April 16, 2020

TO: Lassen County Planning Commission

 Agenda Date: May 5, 2020

FROM: Don Willis, County Surveyor

SUBJECT: Request to authorize a modification of Parcel Map No. 2005-046, as the same was

 filed on May 11, 2006, in Book 40 of Maps, Pages 79-80, of the Official Records

of Lassen County, California.

The Department of Planning and Building Services has received a request from the current property owners of the parcels shown on Parcel Map No. 2005-046 to “remove” a certain note that is shown on the record map. This parcel map was filed on May 11, 2006, in Book 40 of Maps, Pages 79-80, of the Official Records of Lassen County, California (copy attached). The subject note is shown on sheet two and addresses drinking water quality and requires future water sampling/testing for the parcels shown on said Parcel Map No. 2005-046.

The department investigated the history of how the note originally came to be placed on the map and discovered that it was added at the request of the Environmental Health Department shortly before it was filed in the Official Records of Lassen County. The record demonstrates that the subject note was added to the map *after* the property owner had signed it and was added long *after* the property owner’s opportunity to appeal the Planning Commission decision, a period of ten days, had expired. It was also discovered that the note was *not* one of the fourteen (14) conditions of approval required by Resolution No. 11-03-05 (copy attached), as the same was adopted by the Lassen County Planning Commission on November 2, 2005. A brief timeline of various events associated with the project is illustrated below:

* October 12, 2005 Project approved by the Technical Advisory Committee

 and forwarded to the Planning Commission.

* November 2, 2005 Project approved by the Planning Commission and

Resolution No. 11-03-05 adopted.

* November 9, 2005 Final mylar map signed, with notarization, by the property

 owner, Randy Leiding. The subject note could *not* have

been on the map at this time because it was first requested

on April 19, 2006 (see below).

* November 28, 2005 Final mylar map signed, with notarization, by the Trustee,

Fidelity National Title Insurance Company.

* April 19, 2006 Letter from the Environmental Health Department to

Robert Sorvaag, Planning Director, requesting that a note

addressing substandard water conditions be added to the

map.

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* April 25, 2006 Second letter from the Environmental Health Department

 to Robert Sorvaag, Planning Director, stating its intent was

 “revised conditions for the Leiding Parcel Map.” This

 letter again requested addition of the subject note with a

 slight change in wording from the earlier request.

* May 9, 2006 Parcel Map No. 2005-046 approved by the Board of

 Supervisors and the final mylar map was signed by the

 chairman.

* May 11, 2006 Parcel Map No. 2005-046 was filed in the Official Records.

The Environmental Health Department is in agreement with this department that the subject note should be “removed” from said Parcel Map No. 2005-046 and has prepared a letter dated January 24, 2020 which demonstrates this (copy attached). Certainly, the Environmental Health Department’s condition *could* have been added as a condition prior to tentative map approval by the Planning Commission. However, this note appears to have been added at the end of April or at the beginning of May in 2006, shortly before the map was filed in the Official Records. Consequently, the property owner had no opportunity to appeal and very likely could have been unaware that the condition was added to the map since he had signed it nearly six months earlier. Conditions of approval are an important part of the development process because they protect the general public from development becoming an undue burden on taxpayers, however there is a formal process for allowing them to be imposed that provides the property owner an opportunity to appeal.

The court system has addressed this situation and has found that conditions cannot be added once a tentative map has been approved. A specific example of this is found in *Anthony v. Snyder*, 116 Cal. App. 4th 643, 660, 664 (2004). This case determined that “*once the tentative map conditions were set, the developer had a right to rely upon them and the County appellants could not add additional conditions of a technical nature at the final map stage*.” In short, the proper procedure was simply not followed for Parcel Map No. 2005-046 when the subject note was added to the map prior to it being filed.

In order to “remove” the subject note from said Parcel Map No. 2005-046, a modification of the parcel map would need to be approved since the note is associated with the conditions of approval that were applied to the project at the time of approval by the Planning Commission. Modifications of parcel maps are authorized under Section 66472.1 of the Subdivision Map Act and Section 16.44.010(7) of the Lassen County Code and require that a public hearing be held. A parcel map modification can then be effected by recording either a certificate of correction or an amending parcel map, each of which will be explained below. It is necessary that one of these be recorded since it is physically impossible to “remove” something from the face of a document once it has been recorded in the Official Records.

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If a modification of Parcel Map No. 2005-046 were approved, one method of effecting the modification is to record a certificate of correction. This is the simplest method of correcting a recorded document and involves preparation of a separate document that is filed in the Official Records. This document references the original parcel map and states that something is either being revised, removed, or otherwise rendered ineffective. It provides constructive notice to future successors in interest since it is recorded in the public records and becomes part of the chain of title. The County has offered to prepare and record a certificate of correction for the property owners however this was unsatisfactory to them. Their preference was that an amended parcel map be completed.

An amended parcel map involves preparing a separate parcel map that mirrors the original but corrects whatever needs correction. A complicating factor in this case is that the surveyor who prepared the original parcel map is deceased, therefore this work will need to be contracted out to a local surveyor since the County Surveyor would be unable to prepare a new map *and* review it due to a conflict of interest. This is the avenue that will be pursued pending approval of the modification by the Planning Commission.

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