

ZONING ADMINISTRATOR STAFF REPORT
Meeting Date: October 19, 2022

To: Town of Truckee Zoning Administrator
From: Yumie Dahn, Senior Planner
RE: Application 2022-00000093; Barnes Drive Certificate of Compliance; 10869 Barnes Drive (APN 019-390-012); Owner/Applicant: Keri Buchanan and Brian Fewster

Recommended Action: That the Zoning Administrator determine the project to be exempt from further environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act and approve a Conditional Certificate of Compliance based on the findings and subject to the recommended conditions of approval.

Project Description: The applicants are requesting the issuance of a Certificate of Compliance to recognize 10869 Barnes Drive (APN 019-390-012) as a legal parcel in accordance with Section 66499.35 of the California Subdivision Map Act.

Location/Setting: The project is located to the west of the Prosser Lake Heights subdivision and east of the Alder Hill Estates subdivision at the end of Barnes Drive, approximately 1,000 feet southwest of the Jacobs Court and Barnes Drive intersection (10869 Barnes Drive; APN 019-390-12). The property is irregularly shaped and is approximately 1.85 acres in size. The parcel is surrounded by Rural Residential-zoned parcels on all sides. Residential uses are developed to the north, across Barnes Drive, and to the east (see Figure 1 for the Vicinity Map).

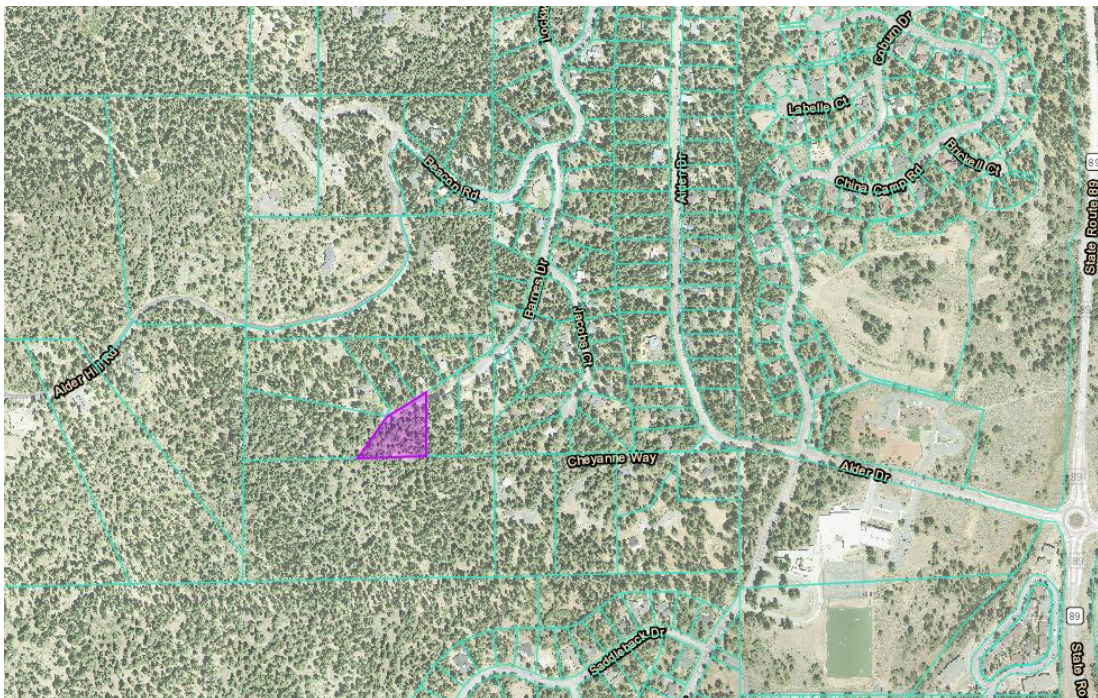


Figure 1: Vicinity Map

Project Site Information:

Zoning District: RR-0.15 (Rural Residential, 1 dwelling unit per 7.5 acres)
General Plan Designation: RC-10 (Residential Cluster Average Density, 1 du/10 acres)
Parcel Size: 1.85 acres
Proposed Utilities: Public electricity and on-site sewer (private septic system)

