

Butte County Planning Commission
AGENDA REPORT – March 26, 2009

Applicant: Dan and Jean Hays

Owner: Hays Family Trust

Application File #: COR07-0002

Request:

A Certificate of Correction is requested to remove a note on Lot 28 of the Sierra Foothills #2 Subdivision map, recorded February 6, 1986 in Book 100, Pages 83 and 84, so that the parcel can be approved for sewage disposal and residential development.

General Plan:

AR Agricultural Residential

Zoning: U Unclassified

Zoning Date: January 6, 1987

APN: 063-310-028

Size: +/-8.72 acres

Parcel Creation Date: Feb. 6, 19863

Location:

Parcel is located +/-7.3 miles east of Highway 99 on Highway 32 to Santos Ranch Road, then 2.6 miles to Wilder Rd., then 1.1 miles to Pam Ct., then 0.5 miles to Zinfandel Dr., between the City of Chico and the Town of Paradise.

Project Planner:

Steve Troester, Senior Planner

Supervisorial District: 5

Attachments:

- A. Resolution
- B. Location General Plan/Zone Map
- C. Northeast Portion of “Sierra Foothills #2” Subdivision
- D. Environmental Health Services Letter of 8-15-08
- E. Neighbor Comment (3-18-09)

RECOMMENDATION:

Since submittal of this application on May 17, 2007, the applicant has not provided the required: 1) Proof of available domestic water supply, and 2) Proof of available usable wastewater disposal area per Appendix VII of the Improvement Standard, as required by Division of Environmental Health of the Butte Country Health Department. As such, this application is deemed incomplete, without adequate information for processing. The Department is recommending that Planning Commission deny this application without prejudice, allowing the applicant to re-apply if the required documentation can be provided.

BACKGROUND:

This request for a Certificate of Correction (per Section 20-91(a)(6) and (7) regarding Subdivision Map Amendment) is to remove a note on the subdivision map that created APN 063-310-028, so that the parcel can be approved for sewage disposal and subsequent development. This parcel was created by the “Sierra Foothills #2” Subdivision map, recorded February 6, 1986 in Book 100, Pages 83 and 84 of the official records of Butte County. Section 20-91(a)(6) and (7) regarding Subdivision Map Amendment reads as follows:

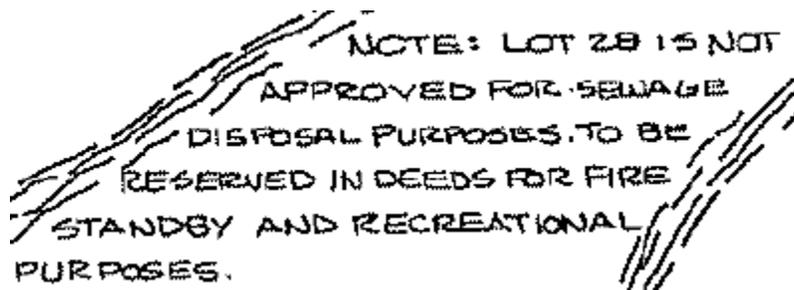
(a) After a final map is filed in the office of the county recorder, it may be amended by a certificate of correction or an amending map:

(6) To correct any other type of map error or omission as approved by the county surveyor which does not affect any property right. Such errors and omissions may include; but are not limited to, lot numbers; acreage, street names and identification of adjacent record maps.

(7) To make amendments reflecting changes in circumstances if the advisory agency, at a public hearing, finds that: There are changes in circumstances which make any or all of the conditions or mitigations of such a map no longer appropriate or necessary; the amendments do not impose any additional burden on the present fee owner of the property; the amendments do not alter any right, title or interest in the real property reflected on the recorded map; and the advisory agency finds that the amendment conforms to the provisions of section 20-65 of this chapter.

As used in this section, “error” does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final or parcel map.

The applicant has requested removal of the following text note which appears on Parcel #28 of the above referenced subdivision map (see attached exhibit of the Northeast Portion of “Sierra Foothills #2” Subdivision):



NOTE: LOT 28 IS NOT APPROVED FOR SEWAGE DISPOSAL PURPOSES. TO BE RESERVED IN DEEDS FOR FIRE STANDBY AND RECREATIONAL PURPOSES.

The Division of Environmental Health Services considers this application “incomplete” for additional processing for lack of the following two elements:

1. Proof of available domestic water supply.
2. Proof of available usable wastewater disposal area, per Appendix VII of the Improvement Standards.

