



County of Yuba

Community Development & Services Agency

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STAFF DEVELOPMENT COMMITTEE STAFF REPORT

MEETING DATE: November 03, 2022

TO: DEVELOPMENT REVIEW COMMITTEE

FROM: Vanessa Franken, Planner II

RE: Conditional Certificate of Compliance CC 2022-0002 (Hastey)

REQUEST: The application is a request for the issuance of a certificate of compliance for a 20.38 acre parcel identified as Assessor's Parcel Number 014-300-078. The parcel is located in the community of Arboga. The property is zoned Civic Center within the Plumas Lake Specific Plan & has a general plan designation of Valley Neighborhood.

RECOMMENDATION: Staff recommends that the Development Review Committee (DRC) recommend issuance of the subject certificate of compliance and make a determination that the certificate of compliance is exempt from environmental review.

BACKGROUND/DISCUSSION: The County Surveyor provided the following analysis for the legality of the parcel in question:

In researching the record information, the original property (APN 014-300-046) was acquired by Jim K. Elliott and Josephine O. Elliott, husband and wife, as joint tenants, by a grant deed recorded April 10, 1987 in Book 904 of the Official Records at page 475. Later on December 22, 2005, Jim K. Elliott, a married man, deeded the property to Jim K. Elliott and Josephine O. Elliott, husband and wife, as joint tenants at Document 2005R-031396 of the Official Records. On March 9, 2006, Jim K. Elliott, a married man, as his sole and separate property granted a 2.727 acre parcel of land (APN 014-300-075) to the Olivehurst Public Utility District, a California special district (OPUD) by grant deed recorded at Document 2006R-004620. There is no indication in the Recorder's records of a deed from Josephine O. Elliott to Jim K. Elliott which would transfer her interest in the original property to Mr. Elliott as a married man, as his sole and separate property, or for that matter to OPUD. This would mean that the parcel of land deeded to OPUD by Mr. Elliott is also owned by Mrs. Elliott in joint tenancy. Due to this change of ownership, the deed effectively created the second new parcel and also a remainder parcel (APN 014-300-078) from the original property (APN 014-300-046).

Upon application, it has been determined that a conditional certificate of compliance is needed. This conditional certificate of compliance is being performed in order to legally develop the remainder parcel. This Conditional Certificate of Compliance will be subject to the original conditions of approval that complemented the map.

ENVIRONMENTAL REVIEW: The subject Conditional Certificate of Compliance is exempt from CEQA per exemption 15305 (Minor Alterations in Land Use Limitations).

Report Prepared By:

Vanessa Franken

Vanessa Franken, Planner II

ATTACHMENTS:

1. Public Works Memorandum
2. Conditions of Approval

County of Yuba

Memorandum

DEPARTMENT OF PUBLIC WORKS

915 8th Street
Marysville, CA 95901

Telephone No. (530)749-5420

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DATE: January 24, 2007

TO: Yuba County Staff Development Committee

FROM: Gary T. Lippincott, County Surveyor, Department of Public Works

SUBJECT: Possible Violation of Subdivision Map Act – APN 014-300-075, 076 & 077
CCC 2007-001 for OPUD and LFPD

Recently Albert Cariaga, Cadastral Drafting Technician I in the Assessor's office, notified me of a possible Map Act and Subdivision Ordinance violation concerning APN 014-300-046 which had been split by deed into the 3 parcels, APN 014-300-075, 077 & 078. After researching the documents that created the parcels, it is my opinion that a violation of the Map Act has occurred and request that this item be brought up for discussion at the next available Staff Development Committee meeting.

In researching the record information, I found that the original property (APN 014-300-046) was acquired by Jim K. Elliott and Josephine O. Elliott, husband and wife, as joint tenants, by a grant deed recorded April 10, 1987 in Book 904 of the Official Records at page 475. Later on December 22, 2005, Jim K. Elliott, a married man, deeded the property to Jim K. Elliott and Josephine O. Elliott, husband and wife, as joint tenants at Document 2005R-031396 of the Official Records. How or why the property was acquired by Mr. Elliott in-between these two documents is not important to this issue. The property descriptions for both documents are identical.

On March 9, 2006, Jim K. Elliott, a married man, as his sole and separate property granted a 2.727 acre parcel of land (APN 014-300-075) to the Olivehurst Public Utility District, a California special district (OPUD) by grant deed recorded at Document 2006R-004620. There is no indication in the Recorder's records of a deed from Josephine O. Elliott to Jim K. Elliott which would transfer her interest in the original property to Mr. Elliott as a married man, as his sole and separate property, or for that matter to OPUD. This would mean that the parcel of land deeded to OPUD by Mr. Elliott is also owned by Mrs. Elliott in joint tenancy.

