

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

DATE: February 16, 2010
AGENDA ITEM NO. 21

DEPARTMENT: Planning

BY: Alvaro Arias, Associate Planner
PHONE: 742-1218

RECOMMENDED ACTION AND JUSTIFICATION:

Approve Formal Resolution Granting Appeal No. 2009-160 with findings, reversing the Planning Commission's action.

Justification is based on the Board of Supervisors action on Appeal No. 2009-160, which was taken at a public hearing on February 2, 2010. The Board of Supervisors tentatively granted the appeal.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

2/2/2010: Board took tentative action at public hearing on Appeal No. 2009-160. Action was to grant appeal and reverse Planning Commission's action.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Modify findings.

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

Draft Board of Supervisors Resolution
Tentative Map and Formal Resolution

CLERK'S USE ONLY:

Res. No.: 10-83 Ord. No. _____
Vote - Ayes: 4 Noes: None
Absent: _____
MAW Approved
() 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]



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN
LYLE TURPIN
JANET BIBBY
KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: **Planning**
PUBLIC HEARING (Deliberation Phase) to Adopt a Resolution taking Action on Appeal No. 2009-160, an Appeal of the Planning Commission's Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)
(Continued from February 2, 2010)

RES. 10-83

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 16, 2010

ACTION AND VOTE:

21

Planning

PUBLIC HEARING (Deliberation Phase) to Adopt a Resolution taking Action on Appeal No. 2009-160, an Appeal of the Planning Commission's Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)
(Continued from February 2, 2010)

BOARD ACTION: Chair Cann advised that the public comment period will be opened just to receive comment on whether or not the findings are supported by the facts and justify the Board's position. Alvaro Arias, Associate Planner, advised that the formal resolution with findings has been prepared and brought back to the Board as directed on February 2, 2010.

The public portion of the hearing was opened to receive comment as previously stated by the Chair. No comments were received. The public portion of the hearing was closed and the Board commenced with deliberations. Supervisor Aborn expressed his concerns with this matter. (M)Allen, (S)Turpin, Res. 10-83 was adopted granting Appeal No. 2009-160, with findings; and overturning the Planning Commission's determination, findings and action regarding Lot Line Adjustment Application No. 2009-090/Ayes: Turpin, Bibby, Cann, Allen; Noes: Aborn. The hearing was closed.

Cc: Steve Dahlem, County Counsel
File

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

Resolution
No. 10-83

A resolution granting Appeal No. 2009-160, and overturning the Planning Commission's determination, findings and action regarding Lot Line Adjustment Application No. 2009-090 between APNs 015-052-19 and 015-052-018 located at the corner of Meadow Lane and Triangle Road

WHEREAS, Lot Line Adjustment Application No. 2009-090 was submitted on the 10th day of June, 2009 by James Craig and Robin Dormer and Irwin and Jessica Iida; and

WHEREAS, Lot Line Adjustment No. 2009-090 proposes to adjust the boundary between APNs 015-052-018 and 015-052-019 to locate a well and home that encroaches over the property line on the correct parcel as well as abandon a twenty (20) foot wide easement for the existing encroachments as shown on the Tentative Map submitted with the application; and

WHEREAS, both parcels are located in the Residential land use and Rural Residential zoning designation, which establishes a minimum parcel size of 5 acres when on-site well and sewage disposal is provided and therefore both parcels are existing, non-conforming in size; and

WHEREAS, Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.2, Implementation Measure 5-9a(2) of the Mariposa County General Plan requires that in a proposal to modify the boundaries of one or more parcels or lots that do not meet minimum parcel or lot size standards of the applicable zone, the planning commission/County may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots, and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification. Under no other circumstances can a boundary modification proposal be approved wherein such modification will result in the creation of a substandard parcel or lot; and

WHEREAS, the Planning Director considered the information provided and did not support the findings as required by County Code and the General Plan; and

WHEREAS, correspondence was sent to the applicants on August 24, 2009 stating that the Planning Director could not support the findings and were given several processing options; and

WHEREAS, the applicants chose to schedule the application for Planning Commission review; and

WHEREAS, the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS, Lot Line Adjustment No. 2009-090 was scheduled for Planning Commission consideration as an action item at the Planning Commission meeting on the 6th day of November 2009; and

WHEREAS, a Staff Report was prepared pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS, the Planning Commission considered all of the information in the public record, including the Staff Report, and testimony presented by the applicants and their agent; and

