

VANNUCCI MOMSEN MORROW

Attorneys at Law
An Association of Sole Practitioners
Mendocino County

Philip M. Vannucci
Brian S. Momsen
The Hofman Building
308 S School St.
Ukiah, CA 95482
Phone: 707.462.0900
Email: pvannucci@vmm-law
Email: bmomsen@vmm-law.com

AUG 08 2023

Planning & Building Services

Colin W. Morrow
The Penny Farthing Building
45060 Ukiah St.
P.O. Box 1214
Mendocino, CA 95460
Phone: 707.380.1070
Email: cmorrow@vmm-law.com

August 8, 2023

VIA EMAIL AND PERSONAL DELIVERY

Coastal Permit Administrator
Planning and Building Services
County of Mendocino
860 N Bush St.
Ukiah, CA 95482
(pbs@mendocinocounty.org)

Re: Case No.: CDP 2018-0012
Continued Hearing Date and Time: August 10, 2023 at 11:00 AM
Owner: Noah & Zoe Sheppard
Applicant: Noah Sheppard

Dear Coastal Permit Administrator:

I. Introduction

I represent David Guggenheim and Holly Guggenheim. Mr. and Mrs. Guggenheim own the real property commonly known as 10770 Calypso Ln., Mendocino, CA 95460, Mendocino County APN: 119-090-47-00 ("Guggenheim Parcel"). The Guggenheim Parcel is immediately west of the real parcel owned by applicants Noah and Zoe Sheppard that is the subject of the present coastal development permit application.

The Guggenheims are deeply opposed to the present application because it proposes to destroy the Guggenheims presently existing driveway and fails to adequately address the limited groundwater in the area. The present application is largely a re-submittal of the previous application that was not approved in 2021. It contains only a façade of revision. The application ignores a multitude of issues that rendered it defective before and continue to leave it defective to this day. The application is rife with mischaracterizations of fact and critical omissions. Were you to approve this application you would not be proceeding in a manner required by law.

Among other things, the applicants lack sufficient legal title to engage in the road alterations they propose, for the county to deem otherwise would constitute a taking, the project is not supported by adequate findings of a sufficient water supply and has not conformed with the County's procedural obligations to neighboring groundwater users, and is not supported by adequate environmental review. Although there are numerous other issues not addressed in the present letter (e.g., the Sheppards' destruction of drainage systems required under a 2006 subdivision), the issues raised in this letter do foreclose the lawful issuance of the proposed permit. The present application must be denied.

II. The Applicants Lack Sufficient Legal Title to Perform the Contemplated Work, Namely the Neighboring Guggenheims Have a Vested Easement Right to Maintain Their Current Driveway

Mendocino County Code section 20.720.025 prescribes specific matters that a applicant must include in a coastal development permit for projects within the Town of Mendocino. In prescribing what must be included in an application, the code uses a mandatory "shall." These requirements include "[p]roof of the applicant's legal interest in all the real property upon which work is to be performed." (*Id.* at sub. (B).) The code also requires that:

All holders or owners of any other interest of record in the affected real property shall be disclosed to the County on the application, notified in writing of the permit application by the applicant, and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate to the County the applicant's authority to comply with all conditions of approval.

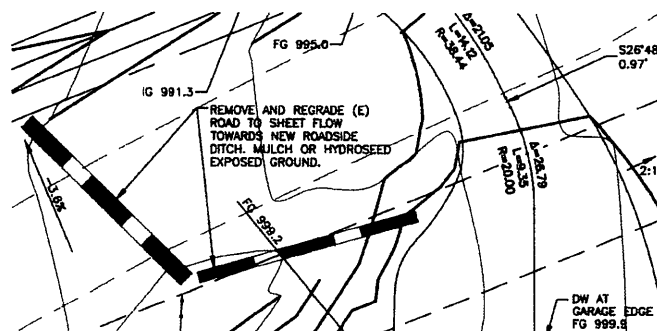
(*Id.* at subd. (C).)

As reflected in the Guggenheims' deed attached hereto as Exhibit 1, the applicant's deed attached hereto as Exhibit 2, the survey of the subdivision attached hereto as Exhibit 3, and the applicants' own permit application—the applicants' parcel is burdened by a roadway easement benefitting the Guggenheim Parcel and the Guggenheims. More specifically, the Guggenheims are benefited by—and the applicants are burdened by—a forty foot wide private roadway and public utility easement. The location of this easement is depicted on the survey attached hereto as Exhibit 3, can be seen on the site plan prepared by Aum Construction around page 20 of the staff report, and is visible on the road plan prepared by Pope Engineering around page 33 of the staff report.

