

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



Agenda of: June 5, 2013
Item No.: 4.a.
Staff: Aaron Mount

CONDITIONAL CERTIFICATE OF COMPLIANCE

FILE NUMBER: COC11-0007

APPLICANT: Denton Beam

AGENT: Gary Weldon

REQUEST: Certificates of Compliance for five parcels created by Gift Deeds and Grant Deed recorded in 1980 and 1981 resulting in two parcels.

LOCATION: Northwest side of Cement Hill Road approximately 0.6 miles from Bottle Hill Road, in the Georgetown area, Supervisorial District 4. (Exhibit A)

APN: 061-780-03, -05, -08-, -09, -10 (Exhibit B)

ACREAGE: 118.83 acres

GENERAL PLAN: Rural Residential (RR) (Exhibit C)

ZONING: Residential Agricultural-80 (RA-80) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Statutorily exempt pursuant to Section 15268 of the CEQA Guidelines

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

1. Certify that the project is statutorily exempt from CEQA pursuant to Section 15268 of the CEQA Guidelines, as a Certificate of Compliance is a ministerial project; and

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

BACKGROUND: The five subject parcels are part of a nineteen parcel Notice of Violation that was recorded on November 29, 1990, in Book 3470, at Page 511, of the Official Records. The Notice of Violation was requested by the Planning Commission due to the parcels being subdivided in violation of the Subdivision Map Act and County code. No certificates of compliance have been issued for the parcels. The parcels are part of a larger violation perpetuated by a single family who created approximately 30 parcels in the Georgetown area. There is no connection between the family that created the parcels and the current owner.

This application is a request for two certificates of compliance for Assessor's Parcel Numbers 061-780-03, -05, -08-, -09, -10, proposed by the applicant to be merged into two parcels as shown on Exhibit E, which would acknowledge the County's acceptance of the two parcels as legally created in accordance with the Subdivision Map Act and local subdivision ordinances. The County's issuance of two certificates of compliance on the parcels would allow development of the property consistent with the RA-80 Zone District, which allows a single-family residence and accessory uses and structures.

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

The project parcels were a result of a division of land after March 4, 1972. Further, it was not done under the guidelines of any local ordinance or by means of a Parcel or Subdivision Map. The applicant acquired title to the subject properties on July 29, 2010. 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 property pursuant to Government Code Section 66499.35(b). Once satisfied, a clear certificate of compliance can be issued which would allow for development of the property in accordance with the RA-80 Zone District.

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: Two Certificates of Compliance for Assessor's Parcel Numbers 061-780-03, -05, -08-, -09, -10. The result of the project would be that the County would legalize two parcels by merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08, -09, -10 into an approximately 74.51 acre parcel, as proposed by the applicant (Exhibit E).

Site Description: The subject site lies at an average elevation of 2,000 feet above mean sea level and is approximately 1.5 miles north of the Georgetown Rural Center. The forested parcels are undeveloped and would be served by individual septic systems and well water.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	RA-80	RR	Residential & Agricultural/Undeveloped
North	OS/TPZ	OS/NR	Residential & Agricultural/Undeveloped (USDA Forest Service)
South	RA-80/RA-20/TPZ	RR/NR	Residential & Agricultural/Undeveloped & Single-Family Residence
East	RA-80/TPZ	RR/NR	Residential & Agricultural/Undeveloped
West	RA-80/OS	RR/OS	Residential & Agricultural/Undeveloped (BLM)

Access: Access to the subject site is currently provided by Canyon Creek and Bottle Hill Roads. The Department of Transportation (DOT) is requiring the applicant to irrevocably offer to dedicate in fee, 50-feet of right-of-way along the on-site portions of Bottle Hill Road. The applicant has not provided proof of legal access and submittal would be required before a Clear Certificate of Compliance can be issued.

Water/Wastewater Disposal: The project parcels would be required to develop on-site wells and to evaluate septic systems prior to issuance of a clear certificate of compliance. Environmental Management had no concern about the viability of septic or wells based on the proposed size and location of the parcels.

