

MONTEREY COUNTY PLANNING COMMISSION

MEETING: March 12, 2008 9:00 AM		AGENDA NO: 2
Project Description: Appeal of Administrative Interpretation of the Director of Planning resulting in the grant of two (2) Certificates of Compliance on the Yuki Farms Limited Partnership III LP request for three (3) Certificates of Compliance (Planning Files CC060024, CC060025 and CC060026). The property is located west of Highway 183, at the intersection of Highway 183 and San Jon Road, Salinas (Assessor's Parcel Number 414-011-011-000).		
Project Location: West of Highway 183, at the intersection of Highway 183 and San Jon Road, Salinas	APN: 414-011-011-000	
Planning Number: PLN070646	Name: Yuki Farms Limited Partnership III LP	
Plan Area: Greater Salinas Area Plan	Flagged and Staked: No	
Zoning Designation: "F/40" (Farmlands, 40 acre minimum)		
CEQA Action: Not a project according to CEQA Guidelines Section 15378		
DEPARTMENT: RMA – Planning Department		

RECOMMENDATION:

It is recommended that the Planning Commission deny the appeal and uphold the administrative interpretation by the Director of Planning resulting in the grant of two Certificates of Compliance for Lot 1 and Lots 2 & 3 collectively on the Yuki Farms Limited Partnership III LP request for three Certificates of Compliance (Planning Files CC060024, CC060025, and CC060026).

SUMMARY:

Yuki Farms Limited Partnership III LP ("Applicant") own an approximately 81-acre parcel located west of Highway 183, at the intersection of Highway 183 and San Jon Road, in Salinas (Assessor's Parcel Number 414-011-011-000 – hereafter "the Property"). On July 13, 2006, the Applicant applied for three Certificates of Compliance on the property. The Applicant contends that three legal lots were created in the late 1800's.

After an analysis of the documents submitted, the Planning Department issued an initial determination on June 6, 2007 that the parcel in question is entitled to two (2) unconditional Certificates of Compliance pursuant to Section 66499.35 (a) of the Subdivision Map Act (**Exhibit J**) and Section 19.14.050.A.1.a and 19.14.050.A.1.e of Title 19 (**Exhibit J**) of the Monterey County Code (**Exhibit D**). On December 4, 2007, the County issued a determination letter and indicated that the Director's determination is appealable to the Planning Commission pursuant to Monterey County Code Section 19.17.030 (**Exhibit E**). This section allows for an appeal of the Director of Planning's administrative decisions and interpretation of the County's Subdivision Ordinance.

On December 17, 2007, the Applicant filed a timely appeal of the Director's determination that the subject parcel qualifies for two Certificates of Compliance (**Exhibit C**). The appeal is brought on the basis that the determination is not supported by the evidence and the following contentions:

- Lot 2 and Lot 3 were separately created and conveyed and were not merged;
- Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots;
- The words 'body' or 'tract' of land may be defined as containing separate legal parcels

and are therefore not determinative of the grantors' intent to merge or combine the two lots.

Staff disagrees with these contentions for the reasons set forth in **Exhibit A**.

DISCUSSION:

See **Exhibit A** for a detailed discussion of the project.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel is the only agency that has been consulted.

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cc: Front Counter Copy; Planning Commission; County Counsel; Alana Knaster, Mike Novo, Carl Holm; Laura Lawrence; Carol Allen; Yuki Farms Limited Partnership III LP, Owners; Tim Baldwin, Agent; Project Files (PLN070646, CC060024, CC060025, and CC060026)

This report was reviewed by Mike Novo, Director of Planning.

Attachments: Exhibit A Project Discussion
Exhibit B Draft Resolution
Exhibit C Notice of Appeal (December 17, 2007), including referenced Exhibits
Exhibit D Planning Department Determination dated June 6, 2007
Exhibit E Planning Department Appeal Letter dated December 4, 2007 (without June 6, 2007 letter enclosure)
Exhibit F Map of Requested Parcels
Exhibit G Map of Lot 1 and Kopman Parcel
Exhibit H Map of Lot 1, Lot 2, Bordges Parcel, and Lot 3
Exhibit I Deeds Relevant to Legal Lot Determination, including current deed
Exhibit J Referenced Code Sections from Title 19 and the Subdivision Map Act

Note: Full chain of title documents are available for review at the RMA- Planning Department

EXHIBIT A PROJECT DISCUSSION

II. INTRODUCTION

Under the Subdivision Map Act (“Map Act”), owners of real property may request a determination from the County that the property complies with the Map Act and local ordinances. If the County determines that the real property complies, the County must issue a Certificate of Compliance (**Exhibit J**). Issuance of a Certificate of Compliance provides legal recognition of the parcel for which the certificate is issued. Subsequently, the parcel may be sold, leased or financed without additional subdivision processing.