Then on March 14, either due to discovery of the error above or some other reason, Mrs. Elliott illegally deeded her interest in the OPUD parcel to Mr. Elliott and additionally, her interest in a second new 1.736 acre parcel (APN 014-300-077) located westerly of the OPUD parcel. Due to this change of ownership, the deed effectively created the second new parcel and also a remainder parcel (APN 014-300-078) from the original property (APN 014-300-046). Mr. Elliott became the sole owner of the new second parcel, a half interest in the OPUD parcel (possibly a joint tenancy) and a joint tenancy interest with Mrs. Elliott in the remainder (third) parcel (APN 014-300-078). To date

the Official Records do not indicate a deed from Mr. Elliott to OPUD for the half interest that he acquired from Mrs. Elliott.

Mr. Elliott then granted the second parcel of land to the Linda Fire Protection District, a California special district, by deed recorded May 3, 2006, at Document number 2006R-008829 in the Official Records.

Lastly, there is no evidence that a parcel map or final map has been filed with the Yuba County Recorder creating any of the above parcels.

Pertinent statutes and ordinances that regulate divisions of property are as follows:

The Subdivision Map Act (SMA), Government Code section 66428(a) states:

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. *A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section.* A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, that are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

(2) *Land 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. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.*

The Yuba County Ordinance Code sections:

11.20.210 Parcel Maps Required. *A Parcel Map shall be required for all subdivisions creating four or less parcels and for the subdivisions described in §11.15.200 subparagraphs (a), (b), (c), and (d). (#705)*

11.15.030 Exemptions . This chapter shall be inapplicable to:

(a) Mineral, oil, or gas leases.

(b) Land dedicated for cemetery purposes under the Health and Safety Code of the State of California.

(c) The financing or leasing of apartments, offices, stages, or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks or trailer parks.

(d) Short term leases (terminable by either party by not more than 30 days notice in writing) of a portion of the operating portion of a right of way of a railroad corporation defined as such by §230 of the Public Utilities Code, *or land conveyed to a public agency or public utility or to a subsidiary of such utility for conveyance to the utility for rights of way, unless as showing is made in individual cases, with*

substantial evidence, that public policy necessitates the application of this chapter to the short term leases in such individual cases.

In my opinion a violation of both the SMA and the county ordinance has occurred on at least two counts. The first violation occurred when Mr. Elliott deeded the first parcel to OPUD without first filing a parcel map to create the parcel. The above referenced section 66428(a)(2) states that:

“Land 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.”

This section is referring to rights of way, easements and fee strips for roads, utilities, etc. It is not meant to include larger parcels of land for development. Additionally because of the fact that the property is located within the Plumas Lake Specific Plan, which has certain design and development criteria such as, lot design, access and drainage, a parcel map would be required by public policy. It is a general misconception that any piece of property deeded to a public entity or utility is not required to go through the parcel map review and environmental process as do other properties being subdivided.

The second violation occurred when Mrs. Elliott deeded her interest in a portion of their property to Mr. Elliott for the second parcel, which was deeded later to the Linda Fire Protection District. This transaction effectively created a separate parcel without benefit of a parcel map. A parcel map would have definitely been required as no public entity was involved.

Based upon the above it is my opinion that the three parcels were created illegally and that the matter should be referred to the Staff Development Committee for consideration as specified by section 66499.30 and following of the SMA and as required by section 11.15.580 of the Subdivision Ordinance.

**DRAFT CONDITIONS OF APPROVAL
YUBA COUNTY DEVELOPMENT REVIEW COMMITTEE**

Applicant/Owner:
APN: 006-250-040

Case Number: CC 2022-0002
DRC Hearing Date: November 03, 2022

ACTIONS FOR CONSIDERATION: Staff recommends that the Development Review Committee take the following actions:

- I. After review and consideration, staff has determined that the project is exempt from further environmental review pursuant California Environmental Quality Act Section 15305 (Minor Alterations in Land Use Limitations).
- II. Approve Conditional Certificate of Compliance (CC 2022-0002) subject to the conditions below, or as may be modified at the public hearing, making the findings made in the Staff Report, pursuant to County of Yuba Title XI Sections 11.40.040 and 11.57.060.

STANDARD CONDITIONS:

1. Unless specifically provided otherwise herein or by law, each condition of these Conditions of Approval shall be completed to the satisfaction of the County. Failure to comply with this provision may be used as grounds for revocation of this permit.
2. Owner(s), Owner's agent(s) or Applicant shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including the requirements provided by Chapter 11 of the Yuba County Development Code.

