

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 4/16/2013	(3) CONTACT/PHONE Jo Manson, Planner III/ (805) 781-4660	
(4) SUBJECT Hearing to consider an appeal by Corr Family Properties of the Director of Planning and Building's determination to deny the issuance of two unconditional certificates of compliance (C09-0096, SUB2008-00071), for two parcels of approximately 8.58 acres and 8,600 square feet, within the Residential Multi-Family land use category located adjacent to and south of the intersection of Ramona Avenue and Fourth Street, in the community of Los Osos. District 2			
(5) RECOMMENDED ACTION Adopt the resolution denying the appeal and upholding the decision of the Director of Planning and Building denying the issuance of two (2) unconditional certificates of compliance for application Certificate of Compliance C09-0096 (SUB2008-00071) based on the findings listed in Attachment 8.			
(6) FUNDING SOURCE(S) Appeal Fee (\$825.00)	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT { } Consent { } Presentation {X} Hearing (Time Est. 45 minutes) { } Board Business (Time Est.____)			
(11) EXECUTED DOCUMENTS {X} Resolutions { } Contracts { } Ordinances { } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required {X} N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY {X} N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW  Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 2 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Jo Manson, Planner III

VIA: Ellen Carroll, Environmental Coordinator, Planning Division

DATE: 4/16/2013

SUBJECT: Hearing to consider an appeal by Corr Family Properties of the Director of Planning and Building's determination to deny the issuance of two unconditional certificates of compliance (C09-0096, SUB2008-00071), for two parcels of approximately 8.58 acres and 8,600 square feet, within the Residential Multi-Family land use category located adjacent to and south of the intersection of Ramona Avenue and Fourth Street, in the community of Los Osos. District 2

## **RECOMMENDATION**

Adopt the resolution denying the appeal and upholding the decision of the Director of Planning and Building denying the issuance of two (2) unconditional certificates of compliance for application Certificate of Compliance C09-0096 (SUB2008-00071) based on the findings listed in Attachment 8.

## **DISCUSSION**

### **Overview**

A property owner may request that the County make a determination whether a parcel was legally created or not through the certificate of compliance application process. Certificates of compliance and conditional certificates of compliance are addressed in Section 21.02.020 of the County Code and are issued under the provisions of Government Code section 66499.35 (State Subdivision Map Act). The purpose of a certificate of compliance is to provide landowners with a record of the County's determination that a parcel was legally created. If the County determines that the parcel was created in compliance with the provisions of the State Subdivision Map Act and local ordinances at the time of the parcel's creation then an unconditional certificate of compliance can be issued. If the parcel was not created in compliance with those provisions, a conditional certificate of compliance is issued.

A certificate of compliance certifies the legality of the parcel. It does not ensure that it is a buildable parcel, nor entitle the parcel owner to a construction permit or other development permits or approvals. To obtain a construction permit or other land use approval for the parcel, the owner must complete the appropriate application process and meet all existing regulations.

In this instance it has been determined that the parcels in question were not legally created and the staff report will provide the analysis by which the County's determination was made and address the appeal issues raised by the appellant.

## **BACKGROUND**

On February 15, 2011, planning staff wrote a letter (attachment #10) to Spence Hinkle, agent for Corr Family Properties, containing its determination in response to an application for the issuance of two (2) unconditional certificates of compliance (C09-0096). The application requested legal parcel recognition and one (1) unconditional certificate of compliance for Lots 38 and 39 and a portion of Lot 1 of the Map of The Town of Sunshine Beach, a map which was recorded on April 5, 1893 in Book A, Page 93 of Maps (Assessor Parcel Number: 074-229-005). In addition, the application requested legal parcel recognition and one (1) unconditional certificate of compliance for a portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos, according to map subdivided by H.C. Ward in June 1880 and filed for record June 9, 1880 in Book B, Page 72 of Maps (Assessor Parcel Number: 074-229-004).

After evaluation of the map information, the deed history, and chain of title submitted in the application and consideration of relevant court case determinations (including *Gardner v. County of Sonoma* (2008) 29 Cal.4th 990, and *Witt Home Ranch, Inc. v. County of Sonoma* (2008) 165 Cal.App.4th 543, and *Abernathy Valley, Inc. v. County of Solano* (2009) 173 Cal.App.4th 42), Planning staff concluded that the filing for recordation of the Map of The Town of Sunshine Beach on April 5, 1893, did not create separate legal lots and that the deed history did not support the two (2) underlying legal parcels that were requested by the appellant. Planning staff also concluded that the deed history for the entire property appears to confirm two (2) legal parcels created by conveyance and two (2) other illegal parcels. As a result, the appellant would need to revise its application to additionally request two (2) conditional certificates of compliance and submit the required environmental description form so that the matter could be analyzed and scheduled for public hearing before the Subdivision Review Board.

