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November 15, 2007

***CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGE***

Anthony LaBouff  
Placer County Counsel  
175 Fulweiler Avenue  
Auburn, CA 95603

Re: Possible Subdivision Map Act Violations

Dear Mr. LaBouff:

You have asked this office to investigate certain possible violations of the Subdivision Map Act. Government Code<sup>1</sup> § 66426 requires a tentative subdivision map for all subdivisions creating five or more parcels. A parcel map is normally used for divisions creating 4 or fewer parcels. (Sections 66426, 66428.) Specifically, we have analyzed several sets of parcel map files and related real estate transactions in order to determine if Section 66426 has been violated through the use of successive parcel maps.

We have assumed and applied the civil “preponderance of the evidence” standard in reaching the conclusions found in this Report. As explained in the attached analysis, we have identified several instances where the evidence reflects a common plan to divide the subject property through a series of successive four parcel (or fewer) divisions. Stated differently, the Report concludes in several instances that it is more likely than not that the divisions analyzed were part of common plan to divide the subject property through a series of 4 parcel (or less) divisions. This Report has not analyzed whether there were any criminal violations of the Subdivision Map Act.

Other relevant documents and evidence will be reviewed and considered as they become available. If necessary, this Report will be updated to include newly available information.

**Relevant Authority**

The Subdivision Map Act regulates the division of land “for the purpose of sale, lease or financing, whether immediate or future.” (Govt. Code §66424.) The Map Act’s primary goals are:

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<sup>1</sup> All statutory references are to the Government Code unless otherwise specified.

- (1) To encourage orderly community development by providing for the regulation and control of the design and improvement of the subdivision, with a proper consideration of its relation to adjoining areas;
- (2) To ensure that the areas within the subdivisions that are dedicated for public purposes will be properly improved by the subdivider so that they will not become an undue burden of the community; and
- (3) To protect the public and individual transferees from fraud and exploitation. (61 Ops. Cal. Atty. Gen. 299, 301 (1978); 77 Ops. Cal. Atty. Gen. 185 (1994).)

The Map Act requires a tentative and final subdivision map for "all subdivisions creating five or more parcels." (Section 66426.) A parcel map is normally employed for divisions creating four or fewer parcels. (Sections 66426, 66428.) Similarly, the Placer County Code defines a "major subdivision" as a subdivision creating more than five parcels. (Placer County Code § 16.04.030.) The Placer County Code requires a tentative and final subdivision map for all major subdivisions. (Placer County Code § 16.12.010, et seq.) Parcel maps are required for "minor subdivisions" (ie. less than five parcels created). (Placer County Code § 16.20.010 et. seq.)

When counting parcels to determine whether a subdivision map or a parcel map is required, all previous parcel divisions by the same subdivider on adjoining property are included. A subdivider may not avoid the tentative and final subdivision map requirements by subdividing one parcel four times using a parcel map and then, either acting alone or through agents, repeating the process over and over again. This practice, known as "quartering" or "four-by-four" is prohibited by the Subdivision Map Act.

The California Attorney General has described illegal quartering through the use of agents as follows:

"The owner 'A' may also be chargeable as the creator of a subdivision if as part of a plan to evade the Subdivision Map Act, he transfers one of the quartered parcels to 'B' for the purpose of having 'B' divide the parcel into four smaller parcels. If there is evidence that the transfer is not an 'arm's length transaction,' for example, a sale for inadequate consideration, a transfer to a close relative or business associates, retention of control or financial interest, or generally a transfer which is part of a conspiracy to evade the Subdivision Map Act, the total number of lots should be treated as a subdivision. In other words, if 'A' and 'B' through successive splittings collusively cause a unit of land to be divided into five parcels or more, a subdivision has been created. Evasion of the Subdivision Map Act cannot be accomplished by subterfuge." (55 Ops. Atty. Gen. Cal. 414, 417-418.)