Yuki Farms Limited Partnership III LP (“Applicant”) own an approximately 81-acre parcel located west of Highway 183, at the intersection of Highway 183 and San Jon Road, in Salinas (Assessor’s Parcel Number 414-011-011-000 – hereafter “the Property”). On July 13, 2006, the Applicant applied for three Certificates of Compliance on the property. The Applicant contends that three legal lots were created in the late 1800’s.

After an analysis of the documents submitted, the Planning Department issued a determination on June 6, 2007 that the parcel in question is entitled to two (2) unconditional Certificates of Compliance pursuant to Section 66499.35 (a) of the Subdivision Map Act (**Exhibit J**) and Section 19.14.050.A.1.a and 19.14.050.A.1.e of Title 19 (**Exhibit J**) of the Monterey County Code (**Exhibit D**). On July 24, 2007, County staff was contacted by Tim Baldwin, the Applicant’s representative, regarding these certificates. Mr. Baldwin verbally disputed the issuing of only two certificates, but asked that the County not issue a final determination until he submitted more information. After 4 ½ months and no new information, County staff issued the final determination letter on December 4, 2007 (**Exhibit E**).

On December 17, 2007, the Applicant filed a timely appeal of the Director’s determination that the subject parcel qualifies for two Certificates of Compliance (**Exhibit C**). The appeal is brought on the basis that the decision is not supported by the evidence and the following contentions:

- Lot 2 and Lot 3 were separately created and conveyed and were not merged;
- Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots;
- The words ‘body’ or ‘tract’ of land may be defined as containing separate legal parcels and are therefore not determinative of the grantors intent to merge or combine the two lots.

Staff’s analysis and response to these contentions follows below.

III. ANALYSIS

A. Creation of Lots

Lot 1

Shown in **Exhibit F** as Lot 1, this parcel was originally created in a deed from Boronda to Fabry recorded on January 27, 1874 in Book P of Deeds at page 69 (**Exhibit I**) as follows:

“Beginning as a point on the line of the S.P. Railroad where the same intersects the line of Doris Davis land: thence South 60° West to a Slough, thence North 15° East to the said

Railroad track and thence along the line of said Railroad track to the place of beginning and containing about four acres of land...”

This parcel is generally described in the same manner in subsequent conveyances. The legal description only differs slightly today in that it excepts out a portion of the property which was conveyed to the County of Monterey in 1930 for the development of the County Road leading from Salinas to Watsonville (now Highway 183). (Please refer to language in the current Grant Deed (Document #2002062521) in **Exhibit I**). The County does not dispute the legality of this parcel and is prepared to grant one (1) unconditional Certificate of Compliance pursuant to Section 66499.35 (a) of the Subdivision Map Act and Section 19.14.050.A.1.a of Title 19 of the Monterey County Code.

Miguel Fontes obtained the property in Lot 1 in a deed from Frank Fabry recorded on October 13, 1891 in Book 34 of Deeds at page 20 (**Exhibit I**).

Lot 2

Shown in **Exhibit G** as the Kopman Parcel, the parcel was originally created as part of a larger parcel “containing 80.52 acres a little more or less” in the deed from Gigling to Kopman, recorded on January 15, 1876 in Book T of Deeds at page 260 (**Exhibit I**).

On December 15, 1886, Miguel Fontes obtained the Kopman Parcel in a deed recorded in Book 12 of Deeds at page 448 (**Exhibit I**). The acreage of the parcel in this deed (78.20 acres) is slightly smaller, as this conveyance was made for the purpose of correcting the description of land sold and conveyed in the deed from Gigling to Kopman in 1876. Six days later on December 21, 1886, Miguel Fontes conveyed 14.13 acres (shown on the map in **Exhibit H** as the Bordges Parcel) of the 78.20 acre Kopman Parcel in a deed to Manuel Bordges and Antonio Bordges recorded in Book 12 of Deeds at page 471 (**Exhibit I**). The 14.13 acres shown on the map in Exhibit H as the Bordges Parcel, is no longer part of the Yuki Farms property. What remained is 64.07 acres of land shown in **Exhibits F & H** as Lot 2.