Discussion/Analysis:

The Zoning Administrator is tasked with reviewing all available information and making a determination on whether the property was divided in compliance with the Subdivision Map Act, the applicable provisions of the Development Code, and other applicable provisions of the Municipal Code. Upon making the determination that the parcel complies with the applicable provisions of this Development Code and the Map Act, the Zoning Administrator shall approve and cause a Certificate of Compliance to be filed with the County Recorder. The review authority may attach conditions to the approval of the Certificate of Compliance to ensure the proper recording of the Certificate of Compliance. In the event that the Zoning Administrator determines that the real property does not comply with the provisions of this Development Code or the Map Act, the Zoning Administrator processes the application as a Conditional Certificate of Compliance. A Conditional Certificate of Compliance is used to validate a parcel that was not legally divided in compliance with the State subdivision laws and local ordinances regulating subdivisions that were in effect at the time the subdivision occurred.

If this request for a Certificate of Compliance is approved by the Zoning Administrator, the Town Surveyor has indicated that a metes and bounds description and plat will need to be prepared by a Licensed Land Surveyor and submitted for review and to be used to accompany the Certificate of Compliance for recording. The Town Surveyor will review the Certificate of Compliance documents for technical correctness and the document will be recorded with the County. The Certificate of Compliance does not become effective until it is recorded by the Nevada County Recorder.

Property History

Research into the history of the parcel shows the original 20-acre parcel (shown in red and blue combined in Figure 2, below), was owned by D & R Development who sold the property to John A. Menaglia, Edward M. Hamilton Jr., and Terry L. Hamilton in 1961. The two approximately 10-acre parcels to the north (in red in Figure 1, Nevada County Recorded Document Volume 392, Page 361) and south (in blue in Figure 2, Nevada County Recorded Document Volume 392, Page 365) at the end of Barnes Drive were created in 1965. John A. Menaglia, Edward M. Hamilton Jr., and Terry L. Hamilton granted the northern parcel to Leland J. and Marjorie E. Peterson and the southern parcel to H. Alfred Hanken.

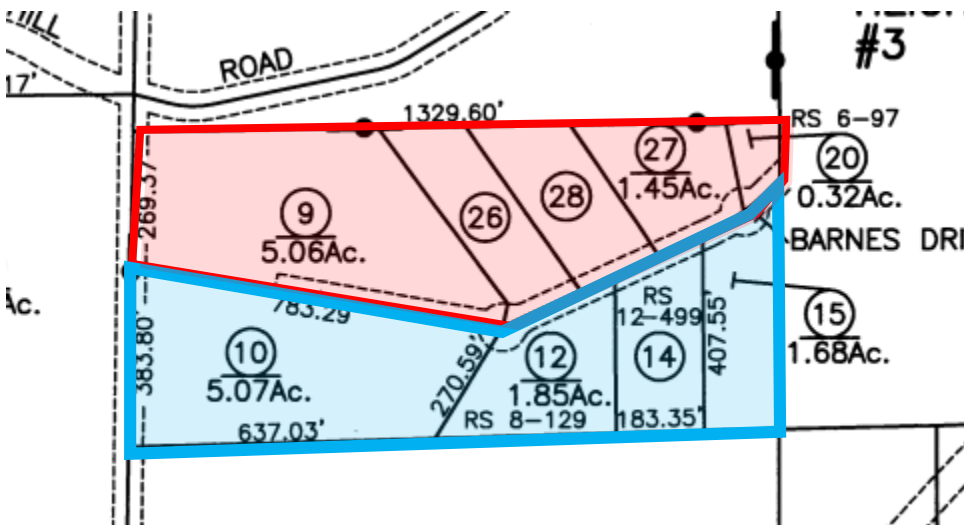


Figure 2: APN Map 019-390

There is evidence that the southern 10-acre parcel was further subdivided in 1967 and 1968. A grant deed (Nevada County Recorded Document Volume 430, Page 527) shows that H. Alfred Hanken granted what is now APN 019-390-14 (the parcel east of the project site) to Raymond M. and Edith E. Fleming in 1967. H. Alfred Franken also granted what is now APN 019-390-012 (the project parcel) to Robert M. and Mary L. Clark in February 1968.