"The owner of the legal title to property is presumed to be the owner of the full

beneficial title. This presumption may be rebutted only by clear and convincing proof.” (Evid. Code § 662.) Here, the Guggenheims are the owners of legal title to an easement forty feet in width. “[T]he grant of an easement is to be liberally construed in favor of the grantee.” (*Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park* (1975) 45 Cal.App.3d 519, 525.) Even “doubtful clauses in the deed are to be construed most strongly against the grantor, and as favorably to the grantee as the language, construed in the light of the surrounding facts, will justify.” (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 242–243.) “A right-of-way to pass over the land of another carries with it ‘the implied right ... to make such changes in the surface of the land as are necessary to make it available for travel in a convenient manner.’” (*Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419.) Generally, the party benefitted by an easement has the right to use its full width. (*Ballard v. Titus* (1910) 157 Cal. 673, 681.) [“The very object of the specification of width would appear to be to place without the realm of controversy all questions as to the amount of land the owner of the dominant estate might take and the owner of the servient estate be compelled to give for the purposes of the easement.”].)

Despite the plain facts and the well settled law, a principal keystone of the applicants’ present application is an intent to usurp the Guggenheim’s easement rights, destroy the driveway that the Guggenheims have used under a claim of right, and severely curtail the Guggenheims’ easement rights without their consent. The Pope Engineering plan appearing around page 33 of the staff report specifically states that the applicants’ plan is to remove the existing road:



The applicants lack the legal authority to do this. They simply are not acting in conformity with general legal principals of real estate law nor Mendocino County Code section 20.720.025. The applicants have fraudulently failed to disclose the Guggenheim’s interest to the County in the application, the Guggenheims were not notified in writing of the permit application, and the Guggenheims’ were not invited to join as co-applicants. Moreover, because the Guggenheims’ vested easement rights trump the applicants’ burdened interests, the applicants lack the authority to comply with any hypothetical conditions of approval within the easement area.

Practically speaking, the Guggenheims remain deeply concerned that the proposed project seeks to unilaterally relocate their sole means of ingress and egress from a flat, clear, stable, and easily traversable portion of the applicants' property onto a steeply sloping and forested portion of the applicants' property. The Guggenheims have a vested easement right to keep their driveway where it is. They worry that the applicant's unilateral relocation of their driveway would profoundly imperil access to—and escape from—their property with heightened risks of treefalls, erosion, and the like.

In sum, the applicant's project is premised on a false assumption that the applicant can unilaterally move the Guggenheims' driveway over the Guggenheims' objections. The applicants have failed to disclose the Guggenheims' vested easement rights. This is a fraud on the department and must necessarily require a rejection of the present permit application.

III. A Deprivation of the Guggenheim's Easement Right's by the County Would Be an Inverse Condemnation for Which the County Would Be Liable for Damages and Attorney's Fees

Were the county to permit applicants to proceed—and take away the Guggenheims' vested driveway easement rights—the county would be affecting an inverse condemnation, which is sometimes also referred to as a taking.

The Fifth Amendment to the United States Constitution requires that "private property [shall not] be taken for public use, without just compensation." (U.S. Const. amend. V.) Under the California Constitution, "[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal. Const., Art. I, § 19.) "Because the California Constitution requires compensation for damage as well as a taking, the California clause 'protects a somewhat broader range of property values' than does the corresponding federal provision." (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664 quoting *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 9.)

Courts sometimes phrase that an inverse condemnation occurs when there is "an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation . . . directly and specially affect[s] the landowner to his injury." (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 119–120.)

Here, there is no question that the Guggenheims have a historically used driveway within their vested easement to ingress and egress as to their home; that this

easement is presently in a flat and cleared portion of land; and that the applicants propose to destroy the Guggenheims' historically used and relied upon driveway. A road traversing a sloping and erosion prone hillside that is vegetated with potential treefalls and wildfire prone obstructions would be a poor substitute to what presently exists and would deprive the Guggenheims of valuable property interests.

Were the county to ordain the applicant to engage in such acts, the county would necessarily be taking the Guggenheims' vested property rights to the Guggenheims' detriment. This would be a taking. The Guggenheims would have either an immediate claim for damages against the county—including attorney's fees and expert fees under Code of Civil Procedure section 1036—or a claim against the county that it failed to conform with the procedures that a state actor in California is required to comply with before exercising its power of eminent domain as prescribed by Code of Civil Procedure section 1245.245 *et seq.* (e.g., requiring a pre-condemnation resolution of necessity). It is further questionable whether there is even a public purpose at hand. (*Cf. Kelo v. City of New London, Conn.* (2005) 545 U.S. 469, 478 [“Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.”].)

IV. The Project Lacks Adequate Water and the County's Present Hydrology Analysis Fails to Adhere to Its Own Requirements

The Guggenheims remain deeply concerned as to the applicants' lack of water on the parcel in question. If properly noticed it is likely many others in the area of the development would feel the same. The applicants' parcel is located within the geographic boundaries of both the Town of Mendocino and the Mendocino City Community Services District (“MCCSD”). The Town of Mendocino and MCCSD have long struggled with adequate water supply.