Regarding compliance with required available usable wastewater disposal area, as created in 1986,

the parcel is constrained by shape, soil type, and the presence of the pond.

Regarding proof of available domestic water supply, the Buzztail Community Services District is the domestic water purveyor in this area. The attached August 15, 2008 letter from the Division of Environmental Health Services states that:

“Before any future connections (to the Buzztail water system) are allowed, the (Buzztail) permit must be amended, which would include compliance with the Safe Drinking Water Act and recently enacted waterworks standards.”

Regarding “reservation of the pond/parcel for fire standby purposes”, CDF-Cal Fire commented that it is difficult to determine what the fire department requirements for a subdivision were in 1986 or what the thought process was in requiring a pond for fire protection. The current standards do not require any storage of water via pond for fire protection. If the pond was not on Lot 28, CDF would simply find another pond or creek to dip from. As far as a water supply to fight fire from the ground, fees are paid into the Development Impact Fund to replace fire apparatus like water tenders to provide this water. CDF currently has 16 water tenders in service. CFD has used the pond on Parcel 28 in the past for bucket dropping operations on fires in the Honey Run Road area. Although the pond is not required by any of the current standards (PRC 4290, Butte County Code, Butte County Improvement standards, etc.) the pond is in a good location and is beneficial for bucket drop operations.

PROJECT CHRONOLOGY:

May 17, 2007 Project application was submitted.

June 18, 2007 The project application was deemed incomplete.

May 10, 2008 Applicant was contacted for resolution of completeness or withdrawal of application.

February 9, 2009 Applicant was advised by certified mail that this application would be moved forward to the Planning Commission on March 26, 2009 with a recommendation for denial without prejudice unless incompleteness items were resolved.

ANALYSIS:

The Department of Development Services has an expectation that applicants who submit projects will respond to incompleteness issues in a reasonably timely manner. No progress has been made on the incompleteness issues since submittal of the application on May 17, 2006. The Department prefers that applications not persist in processing without reasonably timely action to resolve incompleteness issues. Persistent, incomplete applications result in significant costs to the County due to the duplication of effort needed to update, recreate, and restart project processing, caused by prolonged delays and changes in development standards. These significant costs of “holding” applications indefinitely are not covered by the “flat-rate” nature of the County’s application fee structure.

COMMENTS FROM THE PUBLIC:

Attached is one letter of March 18 from a neighbor opposed to the application. The Buzztail Community Service District which provides local water services is also opposed to the application.

ENVIRONMENTAL REVIEW:

- The project site is located in a recorded residential subdivision (“Sierra Foothills #2” Subdivision map, recorded on February 6, 1986). A proposed single family dwelling on the subject parcel conforming to all County standards would be consistent with surrounding uses and would not have a significant effect on the environment.
- This project has been determined to be exempt from the California Environmental Quality Act (CEQA) provisions under Categorical Exemption 15303(a) New Construction of a single-family residence. Denial of a project does not require environmental review under CEQA. Should an application be made “complete” for processing, an Initial Study of the project would need to be completed to assess potential impacts.

RESOLUTION ___ - ___

**A RESOLUTION OF THE BUTTE COUNTY PLANNING COMMISSION DENYING
WITHOUT PREJUDICE LEGAL LOT DETERMINATION
FOR DAN AND JEAN HAYS
COR07-0002**

WHEREAS, the Planning Commission has considered Certificate of Correction COR07-0002 for Dan and Jean Hays in accordance with Chapter 20, Subdivisions, of the Butte County Code on Assessor's Parcel Number 063-310-028; and

WHEREAS, said application was referred to various affected public and private agencies, County departments, and referral agencies for review and comments; and

WHEREAS, this application was considered by the Planning Commission at duly noticed public hearing held on March 26, 2009; and

WHEREAS, the Planning Commission has considered public comments and a report from the Planning Division.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission:

- I. Denies without prejudice Certificate of Correction COR07-0002 for Dan and Jean Hays, subject to the following findings:
 - A. The applicant has not provided, in a timely manner, proof of available domestic water supply, as required by Division of Environmental Health of the Butte Country Health Department necessary to process the application.
 - B. The applicant has not provided, in a timely manner, proof of available usable wastewater disposal area, per Appendix VII of the Improvement Standard, as required by Division of Environmental Health of the Butte Country Health Department.

