



County of Lassen

Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

October 11, 2018

Maurice L. Anderson, *Director*
707 Nevada Street, Suite 5
Susanville, CA 96130-3912
Phone: 530 251-8269
Fax: 530 251-8373
email: landuse@co.lassen.ca.us
website: www.co.lassen.ca.us

TO: Lassen County Planning Commission
Agenda Date: October 17, 2018

Zoning & Building
Inspection Requests
Phone: 530 257-5263

FROM: Don Willis; County Surveyor *DW*

SUBJECT: Appeal of the Technical Advisory Committee's decision to approve recordation of Notice of Violation No. 2018-003 – Lands of Southwest Sea Land LLC.
Assessor's Parcel Number: 053-070-16.

SUMMARY

On September 6, 2018, the Lassen County Technical Advisory Committee directed the recordation of Notice of Violation No. 2018-003 for a 38.88 acre parcel of land that is currently owned by Southwest Sea Land LLC, a Nevada Limited Liability Company. Recordation of a Notice of Violation is required by a local agency if a parcel is found to have been created in violation of the provisions of the Subdivision Map Act and subsequently prevents any permits for development from being issued. The determination that there was a violation of the Map Act was made based on discovery of recordation of a Grant Deed which was recorded on September 14, 1972. The Subdivision Map Act, which is part of the California Government Code, requires that any parcel created after March 4, 1972, be done so by filing either a final map, parcel map, parcel map waiver, lot line adjustment or official map which has received approval from a local agency. In other words, a parcel *cannot* be legally created by the recordation of a deed after the effective date of March 4, 1972. No map was filed in this instance to legally create the parcel.

BACKGROUND

The subject parcel is described as Parcel 37 of a Record of Survey filed at Book 6 of Maps, Pages 40-42, of the Official Records of Lassen County, in the vesting deed recorded as Document Number 2017-00647 of the Official Records of Lassen County. This property is further known as the Northwest one-quarter of the Northwest one-quarter (NW1/4 NW1/4) of Section 17, Township 34 North, Range 11 East, Mount Diablo Base and Meridian and is represented by Assessor's Parcel Number 053-070-16. It is important to note that a Record of Survey is not a "parcel creating" document under the provisions of the Subdivision Map Act, as specifically noted in Section 8762.5 of the Professional Land Surveyors' Act. These types of maps do not receive approvals from a local agency regarding the design and improvement of proposed divisions of land. Instead, they merely represent a land surveyor's opinion of where the title lines are located and marked on the ground. Only the aforementioned maps (final maps, parcel maps,

etc.) can legally “create” parcels after March 4, 1972.

Although the subject property is currently owned by Southwest Sea Land LLC, this parcel is under a contract for purchase by Mr. Kenneth Wemmer. Mr. Wemmer voluntarily contacted the County Surveyor’s Office, in writing, to request a review of the parcel history after he had requested a permit for development from the Planning and Building Services Department. A copy of his request is attached and it can be found on the last page of the “Land Contract For Deed” document that was provided. Although Mr. Wemmer is not the property owner, he does have the ability to request a parcel review under Section 66499.35(a) of the Subdivision Map Act which provides that *“Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant to this division”*. Mr. Wemmer would therefore be considered a vendee under the provisions of the Subdivision Map Act.

Parcel research revealed that the subject parcel was created by a Grant Deed recorded on September 14, 1972 in Book 258, Page 529, of the Official Records of Lassen County. Previous conveyances to this point had described the property as multiple parcels shown on said Record of Survey filed at Book 6 of Maps, Page 40. It was not until September 14, 1972, that the subject parcel was individually conveyed on its own, thus separating it from the remaining properties shown on said Record of Survey. This action, although nearly fifty years old, resulted in a violation of the provisions of the Subdivision Map Act because the law requires that a parcel map be completed for this type of land division. A chain of title is attached for your review which traces the conveyance history of the subject parcel back to the year 1967 when the Record of Survey was filed.