The County of Mendocino's Coastal Groundwater Development Guidelines (“Groundwater Guidelines”), state that among other things, “[n]o development shall be allowed in the County beyond proof of the capability of the adequate water supply,” (*id.* at p. 1); that “[a]ll new development shall be contingent upon proof of an adequate water supply during dry summer months which will accommodate the proposed development and will not deplete the groundwater table of contiguous or surrounding uses, (*id.* at p. 2); that “all new development and land use changes [in the Town of Mendocino] require hydrological studies, (*id.* at p. 3); that “Proof of Water shall be established by conducting a pump test(s) and comparing well yield, observed during pump testing, to the estimated water demand for the property . . . during dry season conditions, which are defined to be the period of August 20th to October 31st,” (*id.* at p. 4); that the minimum supply for individual residences should be 1.0 gal/min (*ibid.*); that [i]n no case will a supply of less than 0.5 gal/min be considered acceptable for individual residences, (*id.*

at pp. 4 & 9); that “a constant rate test shall be required in all cases to establish well yield,” (*id.* at p. 5); that [a]ll property owners within 1/4 mile of the pumped well should be given notice of the pump test (*id.* at p. 10); any that any hydrological studies “should contain specific assessments of the impacts of the pumpage on all wells within the drawdown cone or within 300 feet, whichever is greater,” as well as “[l]etters from local well owners responding to the notice of the pump test, (*id.* at p. 16).

The Mendocino County Code requires that the granting or modification of any coastal development permit “shall be supported by findings which establish,” among other things, that “[t]he proposed development is in conformity with the certified local coastal program;” that “[t]he proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities;” that “[t]he proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act;” and that “[o]ther public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.” (Mendocino Cnty. Code § 20.532.095.)

The present staff report states that any groundwater “allotment would not exceed 260 gallons per day.” Under the county’s own guidelines, this is an inadequate amount of water to support the proposed project. While 260 gallons per day equates to 0.1806 gallons per a minute, the county’s own Groundwater Guideline’s prohibit development that is not supported by a supply of at least one-half a (0.5) gallon per minute.

The County of Mendocino Coastal Groundwater Development Guidelines are crystal clear that:

[T]he minimum required water supply for individual residence should be 1.0 gal/min. A minimum supply of 0.5 to 1.0 gal/min. may be acceptable for individual residences if supplemented with water storage capacity of 2,500 gallons or more. In no case will a supply of less than 0.5 gal/min. be considered acceptable for individual residences.

(*Id.* at p. 4.)

Moreover, what hydrologic review was undertaken by the MCCSD—which forecloses development for the reasons stated above—does not appear to be for the well that is actually intended to support the project. The 2013 subdivision survey attached hereto as Exhibit 3 and the 2013 easement deed granting the existing well on the applicants’ parcel to the Guggenheims attached hereto as Exhibit 4 demonstrate that the well that would previously have been tested is no longer part of the applicants’ property. The applicants acknowledge they are aware of as much by the fact that the

staff report expressly contemplates that the “application also includes a request to convert a well (e.g., WW16552F) into a production well for residential use.”

In sum, the applicants have failed to demonstrate adequate groundwater supply, have in fact proven a lack of adequate groundwater supply, and—regardless of the preceding—the county would not be following its own procedures were it to approve the present application.

V. Any CEQA Analysis Fails to Consider the Environmental Impacts of a Relocation of the Road

“[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) “A project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading.” (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332.) “There is no dispute that CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.)

Here, however, both the applicants’ submission and the county’s analysis of the submission fail to either fully describe or address the complete scope of the project. While on the one hand the submission and review are premised upon an “after the fact” review, on the other hand, the project actually being proposed—in its full scope—greatly exceeds mere after the fact review and proposes extensive additional work.

As a threshold matter, the incongruity of a project description that expressly frames itself as merely “authoriz[ing] after-the-fact construction” with a coastal development permit that would permit far more falls well short of satisfying the basic requirements of CEQA and betrays CEQA’s normative goals of public notice and input.

Moreover, beyond these basic public notice and participation goals of CEQA, the June 7, 2023 correspondence from California Department of Fish and Wildlife expert biologist Angela Liebenberg proves up that functionally the environmental review is inadequate. Neutral expert biologist Liebenberg notes that a qualified professional biologist “should document and assess the expected biological impacts of construction of the new road” and that such an assessment “should be prepared to specifically identify potential impacts to Environmentally Sensitive Habitat Areas (ESHAs) and associated buffer areas.” It is objectively undeniable that such an analysis has not occurred under the county’s current analysis of the project because the ESHA documents described in the county’s review of the present matter do not cite any

Coastal Permit Administrator
Planning and Building Services
County of Mendocino
August 8, 2023
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reports beyond Spade Natural Resources' August 25, 2021 clarifications. In the face of this along ago date, the roadway demolition and construction plans of Pope Engineering are dated roughly a year and a half later on March 1, 2023. The review must necessarily post-date the proposal. Moreover, proceeding with a lack of public notice of any further review would offend due process considerations that must be afforded to neighboring landowners. (See *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 618; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 550.)

VI. Conclusion

For the reasons stated above, the county would not be proceeding in a manner required by law were it to approve the present submission. The submission must necessarily be denied, and the Guggenheims respectfully pray for as much.

