# Zoning Administrator Determination Dated April 19, 2012

**Department of Conservation & Development**

30 Muir Road
Martinez, CA 94553-4601

Phone: 1-855-323-2626

**Contra Costa County**

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Director

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Community Development Division

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Deputy Director
Building Inspection Division

**Steven Goetz**
Deputy Director
Transportation, Conservation and Redevelopment Programs

April 19, 2012

Ms. Lisa Borba
3820 Blackhawk Road
Danville, CA 94506

**RE: DECISION REGARDING REQUESTED CERTIFICATES OF COMPLIANCE FOR FOUR PARCELS**

**Address:** **0 Walnut Boulevard, Byron, CA**
**County Files:** **ZC11-798 (Parcel C; Assessor Parcel No. (APN): 003-010-016 (portion))**
**ZC11-799 (Parcel B; APN: 003-010-017 (portion))**
**ZC11-800 (Parcel A; APNs: 007-150-017, 003-010-017 (portion))**
**ZC11-801 (Parcel D; APNs: 007-150-018, 007-150-016 (portion))**

Dear Ms. Borba:

This letter is in response to four administrative applications requesting issuance of certificates of compliance for the above-referenced parcels (collectively the "subject property").

Background

Prior to 1997, the subject property existed as one continuous legal lot. As part of the Los Vaqueros Reservoir project, the Contra Costa Water District (CCWD) condemned and took fee title to two rights-of-way, one for the relocation of Vasco Road and one for construction of a transfer pipeline. These two condemnations cross the subject property and crisscross each other, resulting in the subject property being broken into four units of land under private ownership. These units are identified as Parcel A (357.17 acres), Parcel B (74.16 acres), Parcel C (45.82 acres), and Parcel D (108.49 acres) on the exhibit prepared by Cunha Engineering, Inc., that was submitted with the certificate of compliance applications.

On June 19, 2008, the owners of the subject property submitted a Minor Subdivision application (County File #MS08-0010) requesting approval to divide the subject property into four lots and a designated remainder. As part of its normal application processing procedure, the County referred this application to interested public agencies and private organizations. In response to the referral, Save Mount Diablo (SMD) raised significant concerns regarding, among other issues, potential impacts to biological resources, potential impacts to mineral resources, consistency with the East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan, and compliance with the requirements of the California Environmental Quality Act (CEQA).

In response to SMD's concerns, you authored a letter to Senior Planner Lashun Cross, dated September 30, 2009, which in pertinent part states:

> The first major misconception SMD had with our project was with the number of legal parcels involved. We are not sure where the author of the letter got his information, but the Dutra Ranch is only one legal parcel. Had more legal parcels existed, we could have satisfied our business needs with a much more simple Lot Line Adjustment. We did not have the ability to do so, so the choice was made to pursue a Minor Subdivision.

The Minor Subdivision application remains open. Processing cannot move forward until we receive information necessary to complete the CEQA review process. Per your email to Ms. Cross dated June 22, 2011, processing has been suspended pending the decision on the four certificates of compliance.

On May 17, 2011, the owners of the subject property submitted the applications for certificates of compliance. In a letter to you dated July 28, 2011, the project planner, Christine Louie, indicated that the County could issue one certificate of compliance for the subject property and explained the reasoning behind this determination. We subsequently received correspondence from your counsel, Mr. Sanford M. Skaggs, countering Ms. Louie's determination and supporting the position that the subject property is four legal lots. The final correspondence we received in support your position was a memo from Mr. Michael P. Durkee to Thomas Geiger of our County Counsel dated November 30, 2011. Mr. Durkee contends that four non-conditional certificates of compliance should be issued. We take Mr. Durkee's memo to be your official position on this matter.

Discussion

Based on the statement in your September 30, 2009, letter regarding the number of lots in existence, we begin under the presumption that the subject property is one legal lot and that the existence of four legal lots must be successfully demonstrated, not vice versa. Furthermore, we note the contents of the tentative map submitted as part of the aforementioned Minor Subdivision application. Pursuant to Government Code § 66424.6, a subdivider may designate a remainder parcel (singular). The tentative map depicts one 184.6-acre remainder parcel that is located on both sides of Vasco Road, with the two pieces linked by a "fishhook" figure. By submitting for County approval a tentative map with said depiction of the proposed remainder parcel, the property owners have clearly demonstrated a belief that a single legal unit of land (in this case a designated remainder) can be separated by, and exist on both sides of, a right-of-way that has been acquired in fee title by a governmental agency.