Lot 3

This parcel was part of adjacent lands owned by Manuel Bordges and Antonio Bordges. On the same day that Miguel Fontes conveyed the 14.13 acre Bordges Parcel, Manuel Bordges and Antonio Bordges conveyed 13.17 acres (shown on the maps in **Exhibits F & H**) of their adjacent land in a deed to Miguel Fontes recorded in Book 12 of Deeds at page 479 (**Exhibit I**). This property was contiguous to the Kopman Parcel that Miguel Fontes had obtained six days earlier. This Parcel is shown in **Exhibits F & H** as Lot 3. The conveyance of Lot 3 and the Bordges Parcel between Manuel Bordges & Antonio Bordges and Miguel Fontes is analogous to the current day lot line adjustment.

Miguel Fontes continually owned the property which comprises Lots 1, 2 and 3 until his death in January 1924.

B. Merger of Lots 2 and 3

In the Decree of Final Distribution (“Decree”) from the Estate of Miguel Fontes to Maria Fontes et al, recorded on March 26, 1925 in Volume 54 Official Records at page 262 (**Exhibit I**), Lots 2 and 3 are described as Parcels One and Two, respectively. Parcel One (Lot 2) is described as containing a “net area of 64.07 acres.” Parcel Two (Lot 3) is described as “containing 13.17

acres.” Although Parcels One and Two were created as separate parcels and are described as separate parcels in the Decree, the language that follows the legal description of Parcel Two in the Decree merges the acreage of Parcel One and Parcel Two by describing it as one collective body or tract of land containing 77.24 acres as follows:

“Said parcels 1 and 2 comprise one body or tract of land situate in Sec. 23, Tp. 14 S. R. 2 E., M.D.M., containing 77.24 acres of land.” (emphasis added)

Staff has interpreted this language as the express written statement by the grantor to merge Lots 2 and 3 as required under Civil Code section 1093. As established in this Decree and subsequent deeds for the next 80+ years¹, Parcel One and Parcel Two are collectively described as “... one body or tract of land ...containing 77.24 acres of land.” Lots 2 and 3 were never conveyed separately again. Lot 1 was also included in the same Decree and described as Parcel Three. It is important to note that the Decree and subsequent deeds did not explicitly merge Parcel Three (Lot 1) into the acreage that includes Parcels 1 and Two (Lots 2 and 3).

Monterey County Code Section 19.14.050.A.1.e states that a parcel qualifies for an unconditional Certificate of Compliance if “the parcel in question has not been combined by the owner...” (**Exhibit J**) Because the property was merged in the Decree and all subsequent deeds, the Director of the RMA – Planning Department, has made the determination that the parcel qualifies for one (1) unconditional Certificate of Compliance for the acreage in Lots 2 and 3. Therefore, staff recommends that the Planning Commission deny the appeal. At the conclusion of the administrative appeals and if the appeal is denied, the Director of Planning would proceed to issue two Certificates of Compliance: one for Lot 1; and one for Lots 2 and 3 collectively.

C. Staff Response to Appellant Contentions

The Appellant contends that the Director’s decision was not supported by the evidence for the reasons outlined below. Staff’s response to each contention follows.

Appellant’s Contention 1:

“APPLICABILITY OF INTENT. The issue of whether or not Parcel 2 and Parcel 3 were merged, begs the question: to what degree the County is allowed to determine the intent of the parties given that the original lots were created by separate conveyances? Existing statutes currently limit the County’s ability to make that determination, including the following:

- 1. *Civil Code section 1093* provides that: ‘Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds...into a subsequent single deed..., does not operate in any manner to alter or affect the separate and distinct nature of the real property so described...’**

¹ The parcels have been described as “one body or tract of land” since 1925 in the following deeds submitted with the applications for review: Vol. 325 O.R. Pg. 333; Vol. 668 O.R. Pg. 448; Book 1842 Pg. 136; Book 2198 Pg. 84; Book 2199 Pg. 207; Book 2200 Pg. 151; Reel 744 Pg. 1015; Reel 1017 Pg. 49; Document #2002062521.

2. ***Government Code section 66412.6(a)*** provides: ‘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 into 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.’
3. ***Government Code section 66451.10*** provides: ‘Notwithstanding Section 66414, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units or any of them.’
4. ***Government Code section 66499.30(d)*** provides: ‘Subdivisions (a), (b), and (c) [relating to prohibitions on the sale, lease, or finance of lots not created in compliance with the Act] 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.’