WHEREAS, the Planning Commission adopted Resolution No. 2009-028 denying Lot Line Adjustment No. 2009-090 with findings; and

WHEREAS, an appeal of the Planning Commission's denial determination was received from James Craig and Robin Dormer and that appeal was complete for processing on the 25th day of November 2009; and

WHEREAS, that appeal is known as Appeal No. 2009-160 (Appeal); and

WHEREAS, Appeal No. 2009-160 was made to the Board of Supervisors; and

WHEREAS, an additional letter titled "Supporting Evidence" and dated January 5, 2010 was submitted by the appellants; and

WHEREAS, processing of Appeal No. 2009-160 was conducted pursuant to Mariposa County Resolution No. 02-525 as amended; and

WHEREAS, a duly noticed Board of Supervisors public hearing to consider Appeal No. 2009-160 was scheduled for the 2nd day of February 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. 2009-160 on the 2nd day of February 2010 and considered all of the information in the public record, including the Staff Report packet, testimony presented by the public concerning the Planning Commission's Determination and Findings, the Notice of Appeal, and the comments of the appellant; and

WHEREAS, during testimony the appellant's agent stated that no developable area for Parcel B is located on the east side of the drainage running through Parcel B; the

property owner of Parcel C stated that the well and septic system for future residential development of Parcel B are located on Parcel C. Based on this information from the appellant's agent and the property owner of Parcel C, the lot line would not affect the future residential development site for Parcel B; and

WHEREAS, the appellant's agent provided the Board of Supervisors with draft findings to support approving the Lot Line Adjustment between non-conforming parcels on February 2nd 2010; and

WHEREAS, these draft findings provided by the appellant's agent were that the project improves both parcels because a house and well were constructed over the property line. Both parcels "are negatively affected by encroachment issues affecting both financing and marketability. The lot line adjustment removes these encroachment issues from the title of both parcels"; and

WHEREAS, the Board of Supervisors took tentative action to grant the appeal and reverse the Planning Commission's denial of Lot Line Adjustment No. 2009-090. The Board of Supervisors directed staff to bring back a formal Resolution with findings for formal action, including a CEQA finding and findings necessary in accordance with the General Plan; and

WHEREAS, pursuant to County Code Section 17.132.040.B and County Code Section 17.136.020, the decision of the Board of Supervisors shall be rendered by formal resolution; pursuant to County Code Section 17.132.040.C, the Board of Supervisor's decision on the 2nd day of February, 2010 cannot be considered "rendered" or final until a formal resolution with findings is adopted based on the draft findings provided by the appellants; and

WHEREAS, the Board of Supervisors continued the public hearing for Appeal No. 2009-160 to the 16th day of February 2010 at 2:00 p.m. or as soon thereafter as possible; and

WHEREAS, for the continued public hearing on the 16th day of February 2010, staff prepared a Resolution with Findings Granting Appeal No. 2009-160, overturning the Planning Commission's action, and approving Lot Line Adjustment No. 2009-090 for the Board of Supervisors consideration; and

WHEREAS, the Board of Supervisors considered the information provided in the Board packet.

NOW, THEREFORE BE IT RESOLVED THAT, the Board of Supervisors of the County of Mariposa does hereby:

1. Grant Appeal No. 2009-160; and
2. Overturn the Planning Commission Resolution No. 2009-028 denying Lot Line Adjustment No. 2009-090; and

3. Approve Lot Line Adjustment No. 2009-090 as proposed by the application and as shown in Exhibit 3, with findings and processing conditions.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors action is based upon the findings in Exhibit 1 and the standard processing steps for Lot Line Adjustments in Exhibit 2.

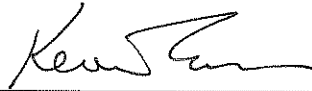
ON MOTION BY Supervisor Allen, seconded by Supervisor Turpin, this resolution is duly passed and adopted this 16th day of February 2010 by the following vote:

AYES: TURPIN, BIBBY, CANN, ALLEN

NOES: ABORN

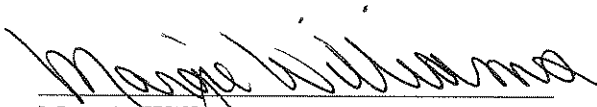
EXCUSED: NONE

ABSTAIN: NONE



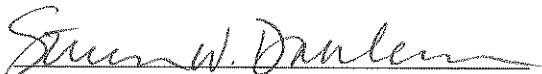
Kevin Cann, Chairman
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel

Exhibit 1

PROJECT FINDINGS for Lot Line Adjustment No. 2009-090

Project Description: The approved project is a Lot Line Adjustment between Parcel A APN 015-052-019, a 0.461 parcel and Parcel B APN 015-052-018, a 0.556 acre parcel. Parcel A APN 015-052-019, a developed parcel will become 0.524 acres in size as a result of the project and Parcel B APN 015-052.018, an undeveloped parcel will become 0.493 acres in size as a result of the project. The project includes the abandonment of an existing twenty (20) foot wide "well and access easement" located along the eastern line of Parcel B APN 015-052-018. The approved Tentative Map is included as Exhibit 3 of this Resolution. The project is approved with the following Findings:

1. **FINDING:** The lot line adjustment involves two (2) parcels which in their current or modified configurations do not comply with the minimum parcel size standards of the Residential land use classification of the General Plan and the Rural Residential zoning district of Title 17, the Zoning Ordinance. In a proposal to modify the boundaries of one or more parcels or lots where one or more of the parcels or lots do not meet minimum parcel or lot size standards of the applicable zone, the county may approve such boundary modifications provided such modifications will result in the improvement of the circumstances and/or design of both parcels or lots. Under no other circumstance can a boundary modification proposal be approved where such modification will result in the creation of a substandard parcel or lot, and in achieving the goals and policies of the General Plan and the purpose of the applicable land use classification. (Section 17.108.040 of the Mariposa County Zoning Ordinance and Section 5.2, Implementation Measure 5-9a(2) of the Mariposa County General Plan).

EVIDENCE: The project meets the required findings. This finding requires that in a case where one or more of the parcels or lots do not meet minimum parcel size, the County can approve the lot line adjustment provided that the adjustment results in the improvement of the circumstances and/or design of both parcels. In this case, the purpose of LLA 2009-090 is to adjust the boundary between Parcels A and Parcel B such that the house and well that encroach on Parcel B are fully located on Parcel A. Without the adjustment, both parcels are negatively affected by the encroachment issues of the well and residential structure. The lot line adjustment removes the well and the residential structure from Parcel B, putting it entirely on the correct parcel and giving the residential structure adequate buffer space to the property line. This improves the title of both Parcel A and Parcel B. General Plan Implementation Measure 5-1a(2) states; "Land development regulations should respect the diversity of rural lifestyles allowing the right to use one's property." The lot line adjustment will allow Parcel B to use more of the property on the east side of the creek, which is currently encumbered by an easement. When the easement is

abandoned, more land will be available for use by Parcel B. The project is consistent with the purpose of the Residential Land Use classification because Parcel A contains a residential dwelling and the project does not impact the anticipated development area on Parcel B. Additionally, based upon information in the record, the following was considered by the Board of Supervisors in making the finding that the circumstances and/or design of both parcels is improved:

- a. There is no developable area for residential improvements on Parcel B on the east side of the drainage located on Parcel B. This is the area which is being adjusted by the project.
 - b. Appurtenant and necessary infrastructure for future residential development of Parcel B, including a septic disposal system and well are located on Parcel C.
 - c. The current total area on Parcel B encompassed by the existing 20 foot wide easement (created by Document No. 2022848, Mariposa County Records) is 4,220 square feet. This is area which is not currently available to Parcel B for development. The area proposed to be adjusted by the Lot Line Adjustment project is 2,744.28 square feet. Based on the project proposal, when the lot line is complete, the 20 foot wide easement is proposed to be removed. Consequently, Parcel B will gain a theoretical 1,475.72 square feet of developable area on the east side of the drainage located on Parcel B.
2. **FINDING:** The lot line adjustment involves two existing adjacent parcels. The adjustment results in land being taken from one parcel and added to an adjacent parcel, and a greater number of parcels than originally existed is not being created by the lot line adjustment (this finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act).

EVIDENCE: The lot line adjustment increases the size of Parcel A and decreases the size of Parcel B. A greater number of parcels than originally existed is not being created by the lot line adjustment. This finding is made in accordance with the provisions of Section 66412(d) of the State Subdivision Map Act.

3. **FINDING:** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA).

EVIDENCE: The project is a minor lot line adjustment in an area with an average slope of less than 20%. The project will not result in any changes in land use or density, or the creation of a new parcel. Based upon the information studied for this project, and based upon the availability of infrastructure improvements for future residential development of Parcel B off-site (on Parcel C), the project does not impact the anticipated development area on Parcel B. Accordingly, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA). This finding is made in accordance with the provisions of Section 15305(a) of the CEQA Guidelines.