Respectfully submitted,



Colin Morrow

EXHIBIT 1

2013-11524
Recorded at the request of:
FIRST AMERICAN TITLE
07/26/2013 11:01 AM
Fee: \$25.00 Pgs: 1 of 5

RECORDING REQUESTED BY
First American Title Company

OFFICIAL RECORDS
Susan M. Ranochak - Clerk-Recorder
Mendocino County, CA



AND WHEN RECORDED MAIL DOCUMENT TO:
David Guggenheim and Holly Guggenheim,
Trustees
The Guggenheim Family Living Trust dated
December 13, 2005
3480 N. El Dorado Drive
Long Beach, CA 90808

Space Above This Line for Recorder's Use Only

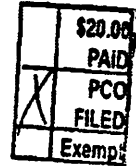
A.P.N.: 119-090-47-00

File No.: 2303-4416645 (CW)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$610.50; CITY TRANSFER TAX \$;
SURVEY MONUMENT FEE \$

- computed on the consideration or full value of property conveyed, OR
- computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- unincorporated area; City of **Mendocino**, and



FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Henry F. McCusker and Agatha Anne Yount, Trustees of The Henry F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006

hereby GRANTS to

David Guggenheim and Holly Guggenheim, Trustees of The Guggenheim Family Living Trust, dated December 13, 2005

the following described property in the unincorporated area of the County of **Mendocino**, State of **California**:

PARCEL ONE:

BEING IN SECTION 29 AND 30, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE, 31, MENDOCINO COUNTY RECORDS EXCEPTING:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE, 31, MENDOCINO COUNTY RECORDS; THENCE ALONG THE BOUNDARIES OF SAID PARCEL 3 AS FOLLOWS: SOUTH 01° 33' 51" WEST, 296.57 FEET; THENCE SOUTH 30° 33' 25" EAST, 126.34 FEET; THENCE SOUTH 79° 14' 32" WEST, 125.00 FEET; THENCE NORTH 23° 17' 39" WEST, 130.25 FEET; THENCE SOUTH 77° 00' 00" WEST, 123.48 FEET; THENCE LEAVING THE SOUTHERLY BOUNDARY OF SAID PARCEL 3, NORTH 339.63 FEET TO THE NORTH BOUNDARY THEREOF; THENCE SOUTH 89° 18' 09" EAST, 238.50 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT FOR PUBLIC UTILITY PURPOSES, AS DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Grant Deed - continued

Date: 07/19/2013

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR ROADWAY AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND 60.00 FEET IN UNIFORM WIDTH LYING IN AND BEING A PORTION OF SECTION 29, TOWNSHIP 17 NORTH, RANGE 17 WEST MOUNT DIABLO BASE AND MERIDIAN.

COMMENCING AT A THREE-QUARTER INCH REBAR MONUMENT TAGGED L. S. 3184 AS SAID MONUMENT IS DELINEATED ON THAT RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 37, PAGE 31, MENDOCINO COUNTY RECORDS, SAID MONUMENT MARKS THE SOUTHEAST CORNER OF THE LANDS OF MCELROY AS DESCRIBED IN BOOK 1240 OF OFFICIAL RECORDS, PAGE 243, MENDOCINO COUNTY RECORDS; THENCE SOUTH 60° 58' 06" WEST, 30.33 FEET TO A POINT IN THE CENTERLINE OF THE EASEMENT BEING DESCRIBED, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF SAID EASEMENT AS FOLLOWS: NORTH 20° 34' 33" WEST, 294.91 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 34° 59' 27" WITH A RADIUS OF 125.00 FEET FOR A DISTANCE OF 76.34 FEET; THENCE NORTH 55° 34' 00" WEST, 260.24 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 33° 44' 09" WITH A RADIUS OF 125.00 FEET FOR A DISTANCE OF 73.60 FEET; THENCE NORTH 89° 18' 09" WEST 414.12 FEET, MORE OR LESS, TO THE WEST LINE OF TRACT ONE ABOVE AND BEING THE TERMINUS OF THIS EASEMENT.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE 20 FOOT X 20 FOOT WELL SITE AREA AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS.

PARCEL THREE:

A 40 FOOT PRIVATE ROADWAY AND PUBLIC UTILITY EASEMENT, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY PROPERTY LINE OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE, 31, MENDOCINO COUNTY RECORDS FROM WHICH THE NORTHEAST CORNER OF SAID PARCEL 3 BEARS NORTH 01° 33' 51" EAST, 21.83 FEET; THENCE FROM SAID POINT OF BEGINNING ALONG SAID CENTERLINE, SOUTH 67° 57' 35" WEST, 256.65 FEET TO THE EASTERLY PROPERTY OF THE REMAINDER PARCEL DESCRIBED ABOVE.

THE SIDELINES OF SAID EASEMENT TO BE EXTENDED OR SHORTENED TO BEGIN ON THE EASTERLY PROPERTY LINE OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE, 31, MENDOCINO COUNTY RECORDS AND END ON THE EASTERLY PROPERTY OF PARCEL ONE DESCRIBED ABOVE.