In Yuki Farm’s application for unconditional Certificates of Compliance, Parcel 2 and Parcel 3 were separately created and conveyed. For this reason, the ‘grandfather’ provisions of Government Code 66412.6(a), 66451.10, or 66499.30(d) must be applied. In addition, Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots must on the face of the deed. Such a requirement is reasonable in light of the conclusive presumption and grandfather provisions of the Map Act.”

Staff’s Response No. 1:

Lot 2 was created in 1886 when Miguel Fontes conveyed 14.13 acres (the Bordges Parcel) of the larger 78.20 acre parcel to Manuel Bordges and Antonio Bordges, leaving a net 64.07 acres of land. Lot 3 was created on the same day in 1886 when Manuel Bordges and Antonio Bordges conveyed 13.17 acres of their adjacent land to Miguel Fontes. The conveyance of Lot 3 and the Bordges Parcel between Manuel Bordges & Antonio Bordges and Miguel Fontes is analogous to the current day lot line adjustment. Miguel Fontes owned Lots 2 and 3 until his death in 1924. The land was then conveyed to his six children in Decree of Final Distribution (“Decree”) from the Estate of Miguel Fontes to Maria Fontes et al, recorded on March 26, 1925 in Volume 54 Official Records at page 262. In that Decree, Lot 2 (Parcel One) and Lot 3 (Parcel Two) were merged as one collective body or tract of land containing 77.24 acres as follows:

“Said parcels 1 and 2 comprise one body or tract of land situate in Sec. 23, Tp. 14 S. R. 2 E., M.D.M., containing 77.24 acres of land.” (emphasis added)

Staff has interpreted this language as the express written statement by the grantor to merge Lots 2 and 3 as required under Civil Code section 1093. As established in the Decree and subsequent deeds for the next 80+ years², Parcel One and Parcel Two are collectively described as “... *one body or tract of land ...containing 77.24 acres of land.*” Lot 1 was also included in the same Decree and described as Parcel Three. It is important to note that the Decree and subsequent deeds did not explicitly merge Parcel Three (Lot 1) into the acreage that includes Parcels 1 and Two (Lots 2 and 3).

The Appellant contends that Parcel 2 and Parcel 3 were separately created and conveyed and for this reason, the ‘grandfather’ provisions of Government Code 66412.6(a), 66451.10, or 66499.30(d) must be applied. Staff disagrees. Although the parcels were created in separate conveyances to Miguel Fontes in 1886, the Decree of Final Distribution from his estate merged Lot 2 and Lot 3 as one collective body or tract of land containing 77.24 acres.

The Appellant also contends that Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots on the face of the deed. Civil Code section 1093 was enacted in the mid-1980s to codify that...the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, mortgages, patents, deeds of trust, contracts of sale, or other instruments of conveyance or security documents, into a subsequent single deed, mortgage, patent, deed of trust, contract of sale, or other instrument of conveyance or security document (whether by means of an individual listing of the legal descriptions in a subsequent single instrument of conveyance or security document, or by means of a consolidated legal description comprised of more than one previously separate and distinct legal description), does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance or security document containing either the listing of or the consolidated legal description of the parcels so conveyed or secured thereby.

When Lots 2 and 3 were collectively described in the Decree, and in subsequent deeds for the next 80+ years, as “Said parcels 1 and 2 [that] comprise one body or tract of land...containing 77.24 acres of land”, this served as the express written (not implied) statement to merge the lots. Why would the Decree include the language collectively describing Lots 2 and 3 as “one body or tract of land” if there was no intent to merge the lots? If Lots 2 and 3 were intended to remain as separate and distinct parcels, the collective language would not have been included in the Decree and the individual legal descriptions of Lot 2 (Parcel One) and Lot 3 (Parcel Two) would stand as separate and distinct real property as Lot 1 (Parcel Three) does in the same Decree and subsequent deeds.

Monterey County Code Section 19.14.050.A.1.e states that a parcel qualifies for an unconditional Certificate of Compliance if “the parcel in question has not been combined by the owner...” Because the property was merged in the Decree and all subsequent deeds, the Director of the RMA – Planning Department has made the determination that the parcel qualifies for one (1) unconditional Certificate of Compliance for the acreage in Lots 2 and 3.

² The parcels have been described as “one body or tract of land” since 1925 in the following deeds submitted with the applications for review: Vol. 325 O.R. Pg. 333; Vol. 668 O.R. Pg. 448; Book 1842 Pg. 136; Book 2198 Pg. 84; Book 2199 Pg. 207; Book 2200 Pg. 151; Reel 744 Pg. 1015; Reel 1017 Pg. 49; Document #2002062521.