GENERAL PLAN

The General Plan designates the subject site as Rural Residential (RR) which establishes areas for residential and agricultural development. Findings for consistency with the General Plan are provided in Attachment 2. The policies and issues that affect this project are discussed below:

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

Discussion: Under the RR land use designation and RA-80 zone district, the site would be authorized to develop residential uses consistent with the surrounding recreational/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: The project parcel is accessed by Bottle Hill Road and Canyon Creek Road which are non-County maintained roads. The Transportation Division has recommended conditions to establish on-site road easements to ensure adequate access and a proof of legal access would be required prior to issuance of a Clear Certificate of Compliance. The Fire District had no concerns on the access to the project site.

Conclusion: As discussed above, staff finds that the certificate of compliance, as requested, is consistent with 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 Residential Agricultural-80 District (RA-80) which permits a minimum parcel size of eighty acres. All future development on the parcel would be subject to the development standards contained in Section 17.30.200 of the County Code. The project applicant has proposed to merge the project parcels into two parcels as shown on Exhibit E.

The parcels as they exist and as proposed are substandard in size for the RA-80 zone district which has a minimum parcel size of 80-acres. As shown on Exhibit G merging of the parcels to bring them into conformance is constrained by layout and adjacent ownership. The applicant has proposed to merge the parcels to the greatest extent possible in order to bring them into conformance with the 80-acre minimum. Since there is no other way to combine the illegally-created lots this is a reasonable solution to resolve an issue that has been outstanding for 33 years.

When a request for a Certificate of Compliance is made the County must issue it. The requested certificate of compliance determines only whether the parcel conforms to the requirements of the Map act and local ordinances, it does not grant any right to develop the parcel.

Conclusion: As discussed above, staff finds that although the proposed lots would be inconsistent with the RA-80 Zone District, since there is no other way to combine the illegally-created lots, this is a reasonable solution. 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 July 29, 2010. 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. Conditions recommended by staff would apply the appropriate standards to the two parcels that would result from this certificate of compliance application.

ENVIRONMENTAL REVIEW

This project has been found to be statutorily exempt from the requirements of CEQA pursuant to Section 15268 of the CEQA Guidelines stating that “ministerial projects are exempt from the requirements of CEQA.” In its 1993 decision, *Findleton v. Board of Supervisors*, the California Appeals Court said that a certificate of compliance is a "ministerial project" requiring no exercise of discretion in the course of its approval (*Findleton v. El Dorado Co. Board of Supervisors* (1993) 12 Cal. App. 4th 709).

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1Conditions of Approval
Attachment 2Findings

Exhibit ALocation Map
Exhibit BAssessor’s Parcel Map Page
Exhibit CGeneral Plan Land Use Map
Exhibit DZoning Map
Exhibit ESite Plan
Exhibit F.....Notice of Violation
Exhibit G.....Notice of Violation Parcels Map

ATTACHMENT 1
CONDITIONS OF APPROVAL
CERTIFICATE OF COMPLIANCE
ZONING ADMINISTRATOR/JUNE 5, 2013

File Number COC11-0007/Beam

I. PROJECT DESCRIPTION

1. This Certificate of Compliance is based upon and limited to compliance with the project description, the exhibits marked Exhibit E, 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:

Two Certificates of Compliance for Assessor's Parcel Numbers 061-780-03, -05, -08-, -09, -10 merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08-, -09, -10 into an approximately 74.51 acre parcel which will acknowledge the County's acceptance of the parcels 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. A Certificate of Merge shall be submitted, approved, and recorded merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08-, -09, -10 into an approximately 74.51 acre parcel. All conditions of approval for this conditional Certificate of Compliance shall be met prior to recording of a Certificate of Merge.
3. All fees associated with the Certificate of Compliance shall be paid prior to issuance of a Clear Certificate of Compliance.