It is important to note that local agencies do not actively seek out violations of the Map Act and do not “police” the recordation of deeds at the County Recorder’s Office. Occasionally, violations are discovered at the County Assessor’s Office *after* recordation, but typically violations of the Map Act can remain unnoticed for decades. Although property owners often feel “targeted” by the County, it is not until the owner of a parcel seeks a permit for development that a review of the parcel history is undertaken by a local agency. This review is necessitated by Section 66499.34 of the Subdivision Map Act which states that *“No local agency shall issue any permit or grant any approval necessary to develop any real property which has been divided, or which has resulted from a division, in violation of the provisions of this division or of the provisions of local ordinances enacted pursuant to this division...”*. In this particular case, Mr. Wemmer requested in writing that the parcel history be reviewed after he had sought a permit for development from the Planning and Building Services Department.

CONCLUSION

Based on the above, a violation of the provisions of the Subdivision Map Act has occurred. The Map Act is very clear that a parcel cannot be “created” by the recordation of a deed after March 4, 1972, and must be done so by filing a map that has received approval from a local agency. The purpose of the Map Act is to “regulate and control the design and improvement of subdivisions by vesting this authority in the legislative bodies of local agencies”. This is accomplished through the approval of maps that have gone through the regulatory process. A Record of Survey is not, and has never been, subject to the type of review that final maps or parcel maps receive necessary to create divisions of land.

The Map Act specifically requires that a Notice of Violation be recorded in the Official Records to provide notice to any future successors in interest of the property that a violation of the Subdivision Map Act has occurred. This document provides constructive notice because it becomes part of the chain of title.

It is important to note that the Map Act provides property owners with a potential remedy to a violation. This can be found under Section 66499.35(a) which authorizes submittal of an application for a Certificate of Compliance. If an application is made by the property owner, Section 66499.35(b) requires a local agency to issue a *Conditional* Certificate of Compliance if real property is found to be in violation of the provisions of the Map Act. Through this process, conditions are established that would have been applicable to a division of land at the time the owner acquired their current interest in the property. These conditions *must* be completed before a permit for development is issued by a local agency as Section 66499.34 of the Map Act prohibits permits from being issued for property which has been divided in violation of its provisions.

DW:dw



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Zoning & Building
Inspection Requests
Phone: 530 257-5263

CERTIFIED MAIL/RETURN RECEIPTS

7017 0660 0000 6271 0843

7017 0660 0000 6271 0850

September 6, 2018

Didi Freiman
Southwest Sea Land LLC, a Nevada Limited Liability Company
551 Carla Way
La Jolla, California 92037

Kenneth Wemmer
41152 Fremont Boulevard, #206
Fremont, California 94538

RE: Notice of Violation No. 2018-003 – Assessor's Parcel Number 053-070-16
in Lassen County, California.

The Lassen County Technical Advisory Committee, during its September 6, 2018 meeting, reviewed a Notice of Intent to Record Notice of Violation Number 2018-003 for Assessor's Parcel Number 053-070-16. This parcel is owned by Southwest Sea Land LLC as described in a Grant Deed recorded as Document No. 2017-00647 of the Official Records of Lassen County and is currently under contract to be purchased by Mr. Kenneth Wemmer as listed in an unrecorded "Land Contract for Deed". The subject property is described in the above mentioned Grant Deed as Parcel 37, as shown on a Record of Survey recorded at Book 6 of Maps, Pages 40-42, of the Official Records of Lassen County, California. This parcel represents the Northwest one-quarter of the Northwest one-quarter (NW1/4 NW1/4) of Section 17, Township 34 North, Range 11 East, Mount Diablo Base and Meridian.

Reference is made to a letter sent to you dated July 23, 2018 that explained the violation of the California Subdivision Map Act which had been found for the parcel. You will note that this was discovered as a result of a request received from Mr. Wemmer to investigate the parcel status.

The Technical Advisory Committee approved and authorized the recording of a Notice of Violation for the parcel described above at its meeting on September 6, 2018. A Notice of Intention to Record a Notice of Violation was sent to you on July 23, 2018 along with the aforementioned letter explaining the violation of the Subdivision Map Act. The recording of the Notice of Violation is a requirement of state law and serves to provide constructive notice of the Subdivision Map Act violation to any successors in interest in the real property.