However, division of real property by independent action of successive and different owners is not treated as a single division in ascertaining the number of parcels created. (61 Ops.Cal.AttyGen. 114 (1978).) In above example, if A and B are “acting entirely independently” in the division of their parcels, A and B are not considered a single subdivider. (55 Ops.AttyGen.Cal. 414, 417-418.)

The courts have instructed that the individual provisions of the Map Act are “not to be read in isolation; [they] must be construed with related statutes and considered in the context of the statutory framework as a whole. [ ] Literal construction of statutory language will not prevail if contrary to the legislative intent apparent in the statutory scheme.” (*Kalway v. City of Berkeley*, 151 Cal.App.4<sup>th</sup> 827, 833 (2007).) “We look to the substance of a transaction and not to its form to determine if the legislative purposes underlying the Act are violated.” (*Id.* at 835.)

Not only is quartering a violation of the Subdivision Map Act, it may also result in a violation of the Subdivided Lands Act. (See, Bus. & Prof. Code §11000, et seq.) The Subdivided Lands Act is administered by the California Department of Real Estate (“DRE”). The Lands Act requires that any person who intends to offer “subdivided lands” within California for sale or lease must file with DRE an application for a “public report.” (Bus. & Prof. Code §11010(a).) “Subdivided lands” are defined as lands “divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels.” (Bus. & Prof. Code §11000(a), emphasis added.)

There are ample incentives for a subdivider to attempt to avoid the requirements of a tentative and final subdivision map, in favor of a parcel map. Parcel map procedures are considerably simpler and cheaper, and parcel maps can usually be processed more quickly than tentative and final subdivision maps. The dedications, improvements and other conditions of approval for parcel maps are normally less extensive than those required of tentative and final subdivision maps. The improvements that can be required for a parcel map are expressly limited by the Map Act. (Section 66411.1.) In addition, parcel maps are frequently determined to be exempt from analysis under the California Environmental Quality Act (“CEQA”). (See, CEQA Guidelines § 15315.) Tentative subdivision map applications normally require a CEQA initial study and either a negative declaration or a full environmental impact report (“EIR”).

### **Report Methodology**

The Report applies the above described legal authorities to several sets of parcel map transactions. All of the information and conclusions in the Report come from a review of the relevant transaction documents and public records. Where available, we have included copies of relevant Assessor Parcel Maps and/or parcel map diagrams from

the County's files to illustrate the parcels created. Finally, the Report contains our conclusions regarding each set of transactions analyzed.

### **Summary of Findings**

Below is a summary of the Report's findings regarding each of the transaction sets analyzed.

#### **Sun Valley #1**

The property referred to as Sun Valley #1 (3 parcels: approximately 60 acres total) was purchased by the Mary Smith Trust (MST) in April of 2000 (Mary Smith is also known as Michelle Ollar-Burris). MST then sold the property to Thomas & Patricia Van Horne in June 2000. Van Horne then obtained a boundary line adjustment which substantially reconfigured the 3 parcels. The boundary line adjustment facilitated the multiple divisions and parcel maps which followed. What was 3 parcels in July 2001 (when Van Horne submitted his parcel map application), became 13 parcels by September 2003 (when the Jones Parcel Map recorded), just over 2 years later, with additional divisions by the WAM Trust (Wesley Burris & Michelle Ollar-Burris) pending. These divisions included a coordinated road system which provides access to all of the parcels. It is more likely than not that these successive parcel maps were part of a common plan to maximize the number of potential parcels through a series of successive parcel maps, while avoiding the Map Act requirements applicable to subdivisions of 5 or more parcels. Accordingly, a tentative and final subdivision map should have been obtained for the resulting divisions.

#### **Sun Valley #2**

The property referred to as Sun Valley #2 is immediately adjacent to the northeast portion of the Sun Valley #1 property. Like the Sun Valley #1 circumstance, the parcel divisions were preceded by a Van Horne boundary line adjustment. In this boundary line adjustment, Van Horne transferred (.35) acres to the adjacent Jones/Johnson parcel. That transfer facilitated a 3 parcel division of the Jones/Johnson parcel. Given the applicable minimum parcel size (2.3 acres net), a 3 parcel division would likely not have been permissible without the extra (.35) acres received from Van Horne. Although only 3 parcels were created, the Sun Valley #2 transactions provide evidence of cooperation among the persons and entities involved in other divisions, including the WAM Trust (William and Michelle Ollar-Burris Trust), Van Horne and others. As described in the Report, there are some transfers of the newly created Sun Valley #2 parcels which do not appear to be arm's length transactions.