An appeal was filed on March 1, 2011, by Spence Hinkle, the authorized agent for Corr [Family] Properties, the property owner. The appellant is requesting recognition by the Board that two (2) individual legal parcels exist (one for each of the two assessor parcel numbers), and that the two (2) unconditional certificates of compliance must be approved for the entire property for each Assessor Parcel Number rather than accept the staff's determination denying the two unconditional certificates of compliance, as requested. Staff's review of the chain of title validates that two (2) small legally created parcels exist on a portion of the property (in a different parcel configuration from what the applicant had requested) and that the remaining portion consists of two (2) illegally created parcels that will require processing of an application for two conditional certificates of compliance. The following comments and analysis discuss the issues raised in the appeal.

In order to confirm that Lots 38, 39 and a portion of Lot 1 (Assessor Parcel Number: 074-229-005) together is one (1) separate legal parcel, the appellant would need to provide deeds dated prior to 1960 that separate the proposed parcel from the surrounding lands. In order to confirm that a portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos (Assessor Parcel Number: 074-229-004) is one (1) separate legal parcel, the appellant would need to provide deeds dated prior to 1966 that separate the proposed parcel from the surrounding lands. If each proposed parcel had been deeded out and separated from the surrounding lands, those deeds could then provide the evidence of separate legal parcels if the deeds were dated prior to 1960 for parcels that are less than three (3) acres in size and dated prior to 1966 for parcels that are less than forty (40) acres in size. The appellant has failed to submit evidence of conveyances for each of the proposed parcels separating them from surrounding lands to effectuate their creation prior to 1960 or 1966 as requested by staff. See *Lakeview Meadows Ranch v. County of Santa Clara* (1994) 27 Cal.App.4th 593, 598. An evaluation of the deeds pertaining to the Corr Family Properties is in Attachment #6.

### **Assessor Parcel Number (APN): 074-229-005.**

After evaluation of the deed history submitted in the application, and consideration of relevant court case determinations, Planning staff has concluded that neither of the proposed parcels for which unconditional certificates of compliance are requested were legally separated from the surrounding lands. Planning staff's analysis concluded that Lots 38 and 39 of the Map of The Town of Sunshine Beach (a portion of APN: 074-229-005) are both separate legal parcels, based upon deed conveyances, for which an unconditional certificate of compliance can be approved and issued, one for each small parcel.

Regarding the remaining portion of Lot 1 (the remaining portion of APN: 074-229-005), all of Lot 1 was a legal parcel per a 1957 conveyance noted in Book 882 of Official Records, Page 565. Based upon a parcel size less than three (3) acres, a pre-1960 deed would establish the legality of the parcel if the parcel had been conveyed by deed separating the parcel from the surrounding lands prior to October 12, 1960. However, conveyance of a portion of Lot 1 in 1974 (Book 1765 of Official Records, Page 18, recorded February 13, 1974) illegally subdivided Lot 1 because a parcel map or final (tract) map was required to be approved to create said parcels in 1974, (under amendments to the Subdivision Map Act that became effective March 4, 1972). Therefore, the portion of Lot 1 encompassed in APN: 074-229-005 was never legally created.

**APN: 074-229-004.**

Portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos, in the County of San Luis Obispo, State of California, according to map subdivided by H.C. Ward in June 1880 and filed for record June 9, 1880 in Book B, Page 72 of Maps (APN: 074-220-004): Based upon a parcel size of approximately 8 acres, a pre-1966 deed would be needed to establish the legality of the parcel if the parcel had been conveyed by deed separating the parcel from the surrounding lands prior to February 17, 1966. There is not a pre-1966 deed for this parcel deeding it out and separating it from surrounding lands. The first time the parcel was deeded out separately was on January 27, 1998 (Doc. No. 1998-034265). This conveyance of the approximate 8 acre parcel was a violation of the County's Real Property Division Ordinance and State Subdivision Map Act because after March 4, 1972, all subdivisions of land required prior approval and filing of a parcel map or a final (tract) map. Since a subdivision map was required to be approved in order to create parcels at that time in 1998, the parcel was not legally created.

Therefore, Planning staff denied the application for the issuance of two (2) unconditional certificates of compliance in the parcel configuration as requested by the applicant and concluded that the deed history supports two (2) legal parcels (in a different parcel configuration from what the applicant had requested) and two (2) illegal parcels for which the appellant would need to revise its application and submit the required environmental description form to additionally request two (2) conditional certificates of compliance/coastal development permit.