There is information that shows APN 019-390-015 was also created at a similar time, but the exact details are incomplete. APN 019-390-015 has an existing single-family residence on the site that was permitted in 1969 (Nevada County Permit No. 6502). Section 66499.35(c) of the Subdivision Map Act states that a certificate of compliance shall be issued for any real property that has been approved for development pursuant to Section 66499.34. The issuance of a permit or grant of approval for development of real property, or with respect to improvements that have been completed prior to the time a permit or grant of approval for development was required by local ordinances in effect at the time of the improvement, or with respect to improvements that have been completed in reliance upon a permit or grant of approval for development, shall constitute "real property which has been approved for development," for the purposes of subdivision (c) of Section 66499.35, and upon request by the person owning the real property or a vendee of such person pursuant to a contract of sale, the local agency shall issue a certificate of compliance for the affected real property. Therefore, the property owners of APN 019-390-015 can request a certificate of compliance and the Town would issue it. Information on the history of the creation APN 019-390-010 was incomplete.

Regardless, APN 019-390-012 was created in 1968 and owned by Robert M. and Mary L. Clark. Since 1968, the following property transfers have occurred:

- March 1968: Mary L. Clark conveyed and quit claims to Robert M. Clark all of her right, interest, and title to APN 019-390-012.
- June 1980: Robert M. Clark, now married to Jeanne B. Clark, granted APN 019-390-012 to Richard LeCount and Jill Susan LeCount, John Baron, Phil Alotis, and Peter Harris.
- September 2002: Richard LeCount and Jill Susan LeCount, John Baron, Phil Alotis, and Peter Harris granted APN 019-390-012 to Steven J. Porter and Jo Annmarie Fretz.
- April 2008: The Porters (now married) granted APN 019-390-012 to Jay Heppner and Kristen Heppner.
- November 2019: The Heppners granted APN 019-390-012 to Keri Buchanan. Keri Buchanan is the current owner, who now owns the property with Brian Fewster.

See Attachment #2 for the Chain of Title and Attachment #3 for the Title Report.

Prior to the Certificate of Compliance request, the applicants submitted an application to construct a 2,498 s.f. three-bedroom, 3.5 bathroom residence with 900 s.f. garage and 780 s.f. one-bedroom, one-bathroom accessory dwelling unit (Building Permit 2022-00000149). The Planning Division noted that the parcel was not part of a known subdivision and may not have been created legally, per the requirements of the Subdivision Map Act. The Planning Division indicated that a Certificate of Compliance was needed prior to the issuance of any building permits for the property.

Subdivision Map Act

Per Section 66412.6 of the Subdivision Map Act, two things must be true for the parcel to be considered legal if it was created prior to March 4, 1972: 1) The parcel resulted from a division of land in which fewer than five parcels were created; and 2) If at the time of creation, there was no local ordinance in effect which regulated division of land creating fewer than five parcels. If a parcel meets both of these criteria, the parcel is considered legal.

Based on a review of the parcels, it is clear that the subdivision of the 20-acre parcel into two was completed separately from the creation of the subdivision of the southern 10-acre parcel. The southern

10-acre parcel, at the most, has four parcels (although the legality of APNS 019-390-010 is unknown). Therefore, the parcel meets the first criterion. The applicants obtained Nevada County Ordinance No. 268 (Attachment #4), which was adopted on September 4, 1962, which was identified by the Nevada County staff as the relevant subdivision ordinance in effect in 1968 when the project parcel was created. Ordinance No. 268 identifies the process for subdivisions of five or greater and requirements for minimum standards for the division of land not a subdivision within Nevada County, which is considered to be the creation of fewer than five lots. The ordinance requires minimum standards for these smaller parcel splits, including minimum areas and dimensions based on use of public water supply and/or public sanitary sewer system. Since there is an ordinance that outlines the requirements for the division of land creating fewer than five parcels, the parcel does not meet criterion two. Therefore, a Conditional Certificate of Compliance or Certificate of Compliance is required.