4. **FINDING:** This action is not to be considered a precedent for future projects.

EVIDENCE: The Board of Supervisors has approved this project based upon site specific and project specific conditions. This action is based upon consideration of unique site conditions for Lot Line Adjustment No. 2009-090, and is not to be considered a precedent for future projects.

Exhibit 2
**Processing Steps required for Completion of Lot Line Adjustment No.
2009-090**

Step 1:

- APPLICANT'S RESPONSIBILITY - Transfer Descriptions:** The project shows that there will be a transfer of property from Parcel B to Parcel A (Iida to Dormer). A land surveyor or other qualified individual must provide the County Surveyor (Jerry Freeman, Department of Public Works, 4639 Ben Hur Road, Mariposa 95338) with typed, stamped and signed legal descriptions describing those portions of the approved lot line adjustment which are to be transferred. The County Surveyor requests that copies of all documents referred to in the legal descriptions and copies of the lot closure computations (including error or closure, ratio of precision and acreage) be supplied with copies of the descriptions to validate the content of the descriptions. The County Surveyor will not accept area summary calculations.

- APPLICANT'S RESPONSIBILITY - Amended Parcel Boundary Descriptions:** A land surveyor or other qualified individual must provide the County Surveyor (Jerry Freeman, Department of Public Works, 4639 Ben Hur Road, Mariposa 95338) with typed, stamped and signed legal descriptions describing the amended parcels (descriptions that include and exclude the transfer pieces). The County Surveyor requests that copies of all documents referred to in the legal descriptions and copies of the lot closure computations (including error or closure, ratio of precision and acreage) be supplied with copies of the descriptions to validate the content of the descriptions. The County Surveyor will not accept area summary calculations.

Step 2:

- COUNTY SURVEYOR RESPONSIBILITY - Review of Legal Descriptions:** If satisfactory, the County Surveyor will approve the legal descriptions and forward them to Mariposa Planning.

Step 3:

- APPLICANT'S RESPONSIBILITY - Payment of Taxes:** Note (this step may be done concurrently with Steps 1 and 2). As required by the County Tax Collector and the Assessor/Recorder, a Verification of Taxes Paid Form allowing recordation of a Certificate of Compliance must be submitted to Mariposa Planning. In general, taxes on the subject parcels must be paid in advance for the current tax year before the Assessor can map the change and assign the new Assessor Parcel Numbers. Please contact the Tax Collectors Office directly [(209) 966-2621] for more information and

the amount which will need to be paid. Have a Verification of Taxes Paid Form allowing recordation of Certificates of Compliance for each parcel sent to Mariposa Planning. The Assessor/Recorder will not allow the recordation of the Certificates of Compliance without this form.

Step 4:

- APPLICANT'S RESPONSIBILITY – Recordation of Grant Deed(s):** Applicant records the transfer grant deeds with the legal descriptions that have been reviewed and approved by the County Surveyor. Applicant provides Mariposa Planning with copies of the recorded grant deeds.

- APPLICANT'S RESPONSIBILITY – Recordation of Modified Trust Deeds:** Any Trust Deeds on either parcel must be modified to reflect the new parcel configurations. The applicant shall record the amended trust deeds with the legal description(s) that have been reviewed and approved by the County Surveyor. Applicant provides Mariposa Planning with copies of the recorded amended trust deeds. As an alternative, the applicant may provide reconveyance documents to Mariposa Planning (showing the trust deeds have been paid off).

Step 5:

- MARIPOSA PLANNING RESPONSIBILITY – Preparation of Certificates of Compliance:** Mariposa Planning will prepare a Certificate of Compliance for each parcel involved in the lot line adjustment, when the above standard requirements are met. Following preparation of the documents, Mariposa Planning will determine the required recording fees for the documents and notify the applicant of the required fees. The Recorder's fee charge is \$14.00 for the first page and \$3.00 for each additional page for each Certificate of Compliance. The number of pages varies with Certificates of Compliance, and that is why the recording fee cannot be determined until this step in the process.

Step 6:

- APPLICANT'S RESPONSIBILITY – Payment of Recording Fees:** The applicant shall submit a check (made payable to the Mariposa County Recorder) based upon the recording fees determined in Step 5 above.