**APPEAL ISSUES**

**Issue #1:**

**APN: 074-220-004. The appellant contends that this lot was created by the 1957 grant of the 40 foot strip of land to the County for Ramona Avenue and is exempt from compliance with modern laws by Gov. Code Section 66412.6 (a), the conclusive presumption of legal creation, and Section 66499.30 (d), the exemption from enforceability against transfer. The fact that it was not conveyed separately until later does not change the date of the creation of the parcel because it was physically divided from all of its remaining contiguous lands by the 1957 grant to the county.**

**Response #1:**

On June 17, 1957, the Board of Supervisors of the County of San Luis Obispo accepted, by resolution, a Grant Deed dated April 9, 1957 from Lydia Mickle for certain pieces or parcels of real property for the construction and maintenance of a public road: "*a right of way and incidents thereto for a public highway over, across and upon that certain real property*" (Ramona Avenue) which is adjacent to APN: 074-229-004. The resolution was recorded in Book 896 of Official Records, Pages 504-506, and the Grant Deed was recorded in Book 896 of Official Records, Pages 507-508. In short, the County accepted the conveyance of a right-of-way easement for the construction and maintenance thereon of a public highway, not a fee interest cutting the property into two pieces.

The appellant contended in its application that the Attorney General's Opinion at 86 Ops.Atty.Gen. 70 (May 15, 2003) applies to this case. The Attorney General opinion involved an irrigation district which condemned most of a 640-acre parcel of land for a reservoir that cut through an existing legal parcel leaving two remainder parcels separated by 700 feet of water, with no road access around the reservoir between the two parcels. The Attorney General concluded that the two remaining parcels were legally created as separate parcels for purposes of the Subdivision Map Act.

Our situation in this case is entirely different because the road right-of-way does not isolate and separate the land located south of Ramona Avenue (APN: 074-229-009) and north of Ramona Avenue (APN: 074-229-004). The road right-of-way is easily traversed between the property and, in addition, Fourth Street provides road access to the property located south and north of Ramona Avenue right-of-way. As a result, the reasoning of the Attorney General's opinion is not applicable in this case.

The appellant contends that the conclusive presumption of Government Code Section 66412.6 is applicable. Section 66412.6(a) states "For purposes of this division or of a local ordinance enacted pursuant thereto, *any parcel created prior to March 4, 1972*, shall be conclusively presumed to have been lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created and if at the time of the creation of the parcel, there was no local ordinance in effect which regulated divisions of land creating fewer than five parcels" [Emphasis added].

As discussed above, the County did not accept the conveyance of a fee, but instead accepted the conveyance of a right-of-way for the construction and maintenance thereon of a public highway. As a result, the property (APN: 074-229-004) was not legally created prior to 1972 by Board acceptance of the right-of-way deed and the presumption of Government Code Section 66412.6(a) does not apply.

The applicant also contends Government Code Section 66499.30(d) is applicable. Section 66499.30(d) states "Subdivisions (a), (b), and (c) [requiring the filing of final or parcel map] do not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was established."

Likewise, Government Code Section 66499.30(d) does not apply because the property (APN: 074-229-004) was never legally created by deed conveyance separating it from surrounding lands and, therefore, does not fall within the exemption.

**Issue #2:**

**Ramona Avenue is not a public street which has merely been dedicated to the public as a right of way while still privately owned, the County actually owns the strip of land and would continue to after an Abandonment unless if specified who the land is to be granted to.**

**Response #2:**

Ramona Avenue right-of-way is owned by the County of San Luis Obispo by deed conveyance per Grant Deed recorded in Book 896 of Official Records, Pages 507-508. The conveyance accepted by the County was for "a right of way and incidents thereto for a public highway" - a right-of-way easement, not a fee, as noted in Response #1. No abandonment is proposed.

**Issue #3:**

**The Subdivision Code contained in Gov. Code Section 66424 applies to roadways so that certain parcels which are not, in fact, contiguous can be treated as such in order to determine the proper standard of review for further divisions of the existing legal parcels....This section has no bearing on the existing legal parcels if they are to be used without further subdivision, as is the case here...Please see: the People v. Pacific Land Research Company, 20 Cal.3d 10, for a complete discussion of the application of this code section and defining "contiguous"...We are not proposing any such division of the land in question and, therefore are not subject to this provision of the map act – 66424.**

**Response #3:**

The definition of "subdivision" in Government Code Section 66424 includes a provision that: "Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way." Consequently, it is our opinion that County acceptance of a deed for a road as in this case, where it was an acceptance of a grant of a right of way for a road, a right of way easement, does not divide property. The fact remains that neither the 1957 right-of-way deed nor the 1998 conveyance (Doc. No. 1998-034265) legally subdivided the property.

As for the case of *People v. Pacific Land Research Company* (1977) 20 Cal.3d 10, its provisions have no bearing on this case as it dealt with whether a white paper was required under the Subdivided Lands Act prior to selling subdivided property, not the provisions of the Subdivision Map Act which regulate the division of land and the issuance of certificates of compliance. As to its discussion concerning property joining at a point being considered "contiguous," that discussion is not relevant to the issues present in our case. The County's acceptance of the right-of-way for Ramona Avenue did not separate the fee ownership in the property and create separate legal lots.