Appellant's Contention 2:

“NO EXPRESS INTENT TO MERGE. Even if the County continues to believe that the prior grantors’ intent is relevant, we believe no ‘express written statement’ showing an intent ‘to alter or affect the separate and distinct nature of the real property’ is contained on the face of the Final Distribution or in any of the subsequent deeds in the chain of title sufficient to rebut the conclusive presumption and protections afforded by the grandfather provisions of the Map Act.

The language said ‘Parcel 1 and 2 comprise one body or tract of land situate in Sec. 23, Tp. 14 S. R. 2 E. M.D., containing 77.24 acres of land.’ was first set forth in the Final Distribution and copied in later conveyances. In each conveyance since the Final Decree, Parcel 2 and Parcel 3 have been described as separate parcels and by separate metes and bounds descriptions. The addition of said language to the two separate and distinct legal descriptions within the Final Decree was most likely a means of describing the total acreage of the lands owned by Miguel Fontes and distributed to heirs upon his death.

Even if the County believes it can determine the grantors intent ‘to alter or affect the separate and distinct nature of the real property’ in the Final Decree where Miguel Fontes is deceased, the meaning of the words ‘body’ and ‘tract’ do not support the County’s assertion that the phrase ‘one body or tract of land’ acted to merge the parcels as separate legal lots may be contained within a ‘body’ or ‘tract’ of land.

Tract Defined. The word ‘tract’ has historically been used in the State’s regulation of subdivision maps in reference to a larger area of land within which ‘land shall be laid out into lots for the purposes of sale...’ (Chapter 231, Statutes 1907). Tract is also defined as ‘A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land. Holt v. Wichita County Water Improvement Dist. No. 2, 48 S. W.2d 527, 529.

Body Defined. The word ‘body’ does not have a technical meaning under the early mapping or subdivision laws of California. However, Webster’s defines body as ‘a number of particulars regarded as forming a system or embodies in a comprehensive and systematic presentation...’ such as a body of land.

By their definition and common usage, a ‘body’ or ‘tract’ of land may contain separate legal parcels. The language contained within the Final Decree did not state that the two parcels shall be considered a single ‘lot’ but rather use the larger more generic terms in describing Parcel 2 and Parcel 3. Therefore, these words cannot be held as determinative of the grantors intent to merge or combine the two lots.”

Staff’s Response No. 2:

The Appellant contends that there is no express intent to merge Lot 2 and Lot 3 and that the addition of said language to the two separate and distinct legal descriptions within the Final Decree was most likely a means of describing the total acreage of the lands owned by Miguel Fontes and distributed to heirs upon his death. Staff disagrees. In the Final Decree, Miguel

Fontes conveyed property to his six children consisting of the land in Lot 2 (Parcel One), Lot 3 (Parcel Two) and Lot 1 (Parcel Three). Following the Appellant's logic, all three of these parcels should have been described together as the total acreage of the lands owned by Miguel Fontes. Lots 2 and 3 were the only acreage collectively described in the Decree and in subsequent deeds for the next 80+ years. Lot 1 stands as separate and distinct real property in the same Decree and in subsequent deeds. If Lots 2 and 3 were intended to remain as separate and distinct parcels, the collective language would not have been included in the Decree and the individual legal descriptions of Lot 2 (Parcel One) and Lot 3 (Parcel Two) would stand as separate and distinct real property as Lot 1 (Parcel Three) does in the same Decree and subsequent deeds.

The Appellant contends that the definition of the words 'body' or 'tract' of land may be defined as containing separate legal parcels and that these words cannot be held as determinative of the grantors intent to merge or combine the two lots. Staff disagrees. As the Appellant states the word 'tract' has historically been used in the State's regulation of subdivision maps in reference to a larger area of land within which 'land shall be laid out into lots for the purposes of sale...' (Chapter 231, Statutes 1907). Tract is also defined as 'a lot, piece or parcel of land, greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land. In the definition, the words "lot, piece or parcel...generally refers to a large piece of land" are used as singular terms (meaning "one") and not plural terms (meaning "more than one"). This singular definition of the word "tract" coincides with the language in the Decree and subsequent deeds which specifies Parcels One and Two as "one body or tract of land...containing 77.24 acres of land." Therefore, Parcels One and Two (Lots 2 and 3) are one parcel entitled to one unconditional Certificate of Compliance.