Step 7:

APPLICANT'S RESPONSIBILITY – Abandoning of 20 foot wide Easement as Proposed by Project Proposal: It shall be the responsibility of the applicants to ensure that the easement is abandoned so as to remove any further encumbrances on Parcel B.

Step 8:

- MARIPOSA PLANNING RESPONSIBILITY** – Recordation of Certificates of Compliance: Mariposa Planning will record the Certificates of Compliance for each parcel involved in the lot line adjustment. **This step completes the Lot Line Adjustment.** The Certificate of Compliance confirms that the parcel was created legally and is eligible for development permits. A copy of the final recorded certificate of compliance will be mailed to the applicant(s) a few weeks following the recordation.

Optional Step.

The applicant may have Mariposa Planning file a Notice of Exemption (NOE). This filing notifies the public that Mariposa County has determined that the California Environmental Quality Act (CEQA) does not apply to the approval of the project to adjust lot lines. While filing is not required, it is advisable to minimize legal exposure to the approval of the project, since the action of filing shortens the statute of limitations on appeals from 180-days to 35-days. If the applicant opts to file, then the NOE must be posted within five days of February 16, 2009. The County Clerk's Office requires a fee of \$50.00 for the filing of the NOE for the project. If the applicant opts to file, the applicant must submit to Mariposa Planning cash or a money order made payable to the Mariposa County Clerks Office for that amount within 4-days of the approval action for the lot line adjustment (the County Clerk's Office will not accept personal checks for this fee).

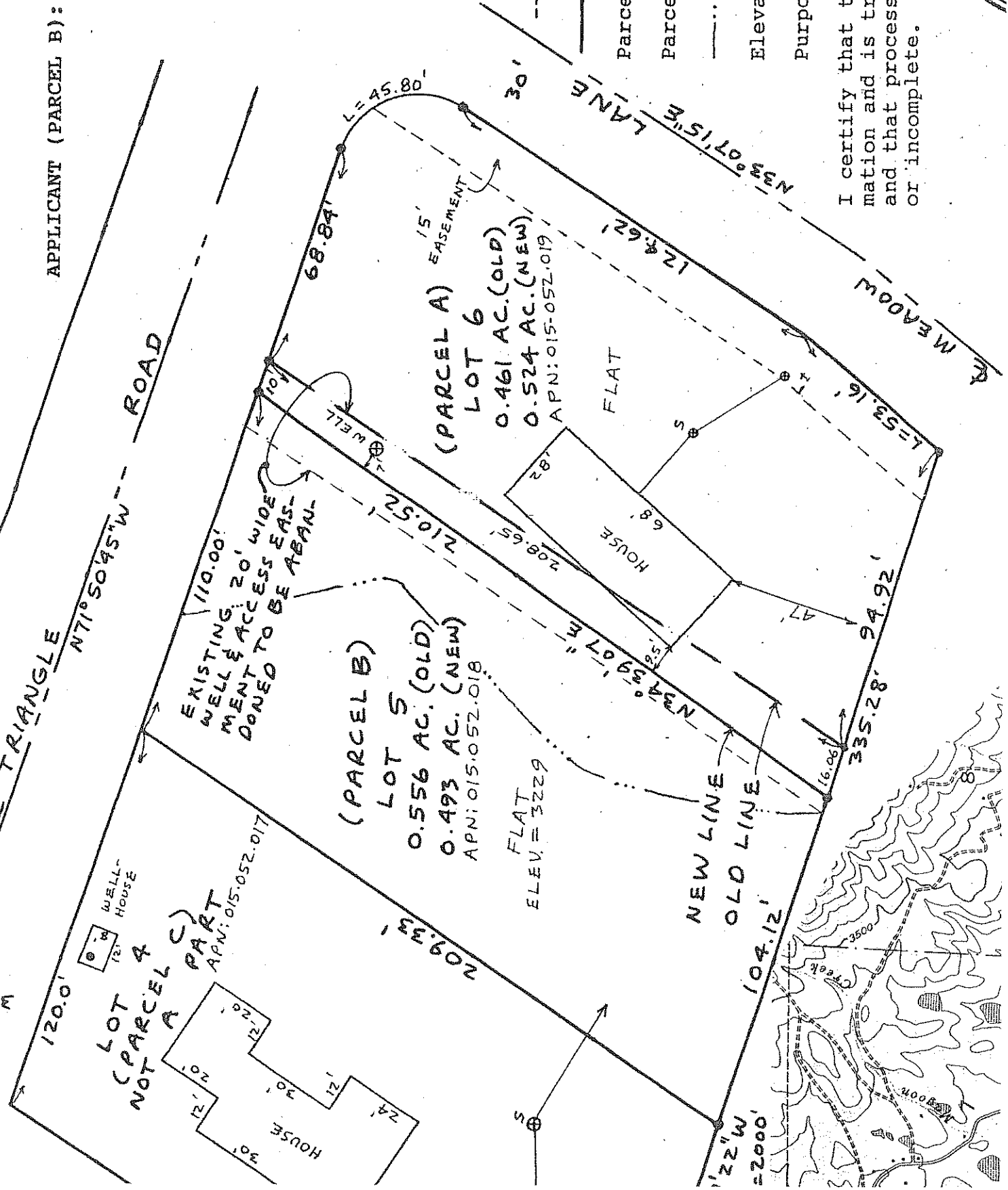
Exhibit 3
Approved Tentative Map for Lot Line Adjustment No. 2009-090