PUBLIC WORKS DEPARTMENT:

3. The Public Works Director may reasonably modify any of the Public Works conditions contained herein.
4. Owner shall dedicate to the County of Yuba sufficient right-of-way easement to provide a 42-foot strip of land adjoining the centerline of Plumas Arboga Road, classed as an Urban Collector Road, lying within the bounds of this property.
5. Owner shall provide and offer to dedicate to the County of Yuba a 10-foot easement for public services along the street frontage of Plumas Arboga Road of this property measured from the County's right of way.
6. All existing or proposed driveway encroachments onto Plumas Arboga Road shall conform to the current Yuba County Standards for a Rural Driveway (Drawing No. 127 and 128) under permit issued by the Department of Public Works.
7. Prior to permit issuance, road construction along Plumas Arboga Road fronting this property shall meet the half-width requirements for an Urban Collector Road in conformance with the Yuba County Standard (Drawing No. 102) or as modified by the Public Works Director. Such standard includes a 25-foot wide paved section, curbs, gutters, landscaping, and a detached sidewalk.
8. Improvement plans, prepared in compliance with Sections 3 and 7 of the Yuba County Standards shall be submitted to and approved by the Public Works Department prior to any construction. The initial submittal shall also include the necessary calculations for all improvements and associated drainage facilities along with the appropriate plan checking fees based upon a

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- preliminary engineer's estimate. The engineer's estimate shall include estimated costs for the construction of the road and drainage improvements, landscaping requirements (if any), and construction staking. Such approvals shall include the alignment and grades of roads and drainage facilities.
9. All road and drainage construction required by these conditions of approval shall be inspected in compliance with Section 4 of the Yuba County Standards and approved by the Yuba County Department of Public Works. Applicant's contractor shall meet on-site with the Public Works Department representative prior to the commencement of work to discuss the various aspects of the project. Applicant shall pay all fees for inspection to the Public Works Department prior to any construction.
 10. Any improvement work within the County right-of-ways for roadway connections and/or road widening or other improvements shall be accomplished under an encroachment permit issued by the Public Works Department. Improvement plans and associated checking and inspection fees shall be submitted to the Public Works Department for review and approval before any construction will be permitted within the County right-of-way.
 11. Whenever construction or grading activities will disrupt an area of 1 acre or more of soil or is less than 1 acre but is associated with a larger common plan of development, the applicant is required to obtain a Yuba County grading permit issued by the Public Works Department and a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000004, Order No. 2013-0001-DWQ. Coverage under the General Permit must be obtained prior to any construction. More information may be found at <http://www.swrcb.ca.gov/stormwtr/construction.html>. Owner must obtain an approved and signed Notice of Intent (NOI) from the Regional Water Quality Control Board (RWQCB), a Waste Discharge Identification (WDID) number and a Storm Water Pollution Prevention Plan (SWPPP), as described by either the RWQCB or the State Water Regional Control Board (SWRCB). The SWPPP shall describe and identify the use of Storm Water Best Management Practices (BMP's) and must be reviewed by the Yuba County Public Works Department prior to the Department's approval of Improvement Plans or issuance of a Grading Permit for the project. See Yuba County's Stormwater Regulations for Construction Activities Procedures for details. According to state law it is the responsibility of the property owner that the SWPPP is kept up to date to reflect changes in site conditions and is available on the project site at all times for review by local and state inspectors. Erosion and sediment control measures, non-stormwater and material management measures, and post-construction stormwater management measures for this project shall be in substantial compliance with the SWPPP.
 12. Erosion control shall conform to section 11 of the Yuba County Improvement Standards.
 13. Strict control over dust problems created during construction shall be adhered to with regard to surrounding properties and public facilities. The construction specifications and/or improvement plans shall have items reflecting dust control measures in detail.
 14. Owner, heirs or assigns of this property, or portions thereof, shall remove and/or relocate any fence(s) located within dedication(s) or offer(s) of dedication required by this division or within existing County easement(s) or right(s)-of-way which lies within or are adjoining this property.

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Such fence removal or relocation may be deferred until such time as the then owner is directed by the Public Works Department of Yuba County to remove or relocate the fence(s) at the owner's expense. Any new fences installed shall be constructed outside the limits of dedications or offer(s) of dedication required by this division, or existing County easements or right-of-ways.