The Subdivision Map Act Section 66499.35(b) states that “A local agency may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at the time by this division or local ordinance enacted pursuant to this division, except where the applicant was the owner of record at the time of the initial violation of the provisions of this division.” Since the applicants obtained interest in the property in 2019, the requirements established in 2019 may be applied to this project. The Subdivision Map Act gives the local agency authority to impose any conditions that were in place in 2019 but does not require that all requirements be imposed on the property.

General Plan/Development Code Consistency

In 2019, the General Plan land use designation, Residential Cluster, 1 dwelling unit per 10 acres, and zoning district, RR-0.15 (1 dwelling until per 7.5 acres), were the same as they are currently. The project site is located in a “Prominent Slope, Ridge Line, Bluff Line, or Hillside” as designated in Figure CC-1 (Scenic Resources) of the Community Character Element.

Overall, the project site is not consistent with the General Plan land use designation and the zoning district due to the size of the parcel. Further, the project site is located on a scenic resource that is generally protected from visible and intrusive development. However, the surrounding neighborhood has similar parcel sizes that have been developed over time, which would now be issued certificate of compliance. Of the nine parcels that have been created out of the original 20-acre parcel, only two remain undeveloped, including the project site. At this point, staff does not believe applying density standards to these would result in any changes that benefit the community or the neighborhood. The site has been assumed for development and is located on the end of a road and driveway with other similarly sized lots located directly adjacent to the property and within the larger Prosser Lake Heights subdivision to the east. The project site complies with all other standards related to lot width and minimum lot size for parcels served by onsite sewer. The project site slope is less than 30% and additional requirements for preservation of open space is not necessary.

Other Agency Standards

Staff reached out to other agencies and departments to determine if any other requirements should be applied to the property. Truckee Fire Protection District (TFPD) and CalFire determined that additional requirements for fire safety should be applied to the project:

1. Barnes Drive from the end of the cul-de-sac to the end of the driveway shall be improved to a 14-foot width;
2. A turnout shall be installed halfway down the length of the Barnes Drive driveway; and
3. A turnaround shall be required at the end of the Barnes Drive driveway.