Grant Deed - continued

Date: 07/19/2013

A.P.N.: 119-090-47-00

File No.: 2303-4416645 (CW)

Dated: 07/19/2013

The Henry F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006

[Signature]
Henry F. McCusker, Trustee

[Signature]
Agatha Anne Yount, Trustee

STATE OF Kansas)SS
COUNTY OF Leavenworth)

On July 22, 2013, before me, Michael L. Belancio, Notary Public, personally appeared Henry F. McCusker

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]

My Commission Expires: 4/13/2014

This area for official notarial seal

Notary Name: Michael L. Belancio
Notary Registration Number: 1047869

Notary Phone: 816-472-7474
County of Principal Place of Business: Jackson, Mo

Grant Deed - continued

Date: **07/19/2013**

STATE OF CALIFORNIA)SS
COUNTY OF MENDOCINO)

On JULY 24, 2013, before me, CHERRYL WEST, Notary Public, personally appeared AGATHA ANNE YEUNT

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature, Cherryl West

My Commission Expires: MAY 2, 2014

This area for official notarial seal

Notary Name: CHERRYL WEST
Notary Registration Number: 1885108

Notary Phone: 707.964.4729
County of Principal Place of Business: MENDOCINO

EXHIBIT "A"

PUBLIC UTILITY EASEMENT:

A 10 FOOT PUBLIC UTILITY EASEMENT, SITUATED IN THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA AND BEING IN SECTIONS 29 AND 30, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, SAID EASEMENT BEING DESCRIBED AS FOLLOWS:

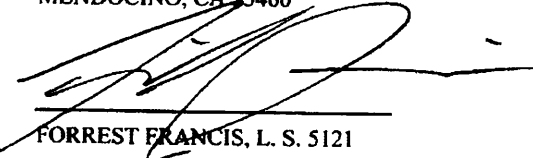
A STRIP OF LAND 10 FEET IN WIDTH, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING THE AT THE NORTHWEST CORNER OF THE LANDS DESCRIBED AS PARCEL 1 IN THAT CERTAIN GRANT DEED TO TRUSTEE OF REVOCABLE LIVING TRUST DATED APRIL 25, 2006, RECORDED MARCH 18, 2009 IN DOCUMENT NUMBER 2009-03647, MENDOCINO COUNTY RECORDS, THENCE SOUTH, ALONG THE WEST LINE OF SAID LANDS 83.96 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM TRUE POINT OF BEGINNING, ALONG THE CENTERLINE OF THIS EASEMENT, WEST, 42.56 FEET TO AN EXISTING UTILITY POLE.

BEING A PORTION OF THE OF THE LANDS DESCRIBED AS THE REMAINDER PARCEL IN THAT CERTAIN GRANT DEED TO TRUSTEE OF REVOCABLE LIVING TRUST DATED APRIL 25, 2006, RECORDED MARCH 18, 2009 IN DOCUMENT NUMBER 2009-03647, MENDOCINO COUNTY RECORDS

AND BEING AN APPURTENANCE TO THE OF THE LANDS DESCRIBED AS PARCEL 1 IN THAT CERTAIN GRANT DEED TO TRUSTEE OF REVOCABLE LIVING TRUST DATED APRIL 25, 2006, RECORDED MARCH 18, 2009 IN DOCUMENT NUMBER 2009-03647, MENDOCINO COUNTY RECORDS

DESCRIPTION PREPARED BY: FORREST FRANCIS, LAND SURVEYOR
P. O. BOX 1162
MENDOCINO, CA 95460



FORREST FRANCIS, L. S. 5121

A PORTION OF A. P. #119-090-47
APPURTENANCE TO A. P. #119-090-46

EXHIBIT 2

2015-14692
Recorded at the request of:
FIRST AMERICAN TITLE
10/30/2015 10:14 AM
Fee: \$19.00 Pgs: 1 of 3

OFFICIAL RECORDS
Susan M. Ranechak - Clerk-Recorder
Mendocino County, CA



RECORDING REQUESTED BY
First American Title Company

**MAIL TAX STATEMENT
AND WHEN RECORDED MAIL DOCUMENT TO:**
Noah Sheppard and Zoe Sheppard
PO Box 112
Albion, CA 95410

Space Above This Line for Recorder's Use Only

A.P.N.: 119-090-46-00

File No.: 2303-5012146 (CW)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$115.50; CITY TRANSFER TAX \$;
SURVEY MONUMENT FEE \$

- computed on the consideration or full value of property conveyed, OR
- computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- unincorporated area; City of **Mendocino**, and

	\$20.00 PAID
✓	PCO FILED
	Exempt

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Hank F. McCusker and Agatha Anne Yount, Trustees of The Hank F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006

hereby GRANTS to

Noah Sheppard and Zoe Sheppard, husband and wife as community property with right of survivorship

the following described property in the unincorporated area of the County of **Mendocino**, State of **California**:

PARCEL ONE:

BEING IN SECTION 29, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE, 31, MENDOCINO COUNTY RECORDS; THENCE ALONG THE BOUNDARIES OF SAID PARCEL 3 AS FOLLOWS: SOUTH 01° 33' 51" WEST, 296.57 FEET; THENCE SOUTH 30° 33' 25" EAST, 126.34 FEET; THENCE SOUTH 79° 14' 32" WEST, 125.00 FEET; THENCE NORTH 23° 17' 39" WEST, 130.25 FEET; THENCE SOUTH 77° 00' 00" WEST, 123.48 FEET; THENCE LEAVING THE SOUTHERLY BOUNDARY OF SAID PARCEL 3, NORTH 339.63 FEET TO THE NORTH BOUNDARY THEREOF; THENCE SOUTH 89° 18' 09" EAST, 238.50 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR ROADWAY AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND 60.00 FEET IN UNIFORM WIDTH LYING IN AND BEING A PORTION OF SECTION 29, TOWNSHIP 17 NORTH, RANGE 17 WEST MOUNT DIABLO BASE AND MERIDIAN.

Mail Tax Statements To: **SAME AS ABOVE**

Plaintiffs_000555

Grant Deed - continued

Date: 10/20/2015

COMMENCING AT A THREE-QUARTER INCH REBAR MONUMENT TAGGED L. S. 3184 AS SAID MONUMENT IS DELINEATED ON THAT RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 37, PAGE 31, MENDOCINO COUNTY RECORDS, SAID MONUMENT MARKS THE SOUTHEAST CORNER OF THE LANDS OF MCELROY AS DESCRIBED IN BOOK 1240 OF OFFICIAL RECORDS, PAGE 243, MENDOCINO COUNTY RECORDS; THENCE SOUTH 60 DEGREES 58' 06" WEST, 30.33 FEET TO A POINT IN THE CENTERLINE OF THE EASEMENT BEING DESCRIBED, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF SAID EASEMENT AS FOLLOWS:

NORTH 20 DEGREES 34' 33" WEST, 294.91 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 34 DEGREES 59' 27" WITH A RADIUS OF 125.00 FEET FOR A DISTANCE OF 76.34 FEET; THENCE NORTH 55 DEGREES 34' 00" WEST, 260.24 FEET; THENCE ALONG A TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 33 DEGREES 44' 09" WITH A RADIUS OF 125.00 FEET FOR A DISTANCE OF 73.60 FEET; THENCE NORTH 89 DEGREES 18' 09" WEST 414.12 FEET, MORE OR LESS, TO THE WEST LINE OF PARCEL ONE ABOVE AND BEING THE TERMINUS OF THIS EASEMENT.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE 20 FOOT X 20 FOOT WELL SITE AREA AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS.

Dated: October 20, 2015

Grant Deed - continued

Date: 10/20/2015

A.P.N.: 119-090-46-00

File No.: 2303-5012146 (CW)

The Hank F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006

[Signature]
Henry F. McCusker, Trustee

[Signature]
Agatha Anne Yount, Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)SS

COUNTY OF MENDOCINO)

On OCTOBER 21, 2015 before me, C. SOUTHERS, Notary Public, personally appeared

HENRY F. MCCUSKER & AGATHA ANNE YOUNT
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