DULY PASSED AND ADOPTED this 26th day of March, 2009, by the following vote:

AYES:

NOES:

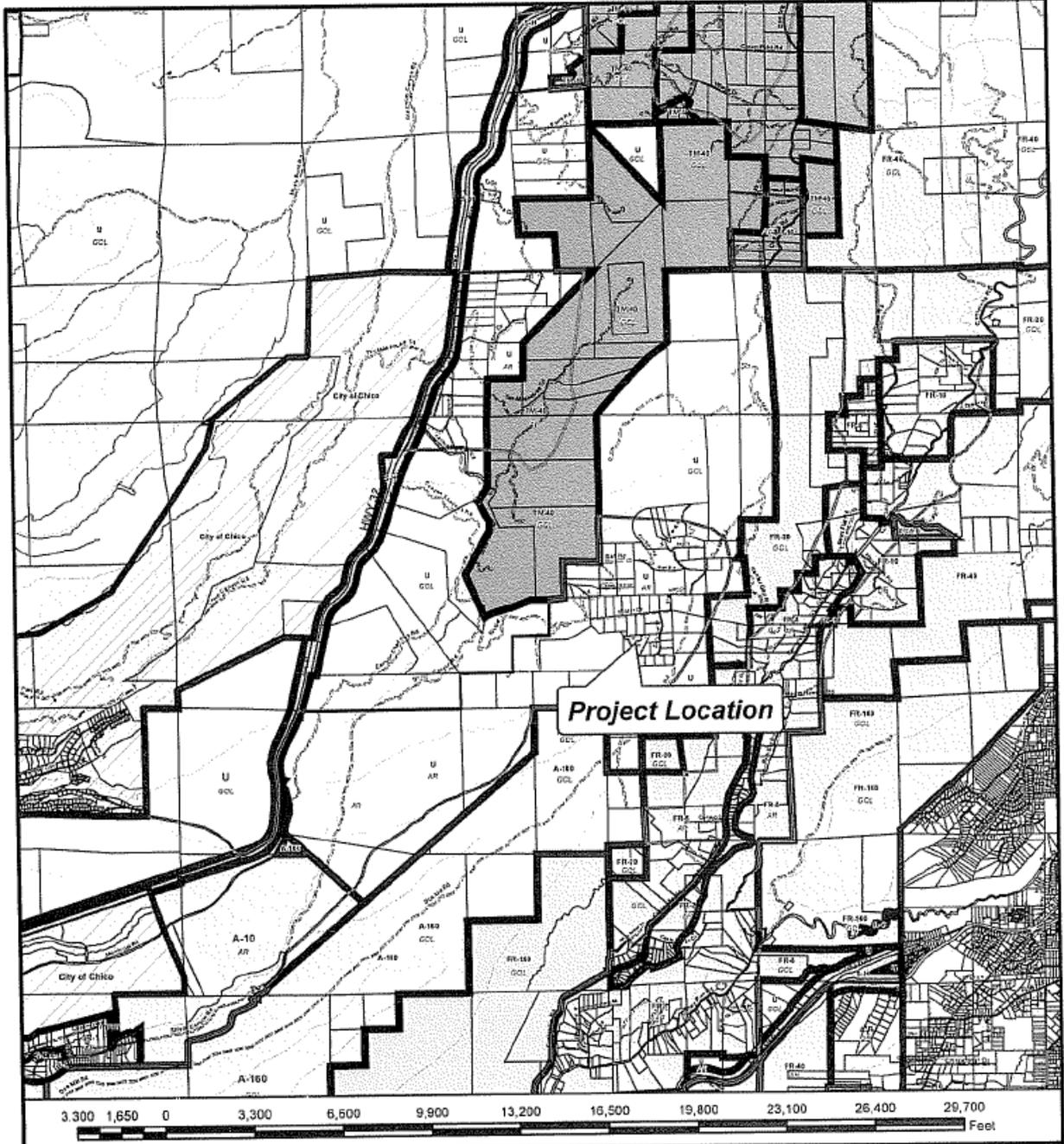
ABSENT:

ABSTAIN:

Fernando Marin, Chairman
Planning Commission
County of Butte, State of California

ATTEST:

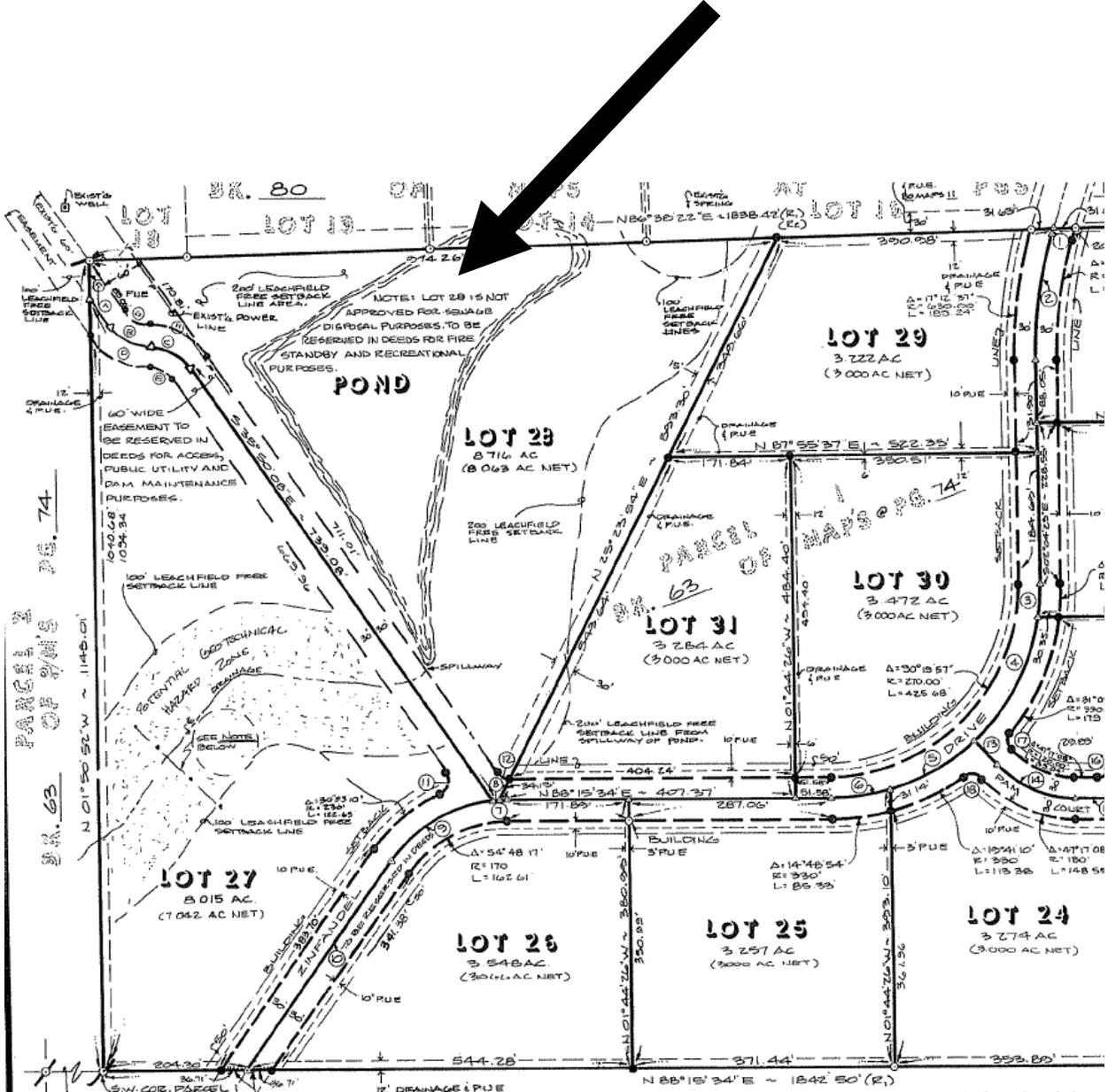
Tina Bonham, Secretary
Planning Commission
County of Butte, State of California



BUTTE COUNTY PLANNING COMMISSION		 Supervisorial District #5
Applicant: Dan & Jean Hays	Owner: Hays Family Trust	
Hearing Date: March 26, 2009 @ 9:00 a.m.	Existing Zone: U (Unclassified)	
Request: Certificate of Correction on SM 100-83/84, Lot #28, to remove a note on the subdivision map so that the parcel can be approved for sewage disposal and residential development.		
Assessor Parcel No: 063-310-028		File: COR 07-0002

Northeast Portion of "Sierra Foothills #2" Subdivision
Containing Lot 28

Subject note requested for removal.



Attachment D.