Didi Freiman
Kenneth Wemmer
September 6, 2018
Page 2 of 2

There is an appeal process to the above mentioned action if you are dissatisfied with the determination made by the Technical Advisory Committee which can be made to the Lassen County Planning Commission. In order to appeal the decision, you must submit an appeal letter within 15 days of the Technical Advisory's Committee's action along with a filing fee of \$159.00 made payable to the Lassen County Department of Planning and Building Services, no later than **4:00 P.M. on Friday, September 21, 2018.**

If you have any questions regarding this process, please contact Don Willis, County Surveyor, at the above address or at (530) 251-8122.

Sincerely,



Maurice L. Anderson
Director

MLA:dw

cc: Gaylon Norwood, Assistant Director, Planning and Building Services
Don Willis, County Surveyor

CHAIN OF TITLE SUMMARY

A.P.N. 053-070-16

Portion of Sec. 17, T. 34 N., R. 11 E., M.D.B.M. - Lands of Southwest Sea Land LLC
(Currently under contract for purchase by Kenneth Wemmer)

<u>Date</u>	<u>Deed Ref.</u>	<u>Deed Type</u>	<u>Grantor</u>	<u>Grantee</u>	<u>Legal</u>
2/2/18	Not Recorded	"Land Contract for Deed"	Southwest Sea Land LLC, a Nevada Limited Liability Co.	Wemmer, Kenneth	Parcel 37 per Record of Survey recorded at 6 Maps 40.
2/15/07	2017-00647	Grant Deed	Universal Exposure Inc., a California Corporation.	Southwest Sea Land LLC, a Nevada Limited Liability Company.	<u>Parcel One</u> : Pcl. 37 per Record of Survey recorded at 6 Maps 40. <u>Parcel Two</u> : Lot 21 per Moon Valley Ranch Unit No. 1, 6 Maps 67.
1/22/15	2015-00265	Grant Deed	Marken Enterprises Inc., a California Corporation.	Universal Exposure Inc., a California Corporation.	Parcel 37 per Record of Survey recorded at 6 Maps 40.
12/11/14	2014-05335	Grant Deed	DeVore, Debbie	Marken Enterprises Inc., a California Corporation.	Parcel 37 per Record of Survey recorded at 6 Maps 40.
2/17/04	2004-01312	Quitclaim Deed	Tukumeatu, Desiree'	DeVore, Debbie	Parcel 37 per Record of Survey recorded at 6 Maps 40.
4/19/02	2002-02900	Deed of Gift	DeJong, Debbie	DeVore, Debbie and Tukumeatu, Desiree'	Parcel 37 per Record of Survey recorded at 6 Maps 40.
6/4/90	521 O.R. 759	Quitclaim Deed	DeVore, Dennis	DeJong, Debbie	Parcel 37 per Record of Survey recorded at 6 Maps 40.

<u>Date</u>	<u>Deed Ref.</u>	<u>Deed Type</u>	<u>Grantor</u>	<u>Grantee</u>	<u>Legal</u>
9/30/87	479 O.R. 458	Ind. Quitclaim Deed	DeVore, Jack L. and DeVore, Alice L.	DeVore, Dennis	Parcel 37 per Record of Survey recorded at 6 Maps 40.
12/9/81	395 O.R. 402	Ind. Grant Deed	Bohlen, William A. and Bohlen, Virginia I.	DeVore, Jack L. and DeVore, Alice L.	Parcel 37 per Record of Survey recorded at 6 Maps 40.
<u>S.M.A. Violation</u>					
9/14/72	258 O.R. 529	Grant Deed	Skow, Charles A. and Skow, Helen C., his wife, and Gretchen, Helen.	Bohlen, William A. and Bohlen, Virginia I.	Parcel 37 per Record of Survey recorded at 6 Maps 40.
5/14/71	244 O.R. 391	Quitclaim Deed	Gretchen, Helen	Skow, Charles A. and Skow, Helen C.	<u>Parcel One</u> : Multiple parcels shown on a Record of Survey recorded at 6 Maps 40. This includes the subject "Parcel 37". <u>Parcel Two</u> : Various lands in Sections 6, 7 and 18 of T. 34 N., R. 11 E., M.D.B.M. <u>Parcel Three</u> : Certain lands in Section 32, T. 35 N., R. 11 E., M.D.B.M.
10/22/69	232 O.R. 179	Corporation Grant Deed	Mid Valley Title and Escrow Company.	Skow, Charles A. and Skow, Helen C., his wife, as to an undivided 1/2 interest, and Gretchen, Helen, as to an undivided 1/2 interest.	<u>Parcel One</u> : Multiple parcels shown on a Record of Survey recorded at 6 Maps 40. This includes the subject "Parcel 37". <u>Parcel Two</u> : Various lands in Sections 6, 7 and 18 of T. 34 N., R. 11 E., M.D.B.M. <u>Parcel Three</u> : Certain lands in Section 32, T. 35 N., R. 11 E., M.D.B.M.
10/3/67	6 Maps 40	Record of Survey	Mid Valley Title and Escrow Company.		Record of Survey map that shows a total of 48 parcels, 39 of which are within the boundaries shown thereon. These parcels are all 40 acre, aliquot-part parcels.