### Moffet Ranch

The property referred to as Moffet Ranch began as a single 71.6 acre parcel. The parcel was purchased by the Mary Smith Trust (MST) in May 2005. In October 2005, MST recorded a parcel map which divided the property into 4 parcels. Within two months, each of the resulting 4 parcels was then transferred/sold. Each of the MST transfer deeds contain uniform restrictions prohibiting overhead utilities and permanent mobile/modular homes, reflecting a common plan to create a residential development (through a series of parcel map divisions) with uniform requirements for underground utilities and a prohibition against mobile/modular homes. These deed restrictions then "run with the land" to include all parcels created through further division of the affected property.

Shortly after the MST Parcel Map recorded, newly created Parcel 29 (9.5 acres) was sold to Jerald and Benet Jones and then divided into 3 parcels with a parcel map recorded in November 2006. The Report concludes that it is more likely than not that the MST and Jones parcel maps were part of a common plan to divide the subject property through successive parcel maps. The resulting parcel maps created 6 parcels where only 1 existed previously. The 3 other parcels created by the MST Parcel Map appear eligible for further division; one has an approved tentative parcel map which would divide Parcel 30 (19.5 acres) into 4 parcels. Accordingly, a tentative and final subdivision map should have been obtained for the resulting divisions.

### Weimar Cross # 1

Mary Smith, acting as Trustee of the Mary Smith Trust (MST), purchased the parcel referred to as Weimar Cross #1 (92.6 acres) on January 16, 2004. In February 2004, a boundary line adjustment was recorded which changed the boundary line between the MST parcel and the adjoining parcel owned by Thomas and Patricia Van Horne. The boundary line adjustment re-configured the lot line to facilitate the parcel divisions which followed. MST then divided the 92 acre parcel into four separate parcels. Those parcels were later transferred to others and again divided. Each of the MST transfer deeds contain uniform restrictions prohibiting overhead utilities and permanent mobile/modular homes, reflecting a common plan to create a residential development (through a series of parcel map divisions) with uniform requirements for underground utilities and a prohibition against mobile/modular homes. These deed restrictions then "run with the land" to include all parcels created through further division of the affected property.

The Report concludes that MST, Ollar-Burris, Van Horne and the other parcel map applicants discussed in the Report, should be considered a single subdivider for purposes of determining compliance with Section 66426. What began as a single parcel in January 2004 became 19 parcels by March 2007 (not including the approved Knoblich

4 parcel tentative parcel map or the Weimar Cross #2 parcels discussed below), through a series of 7 successive parcel maps. The resulting development has a common internal road and drainage system, complete with common access to Forest Lake and an Association that runs and maintains the common area. In fact, Sierra Brokers Real Estate (Wes Burris and Michelle Ollar-Burris) later marketed the multiple residential parcels resulting from the successive divisions as a common residential development with a "3 Acre Private Lake" (all parcels have lake access), "Underground Utilities," and "Private Paved Roads." It is more likely than not that this was accomplished pursuant to a common plan, not by subdividers "acting entirely independently." (55 Op.AttyGen.Cal. 414) Accordingly, a tentative and final subdivision map should have been obtained for these divisions.

### Weimar Cross # 2

Thomas and Patricia Van Horne (Van Horne), purchased the parcel referred to Weimar Cross #2 (11.0 acres) on May 16, 2003. In February 2004, a boundary line adjustment was recorded which changed boundary line between the Van Horne parcel and the adjoining parcel owned by the Mary Smith Trust. The boundary line adjustment re-configured the lot line to facilitate the parcel divisions which followed on the Van Horn property and the adjacent Weimar Cross #1 property. In addition, the deeds in the Weimar Cross #2 transactions also contain uniform restrictions prohibiting overhead utilities and permanent mobile/modular homes, reflecting a common plan to create a residential development (through a series of parcel map divisions) with uniform requirements for underground utilities and a prohibition against mobile/modular homes.