15. Any new or existing gate to access the property shall be installed/modified with adequate distance between the gate and roadway that vehicles/trucks accessing the property do not encroach into the travel way of Plumas Arboga Road while entering/exiting the property.
16. Owner shall dedicate a sufficient drainage easement to Reclamation District 784 (RD784) for maintenance of the existing drainage ditch along the easterly property boundary. It is anticipated that the easterly 80' of the property shall be dedicated to RD 784 as a drainage easement.
17. Owner shall provide a survey and have the exterior property corners set and submit a Record of Survey Map along with the appropriate calculations and fees to the County Surveyor for checking and processing the map prior to obtaining the Certificate of Compliance.
18. All easements of record which affect this property are to be shown on the Record of Survey Map.
19. Owner shall notify County Surveyor when all conditions of approval are met for the conditional certificate of compliance so that a certificate of compliance can be filed with the recorder.

ENVIRONMENTAL HEALTH DEPARTMENT:

20. Owner shall submit a file map to Environmental Health showing that parcel(s) 1 and 2, contains the minimum useable sewage disposal area as established by the Yuba County Sewage Disposal Ordinance, 7.07, and the precise location of all existing sewage disposal systems, and shall clearly identify the location of all soil mantles and percolation tests. This file map shall also show contour, slope, all bodies of water (seasonal and year-round), water wells, and all existing structures. Furthermore, a 100' septic exclusion area (as measured from the seasonal high water line) shall be delineated around all rivers, streams, and ponds.
21. Owner shall submit for Environmental Health review and approval the results of soils studies for parcel(s) 1 and 2, conducted in accordance with the Yuba County Sewage Disposal Ordinance, Chapter 7.07.
22. All soil profiles must be witnessed by Environmental Health Department staff. Schedule soil profile appointments with Environmental Health Department staff in advance of the testing.
23. The total The design and location of wells and sewage disposal systems shall be in conformance with standards established by Yuba County Environmental Health. Each lot must be self-reliant for domestic water and sewage disposal unless public utilities are available.
24. The design and location of wells and sewage disposal systems shall be in conformance with standards established by Yuba County Environmental Health. Each lot must be self-reliant for domestic water and sewage disposal unless public utilities are available.
25. Septic systems crossing ditches, drainages, or creeks will need to meet all Environmental Health or other agency (i.e. DFG, Army Core, etc.) requirements prior to approval.

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26. All abandoned, wrecked, dismantled, or inoperative vehicles, machines, and equipment shall be removed by Owner from the subject site.
27. All abandoned or inactive wells on the subject site shall be destroyed or maintained in accordance with the "Water Well Standards: State of California, Bulletin 74-81".
28. All abandoned septic tanks on the subject site shall be destroyed in accordance with the requirements of Yuba County Environmental Health Department.
29. The following shall apply to all land divisions where domestic water is to be supplied by individual wells:

Prior to final map wells will be required on 10% of the parcels to be developed that meet or exceed the requirements for creation of new parcels as outlined in Ordinance 1400, as it amends chapter 7.03 of Title VII of the Yuba County Ordinance Code regarding water wells.

All wells drilled to meet this requirement shall have a minimum yield of 2 gallons per minute if tested with the airlift method and 3 gallons per minute if a production test is run. If a well is drilled that does not meet these standards it can be destroyed or placed inactive until used and a replacement well drilled. Before approval of test wells, a well log, a drillers report on production and lab tests must be submitted for each test well.

The following statement shall also apply to this division:

"There is no assurance that underground water sources exist within the limits of the hereon shown parcel(s) which will be adequate in sufficient quantity or quality to meet future needs. Developer(s) of the parcel(s) herein created will be responsible for demonstrating that adequate on-site water is available for the proposed use of the parcel(s).

Surface water (i.e. Springs, Creeks, Irrigation ditch's, etc.) is not an approved domestic potable water source."

BUILDING DEPARTMENT:

30. All development on this site must meet applicable requirements of the most current adopted version of the California Code of Regulations, Title 24, which includes building, accessibility & fire code requirements.
31. Owner shall obtain building permits for all applicable work on all parcels.

PLANNING DEPARTMENT:

32. Minor modifications to the final site configuration may be approved by the Community Development & Services Agency Director.

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33. Any relocation or rearrangement of any existing PG&E facilities to accommodate this project will be at the developers/applicants expense. There shall be no building of structures allowed under or over any PG&E facilities or inside any PG&E easements that exist within the subject area. Any road encroachments within the PG&E easements shall be subject to review and approval of PG&E.
34. Owner shall meet all requirements of the Feather River Air Quality Management District during any project related construction.
35. Should any prehistoric or historic artifacts, including human remains be exposed during construction and excavation operations, work shall cease and the Community Development & Services Agency shall be immediately notified and will ensure adherence to CEQA Guideline Section 15064.5(e). If apparent human remains are exposed, the County Coroner shall be consulted to determine whether any such materials require special treatment prior to resuming construction.

Vanessa Franken

Vanessa Franken, Planner II