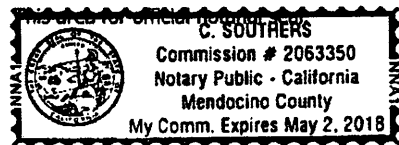


EXHIBIT 3

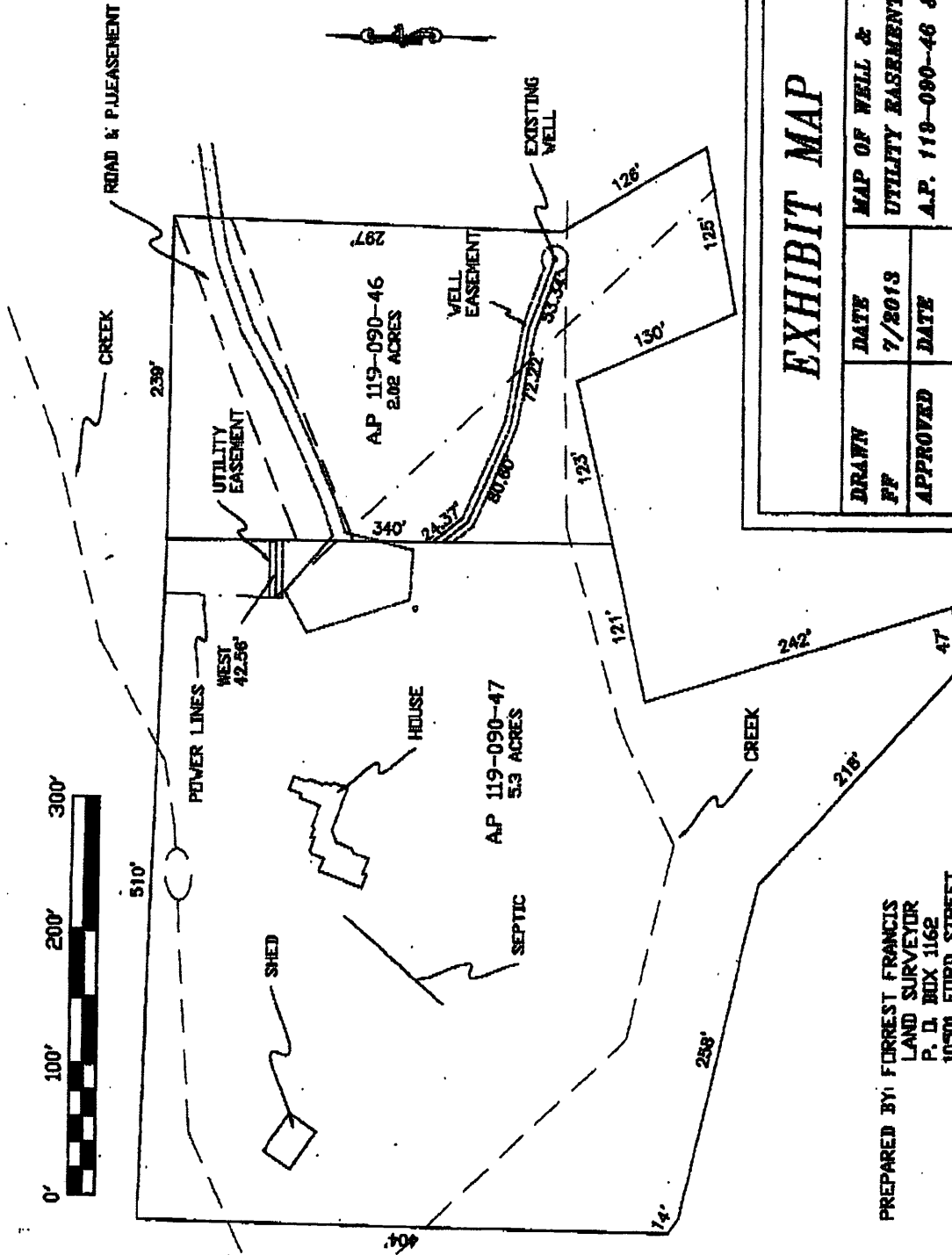


EXHIBIT MAP		MAP OF WELL & UTILITY EASEMENT	
DRAWN FF	DATE 7/2013	A.P. 119-090-46 & A.P. 119-090-47	
APPROVED	DATE	PROJECT NO. 13077	
SCALE AS SHOWN	SHEET 1 OF 1		

PREPARED BY: FORREST FRANCIS
 LAND SURVEYOR
 P. O. BOX 1162
 10501 FORD STREET
 MENDOCINO, CA 95460
 PHONE: (707)937-9900
 E-MAIL: ffrancis@mcn.org

Plaintiffs_000309

EXHIBIT 4

WHEN RECORDED RETURN AND
MAIL TAX STATEMENTS TO:

David Guggenheim
3480 N. El Dorado Drive
Long Beach, CA 90808

2013-11525

Recorded at the request of:
FIRST AMERICAN TITLE
07/26/2013 11:01 AM
Fee: \$25.00 Pgs: 1 of 5

OFFICIAL RECORDS
Susan M. Ranochak - Clerk-Recorder
Mendocino County, CA



The Undersigned Grantor declares: Documentary Transfer Tax: \$0
Revenue & Taxation Code Section 11930 (gift transfer)
Unincorporated area; Mendocino County

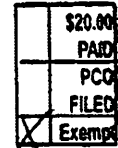
EASEMENT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Henry F. McCusker and Agatha Anne Yount, Trustees of the Henry F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006, Grantors,**

hereby GRANT to **David Guggenheim and Holly Guggenheim, Trustees of the Guggenheim Family Living Trust dated December 13, 2005, Grantees,**

an easement over, under, within and through a portion of the Grantors' certain real property located in the unincorporated area in the County of Mendocino, State of California, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("Well Parcel"), for the following purposes:

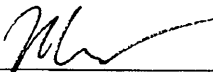
1. Exclusive use of a water well existing on the Well Parcel, as more particularly described in Exhibit B attached hereto and incorporated herein by reference ("Easement");
2. Ingress and egress by Grantees, their successors, assigns, tenants, employees and invitees over the Easement area, for purposes of routing, installation, use, maintenance, service and operation of certain systems in connection with extraction of water from the water well in the Easement area, including, among other things, all of the wiring, pumps, tanks, outlets, pipes, conduits, valves and meters relating to the water well and all rights corresponding or incidental thereto.
3. Construction of all necessary structures within the Easement to service and protect the water well, including structures such as a foundation, well house, meter box, and related equipment.
4. The right to increase the depth or width of the water well in the Easement or perform other upgrading functions, so long as the work is completed within the Easement area described in Exhibit B hereto.