LAND CONTRACT FOR DEED

THIS AGREEMENT FOR DEED is made and entered into this 2nd day of February 2018, by and between: Southwest Sea Land, LLC, Didi Freiman, 551 Carla Way, La Jolla, CA 92037 (hereinafter referred to as "First Party"), and Kenneth Wemmer, 41152 Fremont Blvd # 206, Fremont CA 94538 (hereinafter referred to as "Second Party").

WITNESSETH, that if the Second Party shall first make the payments and perform the covenants hereinafter mentioned on his part to be made and performed, the First Party hereby covenants and agrees to convey to the Second Party, his heirs, executors, administrators, personal representatives, or assigns, in fee simple absolute, clear of all encumbrances by a good and sufficient Grant deed, that parcel of land situated in the County of Lassen, State of California, more fully described on Exhibit "A", attached hereto and made a part hereof.

1. The Second Party herein covenants and agrees to pay to the First Party the sum of \$19,868.00 Dollars in the following manner:
2. \$368.00 Dollars Down Payment has been paid to the First Party along with a \$99 Doc Fee.
 - a. The principal sum of \$19,500.00 Dollars, with 5% interest per annum, shall be paid in full in 60 monthly installments. Minimum monthly payment amount must be \$368.00 per month + \$13.00 per month for prepayment of property tax, a total of \$381.00 per month, beginning on the 3rd day of March, 2018, and continuing on the 10th day of each and every month thereafter, until termination of this agreement, as provided hereinafter.

DISCOUNT OPTIONS:

1) A 10% discount of \$1,950 will apply if paid in full by February 3rd 2019.

2) 0% interest if paid in full off by February 3rd, 2020.

1. Conveyance shall be by a Grant deed.
2. Title shall be conveyed free and clear of all encumbrances except those mortgages or liens, if any, mentioned herein, easements, restrictions, limitations, reservations, covenants and conditions of record not coupled with a possibility of reverter, right of reentry or other reverter right which amounts to a qualification of the fee, and subject also to applicable zoning ordinances and real estate taxes for the year in which the deed is delivered, and thereafter.
3. The Second Party agrees to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land apportioned as of the date of this Agreement. In case property tax figure changes during contract second party will be notified and pay the difference. Second party may use the land while on contract ONLY in manners adhering to county regulations. Marijuana Cultivation is prohibited while on contract.
4. The Second Party may prepay the entire balance outstanding at any time without penalty and without notice. Such prepayment shall not include unearned interest. Upon full prepayment, the First Party shall have twenty (20) days in which to deliver a Grant deed.
5. In case of the failure of the First Party to comply with the terms of this Agreement or to perform any of the covenants hereby made and entered into, the Second Party shall have the option to collect damages at law or to demand specific performance, costs and reasonable attorney's fees from the First Party.
6. In case of the failure of the Second Party to make payments or any part

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thereof, or to perform any of the covenants on his part hereby made and entered into, this Agreement shall, at the option of the First Party, be forfeited and terminated, and the Second Party shall forfeit all payments made by him to date on this agreement and said amount shall be retained by the First Party in full satisfaction and liquidation of all damages sustained by the First Party, and the First Party shall have the right to reenter and take possession of the premises aforesaid without being liable in any action in trespass, or otherwise, and to seek such self-help remedies as shall place the First Party in exclusive possession of the premises.