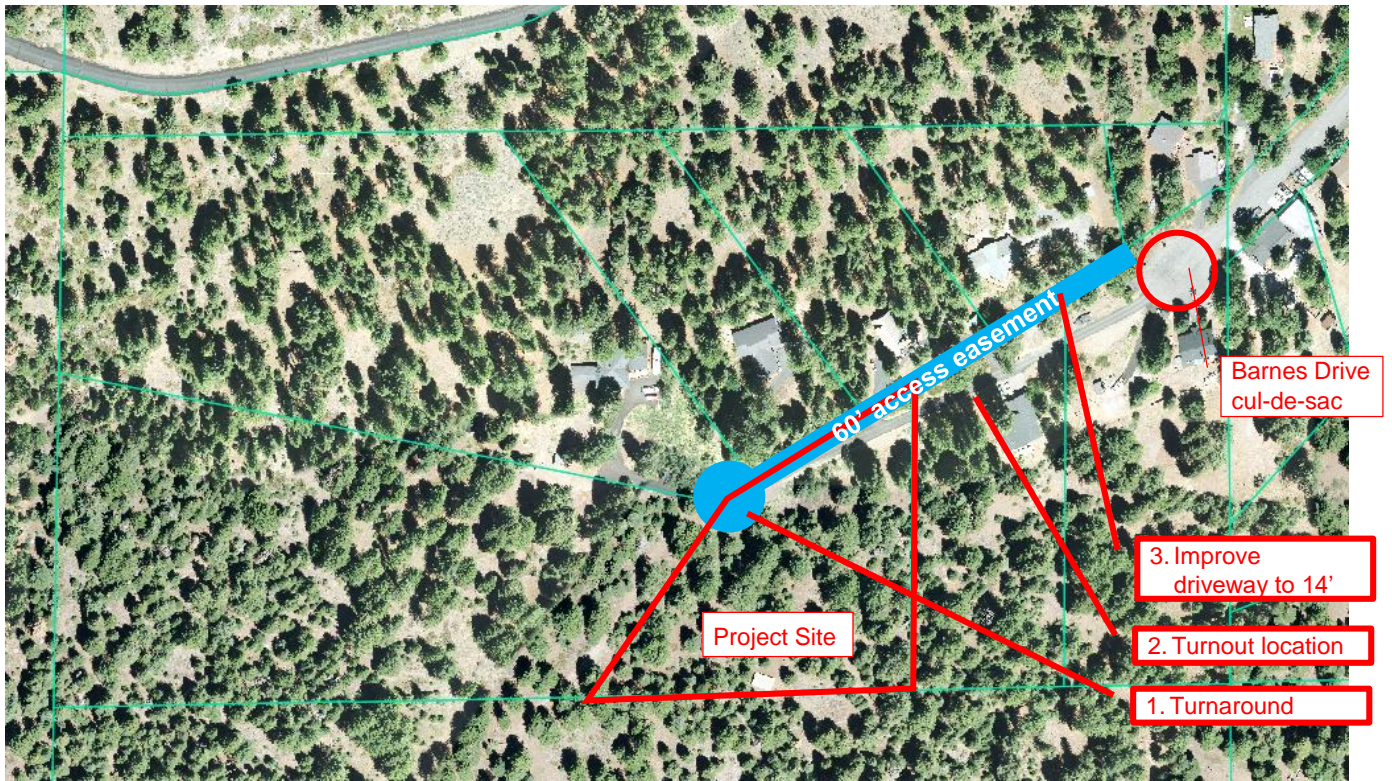


Figure 3: TFPD Requirements

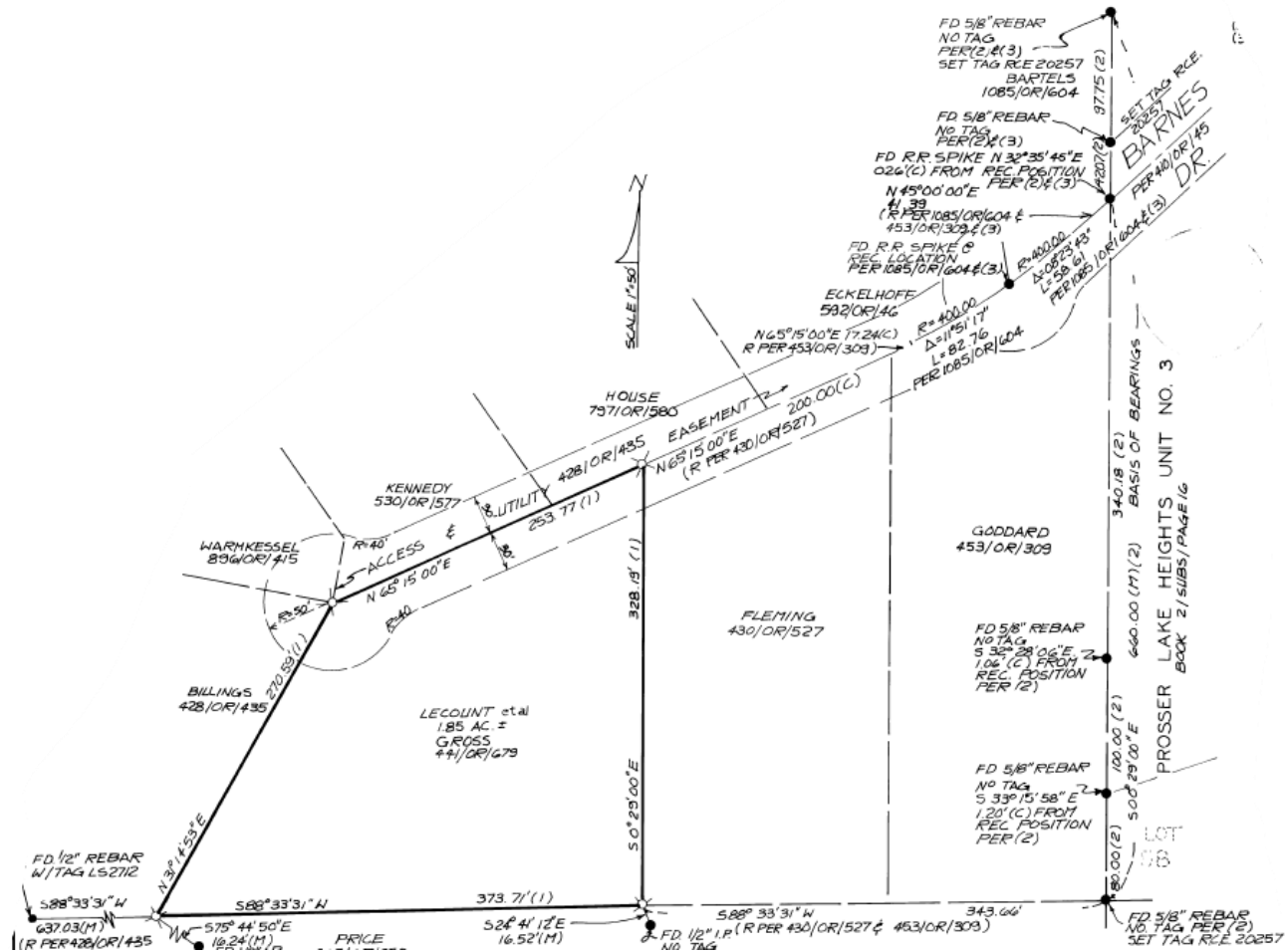


Figure 4: Recorded Survey (Book 8, Page 129)

These conditions are proposed to be applied to the Conditional Certificate of Compliance (See Attachment #1). TFPD noted that these improvements would be required prior to final of any development of the project site. Alternatively, TFPD stated that the applicant may apply for a variance to these standards. Ultimately, the property owner would be required to be consistent with TFPD's requirements, which could include a variance to their initial requirements. Staff notes that there is an existing 60-foot access easement located from the end of the Barnes Drive cul-de-sac to the end of the project site (See Attachment #5 for the Record of Survey for the property and Attachment #6 for the survey of the site).

No other agencies objected to the issuance of the certificate of compliance or identified any required conditions of approval.

Environmental Review: Staff recommends that the Zoning Administrator find that the application is exempt from further environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The action of the issuance of a certificate of compliance is a ministerial decision and does not result in any changes or density to the lots.

Public Communication: A public hearing is being conducted based on Development Code requirements for Certificates of Compliance, which require Zoning Administrator approval. The public hearing notice was published in the *Sierra Sun* on October 7, 2022 and mailed on October 5, 2022 to all affected property owners within 500 feet of the project site as shown on the latest current tax roll of Nevada County. As of the date of publication of this staff report, no public comment has been received on the application.