2017 CLOUDS INC
MARIPOSA, CA 9
209.966.7960

2017 CLOUDS INC
MARIPOSA, CA 9
209.966.7960
robindorme@gmail
Irwin K. & Jes
3491 Triangle
Mariposa, CA 9
209.682.5663
irwinida@yahoo

APPLICANT (PARCEL B):

PREPARED BY: D E P N S D
NO



-----Existi
 ---old lo
 Parcel A=Existing lo
 Parcel B=Existin lo
 -----indica
 Elevation data by US
 Purpose of ILLA: corr

I certify that this site map co
 mation and is true and complete
 and that processing may be dela
 or incomplete.



DEPARTMENT: Planning

BY: Alvaro Arias, Associate Planner
PHONE: 742-1218

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt a resolution denying Appeal No. 2009-160 with findings, upholding the Planning Commission's action.

Justification is provided in the Staff Report to Board of Supervisors from Mariposa Planning.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None

*Original
filed in Res.
Folder*

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Grant the appeal and reverse the Planning Commission's denial of Lot Line Adjustment No. 2009-090. Staff would process an approval for Lot Line Adjustment No. 2009-090 and make the required findings.

Financial Impact? () Yes (X) No Current FY Cost: \$ Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded

Amount in Budget:	\$ _____	Staff Report to the Board with Attachments
Additional Funding Needed:	\$ _____	(Attachments as listed on page 10 of Staff Report)
Source:		_____
Internal Transfer	_____	_____
Unanticipated Revenue	_____ 4/5's vote	_____
Transfer Between Funds	_____ 4/5's vote	_____
Contingency	_____ 4/5's vote	_____
() General () Other		_____

CLERK'S USE ONLY:

Res. No.: 10-62 Ord. No. _____
Vote - Ayes: _____ Noes: _____
Absent: _____
() Approved
2/2 () Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

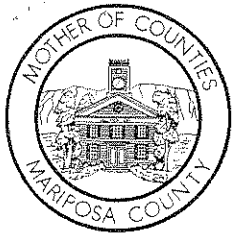
Requested Action Recommended
 No Opinion
Comments:

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]*

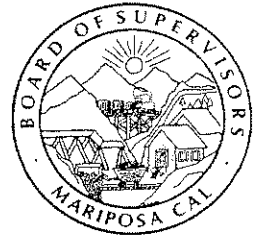


COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN
LYLE TURPIN
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KEVIN CANN
JIM ALLEN

DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: PUBLIC HEARING to Consider Appeal No. 2009-160, an Appeal of the Planning Commission's Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)

Res. 10-62

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on February 2, 2010

ACTION AND VOTE:

18

Planning

PUBLIC HEARING to Consider Appeal No. 2009-160, an Appeal of the Planning Commission's Denial of Lot Line Adjustment No. 2009-090; Applicants and Appellants – James Craig and Robin Dormer and Irwin and Jessica Iida (Project Site Includes APNs 015-052-018 and 015-052-019, Located at the Corner of Meadow Lane and Triangle Road)

BOARD ACTION: Kris Schenk introduced the appeal; and Alvaro Arias, Associate Planner, presented the staff report. He advised of a correction on circle page 7 to “see the above discussion for No. 2” versus “No. 3.” He advised that proposed findings to support approval of the appeal were received this morning on behalf of the appellant. Staff responded to questions from the Board as to whether there are setback standards for future well or septic installation around the drainage area; whether any of the area on Parcel B that is proposed to be moved to Parcel A is buildable; being able to justify improvement to Parcels A and B with a lot line adjustment; relative to existing improvements on each of the parcels (A, B and C), and the possibility of a variance; relative to the option of equal area exchange and taking into consideration the location of the drainage; relative to the Planning Commission misunderstanding the size of the acreage and the minimum size required by zoning; and relative to the flow of the creek through the drainage and whether the area could be developed.