**Issue #4:**

**There was no Law in 1957, local state or otherwise prohibiting the sale and division of such lots at this time. The lot in question here, for which we are submitting this appeal, was created by a grant of a strip of land, dissecting the then existing parcel on June 17, 1957.**

**Response #4:**

The appellant may have correctly observed what the law was in 1957 for the creation of four or fewer parcels. However, the appellant incorrectly interprets the 1957 Grant Deed as a subdivision of property when, in fact, it was not a conveyance of a fee, but instead was the conveyance of a right-of-way easement for a road that did not subdivide the property. See Response #1 and #3.

**Issue #5:**

**As previously stated, this is the sole remainder of a previously legally created parcel as the road is owned by the County and the portion across the road is owned by a nature conservancy. This conservancy lot has already acquired a conditional certificate of compliance so we are entitled to one sole remainder from a previously exempt lot that retains this exempt status after the grant in 1957 to the County by eminent domain.**

**Response #5:**

A conditional certificate of compliance, C07-0306 (SUB2007-00116), was issued and recorded for APN: 074-229-009 on the north side of Ramona Avenue on May 1, 2008 (Doc. No. 2008-022817) and an amended document was recorded on May 15, 2008 (Doc. No. 2008-025406). The appellant indicates that the property across the road from the subject property is owned by a nature conservancy. The current owner is the Morro Coast Audubon Society and they acquired their interest in the property per Grant Deed recorded July 17, 2008 (Document #2008-036439). The basis for requiring them to obtain a conditional certificate of compliance for APN: 074-229-009 is the same as for the subject property, the properties were illegally created. See Response #1 and #3.

**Conclusion:**

After evaluation of the map information, deed history, and chain of title submitted along with the application, staff concluded that none of the requested certificate of compliance parcels had deeds that separated them from surrounding lands. Therefore, in our letter dated February 15, 2011 to the applicant's agent (attachment #10), planning staff concluded that we are required to deny the application for the issuance of two (2) unconditional certificates of compliance for these proposed parcels as they have never been legally created.

Staff is recommending that your Board deny the appeal and uphold the decision of the Director of Planning and Building by determining that neither the 1957 deed (Book 896, Pages 507-508) nor the 1998 conveyance (Doc. No. 1998-034265) legally subdivided the property. Proof of deeds prior to 1960 for Lot 1 portion of APN: 074-229-005 and proof of deeds prior to 1966 for APN: 074-229-004 separating each requested certificate of compliance parcel to effectuate their creation is required and has not been provided. In order to be legally recognized, each requested certificate of compliance parcel would have to be conveyed and separated from surrounding lands. Consequently, the Director of Planning and Building properly denied the issuance of two (2) unconditional certificates of compliance as requested for the properties.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel reviewed the content of the staff report and approved the resolution as to form and legal effect.

#### **FINANCIAL CONSIDERATIONS**

The appellant has paid the appeal fee of \$850 to partially offset staff time required to prepare this staff report. The balance of funding comes from the department's budget - General Fund (total cost is approximately \$4,435).

#### **RESULTS**

Denying the appeal and upholding the decision of the Director of Planning and Building will encourage the appellant to revise the application to request consideration of the issuance of two (2) unconditional certificates of compliance, one (1) for Lot 38 and one (1) for Lot 39, and request consideration of the issuance of two (2) conditional certificates of compliance/coastal development permits, one (1) for Lot 1 portion of Block 8 of the Map of The Town of Sunshine Beach and one (1) for portion of Lot B of a plat of part of Lot 79 of the Rancho Canada de Los Osos, in the County of San Luis Obispo, State of California, according to map subdivided by H.C. Ward in June 1880 and filed for record June 9, 1880 in Book B, Page 72 of Maps. Thereafter, the appellant could then apply for a Lot Line Adjustment/Coastal Development Permit in order to reconfigure the existing two (2) small legal parcels into two (2) resulting larger parcels in order to encompass the total property ownership.

#### **ATTACHMENTS**

1. Location Map
2. Assessor Parcel Map
3. Land Use Category Map - Residential Multi-Family
4. Aerial Photo
5. Map of The Town of Sunshine Beach - Book A of Maps, Page 93
6. Corr Family Properties Evaluation of Deeds
7. Resolution and Grant Deed accepting right-of-way at Book 896  
of Official Records, Pages 504-508
8. Board of Supervisors Resolution with findings denying the appeal and  
upholding the decision of the Director of Planning and Building
9. Appeal letter submitted March 1, 2011
10. Staff letter dated February 15, 2011