Staff Summary and Recommendation: While the requirements for the land use designation and zoning district cannot be met for this particular site, staff believes that the project site, as configured, is compatible with the surrounding development context. With the conditions imposed on the Certificate of Compliance, staff believes that the existing public health and safety conditions of the site and neighborhood would be improved by bringing the existing substandard road access into closer compliance with current road access standards. Staff recommends approval of the issuance of a Conditional Certificate of Compliance to recognize the existing 1.85-acre parcel as a legal parcel in accordance with Section 66499.35 of the Subdivision Map Act, subject to the recommended conditions of approval. If the Conditional Certificate of Compliance is approved, the property owner's surveyor will complete a legal description and plat, which will be reviewed for technical correctness by the Town Surveyor, and the Conditional Certificate of Compliance can be recorded with Nevada County at least 10 days after the determination (for reference, if the determination is made on October 19, 2022, the Conditional Certificate of Compliance could be recorded on or after Tuesday, November 1, 2022, with the appeal period ending at 5:00 PM on Monday, October 31, 2022). The Conditional Certificate of Compliance will not become effective until the document has been recorded by the County Recorder.

Attachments:

1. Draft Conditional Certificate of Compliance, legal plat and description to be created by the applicant's surveyor
2. Chain of Title
3. Title Report
4. 1962 Nevada County Subdivision Ordinance No. 268
5. Record of Survey Book 8 Page 129
6. Survey for project site