Sierra Brokers Real Estate (Wes Burris and Michelle Ollar-Burris) later marketed the multiple residential parcels resulting from the successive divisions of Parcels 63 and 60 (ie. Weimar Cross #1 and #2) as a common residential development with a "3 Acre Private Lake" (all parcels have lake access), "Underground Utilities," and "Private Paved Roads." The Report concludes that MST, Ollar-Burris, Van Horne and the other parcel map applicants discussed in the Report, should be considered a single subdivider for purposes of determining compliance with Section 66426. A tentative and final subdivision should have been obtained for the resulting property divisions.

### Whitehawk Ridge

A 16 parcel subdivision map was originally approved for owner Kevin Woody in 1992. The Whitehawk Ridge Subdivision was re-approved and the tentative map modified and extended on March 13, 2001. The modified map reduced the approved number of lots to 12, primarily due to new County restrictions on development in steeply sloped areas. (Over 32 acres of the property has slopes in excess of 30%.) The modified 12 lot subdivision was approved by the County on March 13, 2001 with 30 separate conditions of approval totaling 16 pages.

On May 31, 2002 Thomas and Patricia Van Horne recorded their purchase of the Woody property, which still had a valid, approved 12 lot tentative subdivision map. The tentative map was allowed to expire, but the property was then divided, through a series of successive parcel maps, into a total of 11 parcels. The resulting arrangement of parcels bears a striking resemblance to the previously approved Whitehawk Ridge Subdivision. The primary access road through the property is in the same or substantially similar position, except that it is now called Whitehawk Ridge Court instead of Whitehawk Way. The parcels are laid out north and south of this road in a fashion similar to the Woody Subdivision.

The parties created a residential neighborhood very similar to the approved 12 lot subdivision, but through a series of individual boundary line adjustments and successive parcel map divisions, each designed to accommodate the divisions which follow until the maximum development potential (given the applicable minimum parcel size and terrain limitations) was achieved. This piece-meal process effectively avoided review of the cumulative impacts of the resulting 11 lot residential development, and avoided both the Map Act's subdivision requirements, as well as the subdivision requirements set forth in the Placer County Code. This process also avoided many of the 30 conditions of approval which accompanied the previously approved Whitehawk Ridge (Woody) Subdivision.

The Report concludes that it is more likely than not that the subject divisions were part of a common plan to divide the property through a series of 4 parcel (or fewer) divisions. What started as two adjoining parcels both owned by Van Horne in 2002, by December 2006 had become 11 separate parcels through the divisions described in the Report. Thus, Van Horne and the other subdividers of the subject property should be considered a single subdivider for purposes of determining compliance with Section 66426. A tentative and final subdivision map should have been obtained for the resulting divisions.

### **Remedies**

A local agency has several remedies available to it for enforcement of the Subdivision Map Act's requirements. The County can bring an action to enjoin any attempted sale, lease or financing that would violate the Act. (Section 66499.33.) The County may also seek any other legal, equitable, or summary remedy to which it would otherwise be entitled, such as declaratory relief. (Id.)

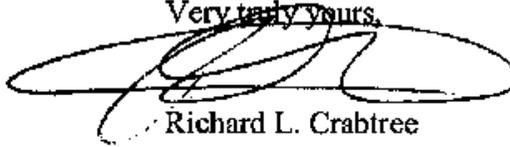
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At your request, we are available to review other additional relevant evidence as it may become available. With few exceptions, our analysis has been limited to publicly

Anthony LaBouff  
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available property transaction documents (primarily from the Recorder's Office) and documents from the County's files.

Very truly yours,

A handwritten signature in black ink, appearing to be "Richard L. Crabtree", written over the typed name below.

Richard L. Crabtree

RLC:jm