**EXHIBIT B
DRAFT RESOLUTION**

**Before the Planning Commission in and for the
County of Monterey, State of California**

Resolution No.: _____

Deny the appeal and uphold the administrative)
interpretation by the Director of Planning)
resulting in the grant of two Certificates of)
Compliance for Lot 1 and Lots 2 & 3)
collectively on the Yuki Farms Limited)
Partnership III LP request for three Certificates)
of Compliance (Planning Files CC060024,)
CC060025, and CC060026).)

The appeal of Yuki Farms Limited Partnership III LP from the administrative interpretation by the Director of Planning resulting in the grant of two Certificates of Compliance came on for a public hearing before the Planning Commission of the County of Monterey on March 12, 2008. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Planning Commission hereby finds and decides as follows:

I. RECITALS, FINDINGS & EVIDENCE

1. On July 13, 2006, pursuant to Monterey County Code Section 19.14.050.A.1, Yuki Farms Limited Partnership III LP applied for three Certificates of Compliance on a parcel located west of Highway 183, at the intersection of Highway 183 and San Jon Road, in Salinas (Assessor’s Parcel Number 414-011-011-000).
2. On June 6, 2007, the Planning Department issued a determination that the property in question is entitled to two (2) unconditional Certificates of Compliance pursuant to Section 66499.35 (a) of the Subdivision Map Act and Section 19.14.050.A.1.a and 19.14.050.A.1.e of Title 19 of the Monterey County Code.
3. On December 4, 2007, the Planning Department issued the determination letter indicating that the decision is appealable to the Planning Commission pursuant to Monterey County Code Section 19.17.030 and that said appeal should be filed no later than December 17, 2007 at 5:00 PM.
4. On December 17, 2007, the Appellant, Yuki Farms Limited Partnership III LP, filed a timely appeal of the December 4, 2007 determination of the Director of Planning to grant two and deny one Certificates of Compliance.
5. Said appeal was filed with the Secretary to the Planning Commission on December 17, 2007, within the 10-day time prescribed by Monterey County Code Section 19.17.040.C.
6. Said appeal was timely brought to a duly noticed public hearing before the Planning Commission on March 12, 2008.
7. The Planning Commission has reviewed, evaluated, and considered the appeal and responds as follows:

Appellant's Contention 1:

“APPLICABILITY OF INTENT. The issue of whether or not Parcel 2 and Parcel 3 were merged, begs the question: to what degree the County is allowed to determine the intent of the parties given that the original lots were created by separate conveyances? Existing statutes currently limit the County’s ability to make that determination, including the following:

5. *Civil Code section 1093* provides that: ‘Absent the express written statement of the grantor contained therein, the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds...into a subsequent single deed..., does not operate in any manner to alter or affect the separate and distinct nature of the real property so described...
6. *Government Code section 66412.6(a)* provides: ‘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 into 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.’
7. *Government Code section 66451.10* provides: ‘Notwithstanding Section 66414, except as is otherwise provided for in this article, two or more contiguous parcels or units of land which have been created under the provisions of this division, or any prior law regulating the division of land, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous parcels or units are held by the same owner, and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous parcels or units or any of them.
8. *Government Code section 66499.30(d)* provides: ‘Subdivisions (a), (b), and (c) [relating to prohibitions on the sale, lease, or finance of lots not created in compliance with the Act] 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.

In Yuki Farm’s application for unconditional Certificates of Compliance, Parcel 2 and Parcel 3 were separately created and conveyed. For this reason, the ‘grandfather’ provisions of Government Code 66412.6(a), 66451.10, or 66499.30(d) must be applied. In addition, Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots must on the face of the deed. Such a requirement is reasonable in light of the conclusive presumption and grandfather provisions of the Map Act.”

Staff's Response No. 1:

Lot 2 was created in 1886 when Miguel Fontes conveyed 14.13 acres (the Bordges Parcel) of the larger 78.20 acre parcel to Manuel Bordges and Antonio Bordges, leaving a net 64.07 acres of land. Lot 3 was created on the same day in 1886 when Manuel Bordges and Antonio Bordges conveyed 13.17 acres of their adjacent land to Miguel Fontes. The conveyance of Lot 3 and the Bordges Parcel between Manuel Bordges & Antonio Bordges and Miguel Fontes is analogous to the current day lot line adjustment. Miguel Fontes owned Lots 2 and 3 until his death in 1924. The land was then conveyed to his six children in Decree of Final Distribution (“Decree”) from the Estate of Miguel Fontes to Maria Fontes et al, recorded on March 26, 1925 in Volume 54 Official Records at page 262. In that Decree, Lot 2 (Parcel One) and Lot 3 (Parcel Two) were merged as one collective body or tract of land containing 77.24 acres as follows:

“Said parcels 1 and 2 comprise one body or tract of land situate in Sec. 23, Tp. 14 S. R. 2 E., M.D.M., containing 77.24 acres of land.” (emphasis added)

Staff has interpreted this language as the express written statement by the grantor to merge Lots 2 and 3 as required under Civil Code section 1093. As established in the Decree and subsequent deeds for the next 80+ years³, Parcel One and Parcel Two are collectively described as “... one body or tract of land ...containing 77.24 acres of land.” Lot 1 was also included in the same Decree and described as Parcel Three. It is important to note that the Decree and subsequent deeds did not explicitly merge Parcel Three (Lot 1) into the acreage that includes Parcels 1 and Two (Lots 2 and 3).

The Appellant contends that Parcel 2 and Parcel 3 were separately created and conveyed and for this reason, the ‘grandfather’ provisions of Government Code 66412.6(a), 66451.10, or 66499.30(d) must be applied. Staff disagrees. Although the parcels were created in separate conveyances to Miguel Fontes in 1886, the Decree of Final Distribution from his estate merged Lot 2 and Lot 3 as one collective body or tract of land containing 77.24 acres.

The Appellant also contends that Civil Code section 1093 requires an express (not implied) statement of intention to merge the lots on the face of the deed. Civil Code section 1093 was enacted in the mid-1980s to codify that...the consolidation of separate and distinct legal descriptions of real property contained in one or more deeds, mortgages, patents, deeds of trust, contracts of sale, or other instruments of conveyance or security documents, into a subsequent single deed, mortgage, patent, deed of trust, contract of sale, or other instrument of conveyance or security document (whether by means of an individual listing of the legal descriptions in a subsequent single instrument of conveyance or security document, or by means of a consolidated legal description comprised of more than one previously separate and distinct legal description), does not operate in any manner to alter or affect the separate and distinct nature of the real property so described in the subsequent single instrument of conveyance or security document containing either the listing of or the consolidated legal description of the parcels so conveyed or secured thereby.

³ The parcels have been described as “one body or tract of land” since 1925 in the following deeds submitted with the applications for review: Vol. 325 O.R. Pg. 333; Vol. 668 O.R. Pg. 448; Book 1842 Pg. 136; Book 2198 Pg. 84; Book 2199 Pg. 207; Book 2200 Pg. 151; Reel 744 Pg. 1015; Reel 1017 Pg. 49; Document #2002062521.

When Lots 2 and 3 were collectively described in the Decree, and in subsequent deeds for the next 80+ years, as “Said parcels 1 and 2 [that] comprise one body or tract of land...containing 77.24 acres of land”, this served as the express written (not implied) statement to merge the lots. Why would the Decree include the language collectively describing Lots 2 and 3 as “one body or tract of land” if there was no intent to merge the lots? If Lots 2 and 3 were intended to remain as separate and distinct parcels, the collective language would not have been included in the Decree and the individual legal descriptions of Lot 2 (Parcel One) and Lot 3 (Parcel Two) would stand as separate and distinct real property as Lot 1 (Parcel Three) does in the same Decree and subsequent deeds.

Monterey County Code Section 19.14.050.A.1.e states that a parcel qualifies for an unconditional Certificate of Compliance if “the parcel in question has not been combined by the owner...” Because the property was merged in the Decree and all subsequent deeds, the Director of the RMA – Planning Department has made the determination that the parcel qualifies for one (1) unconditional Certificate of Compliance for the acreage in Lots 2 and 3.

Appellant’s Contention 2:

“NO EXPRESS INTENT TO MERGE. Even if the County continues to believe that the prior grantors’ intent is relevant, we believe no ‘express written statement’ showing an intent ‘to alter or affect the separate and distinct nature of the real property’ is contained on the face of the Final Distribution or in any of the subsequent deeds in the chain of title sufficient to rebut the conclusive presumption and protections afforded by the grandfather provisions of the Map Act.

The language said ‘Parcel 1 and 2 comprise one body or tract of land situate in Sec. 23, Tp. 14 S. R. 2 E. M.D., containing 77.24 acres of land.’ was first set forth in the Final Distribution and copied in later conveyances. In each conveyance since the Final Decree, Parcel 2 and Parcel 3 have been described as separate parcels and by separate metes and bounds descriptions. The addition of said language to the two separate and distinct legal descriptions within the Final Decree was most likely a means of describing the total acreage of the lands owned by Miguel Fontes and distributed to heirs upon his death.