The public portion of the hearing was opened and input was provided by the following:

Appellant:

Anita Starchman Bryant, Starchman and Bryant Attorneys at Law, advised that she is representing the Dormers. She asked staff to project the photographs that she emailed to them this morning showing where the current boundary cuts through the house and where the proposed boundary with the lot line adjustment would be. She asked which Board members have visited the site. Supervisors Aborn and Bibby indicated that they have not. Attorney Bryant advised that there is not enough space to develop between the drainage area and the fence. She distributed a copy of a portion of Code Section 17.108.040 which she feels allows for the modification of boundaries of parcels where one or more do not meet the minimum parcel size of the applicable zone provided such modifications will result in the improvement of the circumstances and/or design of both parcels. She referred to the confusion on the .5-acre parcel size by the Planning Commission members and advised that both parcels (A and B) are currently non-conforming and do not meet the minimum parcel size of 5-acres. She advised that the existing easement does not solve the problem with the locations of the well and septic. The lot line adjustment will remove the encroachments and the negative affect on the title. She referred to the Planning Commission's reasons for denying the lot line adjustment; and she noted that the owners of parcels A and B and C are present to answer questions. She noted that the lot line adjustment does not reduce the developability of parcel B. She could find no legal basis to require an equal exchange of land; and she addressed the impacts of such a requirement, including survey costs and relocation of the fence. She referred to the issue of setting precedents and the conservative interpretation of the codes by the Planning Director and the Commission; and she advised of a similar situation with Lot Line Adjustment Application No. 502 that was approved in 1996. She referred to the suggestion to merge parcels B and C and advised that parcel C should not be considered for discussion with this application. She requested that the Board uphold the appeal and direct staff to process the application. She advised that Rick Lobaugh from Inter County Title Company is present to testify relative to the title issues; and that Attorney Don Starchman is present to testify relative to interpretation of the Code. She responded to questions from the Board as to whether the fence was a joint project with the two property owners; and relative to the date of construction of the septic on parcel B and its location.

Irwin Iida responded to a question from the Board relative to the location of the well that serves parcel B and the septic systems. He advised that there is piping from the existing well on parcel C to serve parcel B. He advised that the septic system for parcel B is on parcel C.

Rick Lobaugh responded to questions from the Board as to whether the encroachment is done through an easement for the well and septic to benefit parcel B. He advised that the Iidas own parcels B and C and they do not need an easement at this time. If they sell a parcel, an easement would need to be created; and he provided input on the title issues.

Don Starchman, Starchman and Bryant Law Offices, advised that he served as Chair of the subcommittee that drafted the Ordinance (for Section 17.108.040) and the text for lot line adjustments between non-conforming parcels was not originally a part of Title 17. He advised that Barry Brouillette came before the subcommittee and cited an example of where it would be beneficial to do a lot line adjustment for substandard parcels as long as there is an advantage to both parcels. He further noted that this Code section has been interpreted that way until five and one-half years ago. He stated he does not feel that financing could be obtained if there is an encroachment on the title of both parcels and he feels the problem needs to be addressed.

Opponent: none

Persons Speaking in Opposition:

Rita Kidd urged the Board to support the Planning Commission and Planning Director's decision in this case. She provided input on the matter and

noted that funds were expended for the fence before the lot line adjustment application was submitted. She feels this request is in conflict with the 2006 General Plan which requires findings be made. She feels that the applicant should discuss the matter with staff before submitting an application. She asked why the Board is trying to fix a problem for a buyer that took on this problem, and she feels the existing easement solves the matter. She referred to Implementation Measure 5-9a(2) of the General Plan, and she stated she feels it would be a different circumstance if parcels C and B were owned by two different property owners. She feels the lot line adjustment will make parcel B undevelopable, and she referred to the General Plan procedures relative to allowing shared wells. She noted that we have not had an opportunity to update the ordinances and feels the General Plan should prevail where there is any conflict. She feels that if this is approved, we could be headed down a "slippery slope." She urged the Board to not approve the appeal.

