural Lands (AL-A) General Plan land use designation for minimum parcel size, density, and land use because the project site is 30 acres.
- 3.2 The proposal is consistent with all applicable Policies of the General Plan including 2.2.1.2 (land use density), 2.2.2.2 (agricultural district overlay), 2.2.5.21 (compatibility with the surrounding neighborhood), and 6.2.3.2 (adequate emergency access). The project provides adequate access and parcel size that ensure compatibility with the surrounding permitted land uses, and is consistent with the General Plan policies identified above.

4.0 ZONING FINDINGS

- 4.1 The project is zoned Planned Agricultural 20-Acre (PA-20) which establishes a minimum parcel size of 20 acres. The project will legalize a 30-acre parcel which is consistent within the PA-20 zone district. The proposed parcel conforms to existing zoning.