Even if the County believes it can determine the grantors intent ‘to alter or affect the separate and distinct nature of the real property’ in the Final Decree where Miguel Fontes is deceased, the meaning of the words ‘body’ and ‘tract’ do not support the County’s assertion that the phrase ‘one body or tract of land’ acted to merge the parcels as separate legal lots may be contained within a ‘body’ or ‘tract’ of land.

Tract Defined. The word ‘tract’ has historically been used in the State’s regulation of subdivision maps in reference to a larger area of land within which ‘land shall be laid out into lots for the purposes of sale...’ (Chapter 231, Statutes 1907). Tract is also defined as ‘A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land. Holt v. Wichita County Water Improvement Dist. No. 2. 48 S. W.2d 527, 529.

Body Defined. The word ‘body’ does not have a technical meaning under the early mapping or subdivision laws of California. However, Webster’s defines body as ‘a

number of particulars regarded as forming a system or embodies in a comprehensive and systematic presentation...’ such as a body of land.

By their definition and common usage, a ‘body’ or ‘tract’ of land may contain separate legal parcels. The language contained within the Final Decree did not state that the two parcels shall be considered a single ‘lot’ but rather use the larger more generic terms in describing Parcel 2 and Parcel 3. Therefore, these words cannot be held as determinative of the grantors intent to merge or combine the two lots.”

Staff’s Response No. 2:

The Appellant contends that there is no express intent to merge Lot 2 and Lot 3 and that the addition of said language to the two separate and distinct legal descriptions within the Final Decree was most likely a means of describing the total acreage of the lands owned by Miguel Fontes and distributed to heirs upon his death. Staff disagrees. In the Final Decree, Miguel Fontes conveyed property to his six children consisting of the land in Lot 2 (Parcel One), Lot 3 (Parcel Two) and Lot 1 (Parcel Three). Following the Appellant’s logic, all three of these parcels should have been described together as the total acreage of the lands owned by Miguel Fontes. Lots 2 and 3 were the only acreage collectively described in the Decree and in subsequent deeds for the next 80+ years. Lot 1 stands as separate and distinct real property in the same Decree and in subsequent deeds. If Lots 2 and 3 were intended to remain as separate and distinct parcels, the collective language would not have been included in the Decree and the individual legal descriptions of Lot 2 (Parcel One) and Lot 3 (Parcel Two) would stand as separate and distinct real property as Lot 1 (Parcel Three) does in the same Decree and subsequent deeds.

The Appellant contends that the definition of the words ‘body’ or ‘tract’ of land may be defined as containing separate legal parcels and that these words cannot be held as determinative of the grantors intent to merge or combine the two lots. Staff disagrees. As the Appellant states the word ‘tract’ has historically been used in the State’s regulation of subdivision maps in reference to a larger area of land within which ‘land shall be laid out into lots for the purposes of sale...’ (Chapter 231, Statutes 1907). Tract is also defined as ‘a lot, piece or parcel of land, greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land. In the definition, the words “lot, piece or parcel...generally refers to a large piece of land” are used as singular terms (meaning “one”) and not plural terms (meaning “more than one”). This singular definition of the word “tract” coincides with the language in the Decree and subsequent deeds which specifies Parcels One and Two as “one body or tract of land...containing 77.24 acres of land.” Therefore, Parcels One and Two (Lots 2 and 3) are one parcel entitled to one unconditional Certificate of Compliance.

II. DECISION

NOW THEREFORE, BASED ON THE ABOVE RECITALS, FINDINGS AND EVIDENCE AND THE RECORD AS A WHOLE, BE IT RESOLVED that the Planning Commission hereby denies the appeal and upholds the administrative interpretation by the Director of Planning resulting in the grant of two Certificates of Compliance for Lot 1 and Lots 2 & 3 collectively on the Yuki Farms Limited Partnership III LP request for three Certificates of Compliance (Planning Files CC060024, CC060025, and CC060026).

PASSED AND ADOPTED on this 12th day of March, 2008, upon motion of Commissioner _____, seconded by Commissioner _____, by the following vote, to-wit:

AYES:
NOES:
ABSENT:

I, Mike Novo, Secretary to the Planning Commission of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Planning Commission duly made and entered in Resolution _____, on _____, 2008.

Dated: _____, 2008

Mike Novo, Secretary to the Planning Commission, County of Monterey, and State of California.

By _____