4. Prior to issuance of Clear Certificate of Compliance the applicant shall provide a written description, together with appropriate documentation, showing conformance of the project with each condition imposed as part of the project approval.
5. Hold Harmless Agreement: 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. County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

6. Notice of Exemption Fee: A \$50.00 administration fee is required by the County Recorder to file the Notice of Exemption. This fee shall be made payable to El Dorado County and shall be submitted to Planning Services upon project approval.
7. Archeological Resources: The following shall be incorporated as a note on the grading/improvement plans:

In the event archeological resources are discovered during grading and construction activities, the applicant shall ensure that all such activities cease within 50 feet of the discovery until an archaeologist can examine the find in place. If the find is determined to be a “unique archaeological resource”, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in Section 21083.2 of the Public Resources Code. Construction work could continue on other parts of the project site while archaeological mitigation takes place.

If the find is determined to be a “unique archeological resource”, the archaeologist shall determine the proper method(s) for handling the resource or item in accordance with Section 21083.2(b-k). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken or the site is determined a “nonunique archeological resource”.

Planning Services shall verify the inclusion of this notation on the grading plans prior to the issuance of a grading permit

8. Human Remains: The following shall be incorporated as a note on the grading/improvement plans:

In the event of the discovery of human remains, all work shall cease and the County coroner shall be immediately notified pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Upon the discovery of the Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in Section 5097.98 of the Public Resources Code, with the most likely descendants regarding their recommendations. The descendants shall complete their inspection and make their recommendation within 48 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials or other proper method(s) for handling the remains in accordance with Section 5097.98(b-h). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken.

Planning Services shall verify the inclusion of this notation on the grading plans prior to the issuance of a grading permit

Department of Transportation

9. Road & Public Utility Easements: The applicant shall irrevocably offer to dedicate a 50-foot wide non-exclusive road and public utility easement for the on-site access roadway located on the proposed parcels in its entirety, prior to issuance of clear COC. This offer will be rejected by the County.

Environmental Management

10. Wastewater: Suitable wastewater disposal area shall be identified on all proposed parcels. The areas identified shall meet the requirements for onsite wastewater disposal system and be located so as not to conflict with any other applicable county requirements. An OWTS capability report and site map showing the locations of the usable sewage disposal area shall be submitted to Environmental Management.
11. Water: The applicant shall provide a safe and reliable water source for each proposed parcel.

ATTACHMENT 2
FINDINGS
CERTIFICATE OF COMPLIANCE
ZONING ADMINISTRATOR/JUNE 5, 2013

File Number COC11-0007/Beam

FINDINGS FOR APPROVAL

1.0 CEQA FINDINGS

- 1.1 This project has been found to be statutorily exempt from the requirements of CEQA pursuant to Section 15268 of the CEQA Guidelines stating that “ministerial projects are exempt from the requirements of CEQA.” In its 1993 decision, *Findleton v. Board of Supervisors*, the California Appeals Court said that a certificate of compliance is a "ministerial project" requiring no exercise of discretion in the course of its approval (*Findleton v. El Dorado Co. Board of Supervisors* (1993) 12 Cal. App. 4th 709).
- 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 two Conditional Certificates of Compliance for Assessor’s Parcel Numbers 061-780-03, -05, -08-, -09, -10 merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08-, -09, -10 into an approximately 74.51 acre parcel, 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 uses. Further, the County is ensuring that a legitimate transfer took place and with an accurate legal description.

3.0 TITLE 16 SUBDIVISIONS ORDINANCE

- 3.1 The project parcel was a result of a division of land after March 4, 1972. Section 16.76.090.G authorizes issuance of a conditional certificate of compliance if the parcel is a parcel created without the benefit of a Parcel or Final Map that has not been specifically cited in Chapter 16.76 of the El Dorado County Subdivision Ordinance.

4.0 GENERAL PLAN CONSISTENCY FINDINGS

- 4.1 The proposed two Certificates of Compliance, as conditioned, is consistent with the General Plan and the RR land use designation for density and land use.

- 4.2 The proposal is consistent with all applicable Policies of the General Plan including 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.

5.0 ZONING FINDINGS

- 5.1 The project is zoned Residential Agricultural-80 (RA-80) which establishes a minimum parcel size of 80 acres. The project will legalize a 43.3-acre parcel and a 74.51-acre parcel which are inconsistent with the RA-80 Zone District since there is no other way to combine the illegally-created lots. This is a reasonable solution and meets the intent of the Zoning Ordinance.