PHYLLIS L. MURDOCK, DIRECTOR
MARK A. LUNDBERG, M.D., M.P.H., HEALTH OFFICER

WWW.BUTTECOUNTY.NET/PUBLICHEALTH

ENVIRONMENTAL HEALTH DIVISION

William C. Paris III
O'Laughlin & Paris LLP
P.O. Box 9259
Chico, CA 95927-9259

BUTTE COUNTY
AUG 15 2008
DEVELOPMENT SERVICES

RE: Buzztail Community Services District

Dear Mr. Paris,

Thank you for your July 2nd letter regarding the above-noted Community Services District and thank you for your understanding as to the extended response time to your inquiries.

The Butte County Environmental Health Division issues a public water supply permit to all water systems meeting certain requirements found in the California Safe Drinking Water Act. This act is found in the California Health and Safety Code, commencing with Section 116270. The water system permit for the Buzztail system is issued to the Buzztail Community Services District.

Application for a new connection is made to the water system entity. In this case, the water system is served by only one well. This well is reportedly producing declining volumes of water and has substantial sanding problems. The District is aware of these problems and is researching remedies.

Before any future connections are allowed, the permit must be amended, which would include compliance with the Safe Drinking Water Act and recently enacted waterworks standards. These standards are codified 22CCR commencing with Section 64551.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig J. Erickson".

Craig J. Erickson, REHS
Division of Environmental Health

Attachment E.

From: Tony [mailto:Borgman@DigitalPath.net]
Sent: Tuesday, March 17, 2009 8:51 PM
To: Troester, Steve
Subject: Project: COR07-0002 (Applicant: Dan and Jean Hays)

Mr. Troester-

My name is Anthony Borgman, and I reside at 4655 Pam Court (Lot #24 of Sierra Foothills Subdivision #2), Chico, CA, across the street and three parcels over from APN 063-310-028.

I received a letter in the mail regarding a public hearing on March 26, 2009, at 0900. Due to a required training that I must attend in order to continue my employment at that time, I will be unable to attend the public hearing. If this email correspondence will not be allowed to be heard (read) by the planning commission, please advise how my voice can be heard.

I bought my property only after reviewing the subdivision map that I obtained from the County, on which Lot 28 is clearly marked "NOTE: LOT 28 IS NOT APPROVED FOR SEWAGE DISPOSAL PURPOSES, TO BE RESERVED IN DEEDS FOR FIRE STANDBY AND RECREATIONAL PURPOSES." Unfortunately, I did not review the deed for lot 28. If I had, I would have realized that the developer never intended to actually follow through with his agreement with the County, the condition of approval of the subdivision that lot 28 be reserved in the deeds for recreational purposes. Mr. Hays is trying to circumvent this agreement now by having this note removed from the subdivision map. What he should be doing is modifying the deed, so that it is truly deeded as agreed to in the first place.

It is unfortunate that when the subdivision was built, the County at whatever level failed to ensure that the development company, run by Mr. Hays' family, be forced to do anything correctly. Whether it be the shoddy installation of the water system in which they installed plastic water mains directly on bedrock, or backfilled around it with dirt filled with rocks and boulders, the substandard road construction, the lack of permanent surveying monuments, or the failure to correctly deed lot 28 as agreed to.

This note on lot 28 has a direct impact on my quality of life and property value. When I purchased my property in 2002, it still bore the scars of the Doe Mill Complex fire of 1999. The fact that the pond is allegedly reserved for fire protection, was a major incentive to go ahead and purchase. If the water supply system failed during a similar fire event, the fire department would still be able to refill their trucks out of this water supply. In 2008, the Humboldt Fire came within approximately 100 yards of my home, and burned around the pump and well system and nearly reached the one powerline that feeds the entire community and water system. There was a line of helicopters waiting to draw water from the pond to fight the fire, one after another after another. This pond was a MAJOR factor in the fire department's ability to save every single home in the entire community from suffering any fire damage whatsoever.

Additionally, we've enjoyed fishing and relaxing at the pond since we built our home and moved to this subdivision in 2002. My children and their friends have spent countless hours, innocently exploring and recreating at the pond. My property value has suffered significantly in the past year or two, losing perhaps as much as 1/3 of its market value. It would be further devastating to have the restrictions removed from this lot.

I implore the planning commission to prevent Mr. Hays' attempted encroachment on my property as originally intended and uphold the original designation for lot 28, and NOT remove the note from the subdivision map. Any change to the designations of this property, will diminish the original intended purpose of the lot by allowing Mr. Hays or a subsequent owner to build a home on the lot and modify the property in unknown ways.

Sincerely,
Anthony Borgman
4655 Pam Court