7. As an alternative remedy in the case of any default on behalf of the Second Party, the unpaid balance due under this contract shall, at the option of the First Party, become due and payable, and all costs and expenses of collection, by foreclosure, or otherwise, including reasonable attorney's fees, shall be paid by the Second Party, and all such sums are hereby secured by this agreement.
8. The time of each payment shall be an essential part of this contract. An accumulation of two consecutive payments not received within five (5) days of the due date of 2nd unpaid month, shall constitute an automatic default. In the event of default in any of the terms and conditions or installments due and payable under the terms of this contract, Seller shall be entitled to immediate possession of the property.
9. Any notice necessary under this Agreement may be sent by mail or email to the last known address of the party to be notified.
10. All covenants and agreements herein contained shall extend to and be obligatory upon the successors, heirs, executors, administrators, personal representatives and assigns of the respective parties.
11. The Second Party will not permit, commit or suffer waste and will maintain the land at all times in a state of good condition, and will not do or permit to be done anything to the premises that will in any way impair or weaken the security of the First Party's title. In case of the refusal, neglect or inability of the Second Party to repair and maintain said property, the First Party may, at the First Party's option, make such repairs or cause the same to be made, and advance money in that behalf, which sums advanced or costs of repairs shall be the obligation of the Second Party and shall be secured by this Agreement.
12. The words "First Party" and "Second Party" herein employed shall be construed to include the plural as well as the singular, and the masculine shall include the feminine and neuter where the context so admits or requires.
13. Buyer/s acknowledge the land is being purchased "AS IS", at public online sale, in whatever physical condition, including topography and location the parcel may be found at the time of entering this contract, subject to all existing covenants, conditions, restrictions, reservations, exploration rights, easements, rights of way, or lack of same, assessments, zoning of record and any land use restrictions. Buyer/s acknowledges having inspected the property and/or investigated its suitability and useability prior to entering contract, including availability of access and utilities or lack of same, and hereby accepts real property "AS IS"

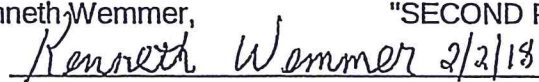
Didi Freiman,



"FIRST PARTY"

DATE: 2/2/2018

Kenneth Wemmer,



"SECOND PARTY"

DATE: 2/2/18

RECEIVED

JUL 10 2018

Lassen County Department of
Planning and Building Services

DF

EXHIBIT "A"

38.88 Acres - Lassen County APN 053-070-16-11

Parcel 37, as shown on that certain map entitled "Record of Survey Map," recorded October 3, 1967 in Book 6 of Maps, Pages 40 to 42 inclusive, according to the Official Records on file in the Office of the County Recorder of said Lassen, California ..

Kenneth Warner give Don Woods
County Surveyor permission to
Run a chain of title to determine
PARCEL NEGALITY- on ~~PAR~~ Above
PARCEL

(408) 843-3291
Kenneth Warner
7/10/18

Parcel # 37, Book 6 of Maps 40-42

Violation # 2018-003

Parcel # 053-020-16

To Whom It may Concern:

If this matter is not resolved in a timely matter Didi Freeman Southwest Sea Land LLC. and Kenneth Wemmer will be taking legal matters with a Real Estate Attorney against the Lassen County Dept of Planning and Building Services to get this matter of Land Violation Resolved along with Penetive damages so we are appealing this Violation and urge you to Reconsider your decision of property Violation that keeps us from developing this Parcel.

9/17/2018

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SEP 20 2018

Lassen County Department of
Planning and Building Services

To Whom it may concern,

September 13th, 2018

Regarding APN 053-070-1611 Lassen County

Kenneth Wemmer, and Didi Freiman of Southwest Sea Land LLC, disagree with the decision to place a "so called" violation on this property based on an error that occurred nearly 50 years ago.

We believe the county of Lassen (who collected property taxes on this parcel year in and year out for the past 50 years) should not use a "Clerical" error done so many years ago, one that have gone unnoticed all these years - to suddenly NOW prevent us from developing this land parcel by placing this "violation".

Let's be reasonable guys... whose interest exactly does placing this "violation" serve - help - or protect? I think the answer is clear... no one!

We hope you use common sense here, be helpful, and allow us to proceed.

Sincerely,

Didi Freiman



Kenneth Wemmer

RECEIVED

SEP 20 2018

Lassen County Department of
Planning and Building Services
cc: MLA, GFN