Rebuttal:

Anita Starchman Bryant stated she does not know what good it would have done for the applicant to meet with staff before submitting the application as she feels that they would have been given the same information. She does not feel that the application makes parcel B undevelopable. She referred to the shared well issue and advised that the testimony during the General Plan update process referred to the creation of new parcels. She does not feel that this is a "slippery slope" as each case is reviewed on its own merits. She referred to the testimony that the ordinances need to be reviewed if they are in conflict with the General Plan, and she advised that there is no conflict with the language that was referred to; and she asked that the appeal be upheld. She responded to questions from the Board relative to being able to develop parcel B without having an encroachment or easement to parcel C; whether parcel B could be developed if parcel C belonged to someone else; and she advised that the lot line adjustment between parcels A and B would not affect the developability of parcel B. She advised that there is a benefit to parcel B to remove the portion of the house and the well that encroaches on it. Supervisor Bibby commented on the need for all Board members to have the benefit of receiving the same information for an appeal, and she thanked Attorney Bryant for presenting the photographs of the area that Planning staff showed. Attorney Bryant advised that the Board members that visited the site were on their own, she did not go with them.

The public portion of the hearing was closed. Supervisor Cann thanked Alvaro Arias for finding the Grant Deed for him that describes the easement. Rick Benson, County Administrative Officer, asked for clarification of whether the easement goes away with the lot line adjustment application. Steve Dahlem, County Counsel, advised that the Grant Deed document should be introduced and made a part of the record, and it was. Staff responded to questions from the Board relative to review of the proposed findings that were submitted on behalf of the appellant this morning – staff advised that a CEQA determination would need to be incorporated in the findings if the Board takes action to approve the appeal. The Board commenced with deliberations. Supervisor Turpin commented on the neighbors being able to reach agreement. Supervisor Allen commented on the impact of aesthetics for a "jogged" fence for the equal area exchange option. Discussion was held relative to consideration of the creek/drainage location.

(M)Turpin, (S)Allen, Res. 10-62 was adopted upholding Appeal No. 2009-160 with the findings as presented on behalf of the appellant, and with the inclusion of a CEQA determination. County Counsel deferred to staff as to whether they would like to have a recess to have an opportunity to bring back specific findings relative to the CEQA part of the motion. Discussion was held. County Counsel responded to a question from the Board relative to the option of sending the matter back to the Planning Commission for review of all of the information that has been presented, including the misunderstanding relative to the size of the parcels and the zoning;

and he advised that sending the matter back to the Commission would be an option; however, the Board is considering this matter on its own merits. Kris Schenk advised that two options are available: 1) consider and adopt the findings at this time; or 2) refer this back to County Counsel and staff for the findings to be brought back, including CEQA findings and General Plan findings raised during the public input portion of the hearing. County Counsel responded to a question from the Board relative to options for action – tentatively upholding the appeal with direction to staff to bring back a resolution with findings and with direction to staff as to the general content of those findings. He responded to a question from the Board as to the status of the hearing if this option is pursued, and advised that if the Board tentatively approves and upholds the appeal on Lot Line Adjustment No. 2009-090 and directs staff to bring back the appropriate findings that would support the findings presented by the appellant and include the appropriate CEQA finding, that the hearing should be continued to a specific date and time. Supervisor Turpin restated his motion, agreeable with Supervisor Allen as the second, to adopt Res. 10-62 upholding Appeal No. 2009-160 for Lot Line Adjustment No. 2009-090 and directing staff to bring back the appropriate findings that would support the findings presented by the appellant and include the appropriate CEQA finding, and with further direction for the hearing to be continued to a specific date and time. Supervisor Bibby asked for clarification of whether this concludes the Board's deliberations; and was advised that the public comment portion is closed unless action is taken to reopen it. Supervisor Bibby expressed concern about the record and the testimony by the County Administrative Officer and asked County Counsel to review this. Supervisor Aborn expressed concern with a tentative vote before receiving the formal findings. Supervisor Bibby stated she feels this is a site specific case and that it is not precedent setting. Ayes: Turpin, Bibby, Cann, Allen; Noes: Aborn. Chair Cann continued the deliberation phase of the hearing to February 16, 2010 at 2:00 p.m.

Attorney Starchman Bryant noted that with the closure of the public portion of the hearing, that there should not be any public contact with Board member(s) at this point. County Counsel concurred.

Cc: Steve Dahlem, County Counsel
File