We agree with Mr. Durkee's argument that the act of separating the CCWD rights-of-way from the subject property did not require a parcel map and that the resulting properties, public and private, are legally created. The point of disagreement is whether the subject property is one legal lot or four legal lots. We find nothing in the argument presented to us which unequivocally demonstrates that the CCWD condemnations divided the subject property into four legal lots.

In a 2003 California Attorney General Opinion, the Attorney General concluded that a 1965 condemnation by a governmental agency lawfully created not only the condemned parcel, but also two new remnant parcels located on either side of the condemned parcel. (See 86 Ops.Cal.Atty.Gen. 70 (2003)). In 1965, when the condemnation occurred, the Map Act did not require parcel maps for divisions of fewer than five parcels. At that time no map of any kind was required; the parcel map requirement began in 1972. The Attorney General relied on Map Act § 66412.6, which presumes that a parcel was lawfully created if it was part of a division that occurred prior to March 4, 1972, the division created fewer than five parcels, and the division was not regulated by a local ordinance then

in effect. The remnant parcels were legal because no map was required under the Map Act or by local ordinance when they were created in 1965. According to the Attorney General, the "division" occurred, and the parcels were created, when the court ordered the condemnation and the deed was recorded.

The present case differs from the 1965 case in that the County's subdivision ordinances regulated divisions of four or fewer parcels in 1997 when the CCWD condemnations occurred. According to the Attorney General Opinion, if the lots created by the 1965 condemnation were legal because neither the Map Act nor the ordinances in effect at the time regulated subdivisions of four or fewer lots, then it stands to reason that lots created when local ordinances regulating subdivisions of four or fewer lots are in effect are not legal. This position is supported by footnote 5 of the 2003 Attorney General Opinion, which reads as follows:

> We note that a parcel map is currently not required for "[l]and conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map" (§ 66428, subd. (a)(2)), and "[a]ny conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for conveyance to that public utility for rights-of-way shall not be considered a division of land for purposes of computing the number of parcels" (§ 66426.5). *Of course, new parcels that are created but not conveyed to a governmental agency must comply with any applicable requirements of the Act.* (See 58 Ops.Cal.Atty.Gen., supra, at pp. 594-595). [emphasis added]

While a parcel map was not required to divide the two CCWD condemnations from the subject property, a parcel map is required to divide the subject property into four legal lots. In further support of this position, we note the following:

- Pursuant to a 1991 Attorney General's Opinion, there are two distinct ways to subdivide property in California: 1) by a subdivision map that has been properly prepared, approved, and recorded; and 2) through actual conveyance. (See 74 Ops.Cal.Atty.Gen. 149 Opinion No. 91-105, August 13, 1991). We can find no evidence of individual grant deeds for any of the four parcels that constitute the subject property; they have always been conveyed as one unit of land.

- Chapter 4, subsection (c) of the 2011 edition of *Map Act Navigator*, principally authored by Mr. Durkee, states the following:

  > Any conveyance of land to a governmental agency, public entity, public utility or subsidiary of a public utility for rights-of-way is not considered a division of land and therefore not subject to the Subdivision Map Act. Gov't Code § 66426.5

  It stands to reason that the subject property could not have been divided into four parcels if the right-of-way conveyances to CCWD did not constitute divisions under the Map Act. Said differently, a division of the land in private ownership cannot be the final outcome if no division occurred in the first place.

- If one accepts the notion that government condemnation of a strip of land through a privately-owned parcel automatically subdivides the parcel into multiple private lots, then one must also accept the notion that in addition to the power of eminent domain, the government has the right

to subdivide private property without the owner's consent. We do not believe that this is the intent of the Legislature.

Decision

Based on the foregoing, we have determined that the four units of land for which you are requesting certificates of compliance constitute one legal lot. Your request for issuance of four certificates of compliance is **denied**.

Opportunity to Appeal this Decision

This decision may be appealed to the County Planning Commission. In order for an appeal to be valid, it must be in writing and received in the offices of the Department of Conservation & Development, Community Development Division by **5:00 p.m., Monday, April 30, 2012**. The appeal letter must state the grounds for the appeal and must be accompanied by the required $125.00 appeal fee. If no appeal is received by the close of the appeal period, then this decision will become final. At that point, if you desire, the Department will submit one certificate of compliance covering the entirety of the subject property to the County Recorder for recordation.

Should you have any questions regarding this matter, please contact the project planner, Christine Louie, at (925) 674-7787 or by e-mail at christine.louie@dcd.cccounty.us, or Principal Planner William Nelson at (925) 674-7791 or william.nelson@dcd.cccounty.us.

Sincerely,

Aruna Bhat

Aruna M. Bhat
County Zoning Administrator

cc: Mr. Ron Nunn
Mr. Jeff Tamayo
10500 Brentwood Boulevard
Brentwood, CA 94513