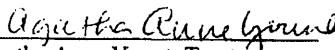
The Easement is exclusive and appurtenant to the Grantees' certain real property located in the unincorporated area in the County of Mendocino, State of California, as more particularly described in Exhibit C, attached hereto and incorporated herein by reference, and includes the absolute and sole right of Grantee to use the Easement for the purposes described herein, which use must not be disturbed, interrupted or impeded in any manner. The Easement is an Easement in perpetuity for the benefit of the Grantees, their heirs, successors and assigns, and shall run with the land.

Henry F. McCusker and Agatha Anne Yount Living Trust dated April 25, 2006

Dated: July 22, 2013


Henry F. McCusker, Trustee

Dated: July 24, 2013


Agatha Anne Yount, Trustee

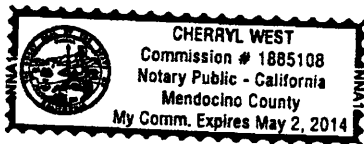
State of California)

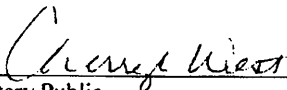
County of Mendocino)

On July 24, 2013, before me, CHERYL WEST, Notary Public, personally appeared Agatha Anne Yount, who proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.




Notary Public

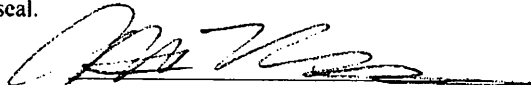
State of Kansas)

County of Leavenworth)

On July 22, 2013, before me, Michael L. Belancio Notary Public, personally appeared Henry F. McCusker, who proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.


Notary Public

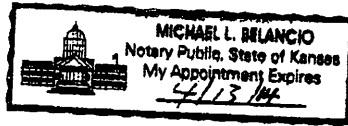


EXHIBIT A

WELL PARCEL

ALL THAT CERTAIN REAL PROEPRTY SITUATED IN THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA AND BEING IN SECTION 29, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS; THENCE ALONG THE BOUNDARIES OF SAID PARCEL 3 AS FOLLOWS: SOUTH 01° 33' 51" WEST, 296.57 FEET; THENCE SOUTH 30° 33' 25" EAST, 126.34 FEET; THENCE SOUTH 79° 14' 32" WEST, 125.00 FEET; THENCE NORTH 23° 17' 39" WEST, 130.25 FEET; THENCE SOUTH 77°00' 00" WEST, 123.48 FEET; THENCE LEAVING THE SOUTHERLY BOUNDARY OF SAID PARCEL 3, NORTH 339.63 FEET TO THE NORTH BOUNDARY THEREOF; THENCE SOUTH 89° 18' 09" EAST, 238.50 FEET TO TH EPOINT OF BEGINNING.

CONTAINING 2.02 ACRES

APN 119-090-46

EXHIBIT B

WELL EASEMENT

A 10 FOOT EASEMENT FOR THE INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF A WELL AND FOR THE INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF THE APPURTENANCE OF SAID WELL, SITUATED IN THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA AND BEING IN SECTIONS 29 AND 30, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, TE SAID EASEMENT BEING DESCRIBED AS FOLLOWS:

COMMENCING THE AT THE NORTH WEST CORNER OF THE LANDS DESCRIBED IN EXHIBIT "A" ATTACHED HERETO. THENCE SOUTH ALONG THE WEST LINE OF SAID LANDS 210.89 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE CENTERLINE OF THIS 10 FOOT WIDE EASEMENT, SOUTH 39°14'09" EAST, 24.37 FEET; THENCE SOUTH 66°33'39" EAST, 80.60 FEET; THENCE SOUTH 79°13'29" EAST, 72.22 FEET; THENCE SOUTH 69°30'01" EAST, 53.34 FEET TO THE CENTER OF AN EXISTING 4 FOOT DIAMETER WELL.

TOGETHER WITH A 20 FOOT DIAMETER EASEMENT FOR THE INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF A WELL AND FOR THE INSTALLATION, OPERATION, MAINTENANCE AND REPAIR OF THE APPURTENANCE OF SAID WELL.

EXHIBIT C

DOMINANT TENEMENT/REMAINDER PARCEL

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA AND BEING IN SECTION 29 AND 30, TOWNSHIP 17 NORTH, RANGE 17 WEST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS EXCEPTING:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS; THENCE ALONG THE BOUNDARIES OF SAID PARCEL 3 AS FOLLOWS: SOUTH 01° 33' 51" WEST, 296.57 FEET; THENCE SOUTH 30° 33' 25" EAST, 126.34 FEET; THENCE SOUTH 79° 14' 32" WEST, 125.00 FEET; THENCE NORTH 23° 17' 39" WEST, 130.25 FEET; THENCE SOUTH 77° 00' 00" WEST, 123.48 FEET; THENCE LEAVING THE SOUTHERLY BOUNDARY OF SAID PARCEL 3, NORTH 339.63 FEET TO THE NORTH BOUNDARY THEREOF; THENCE SOUTH 89° 18' 09" EAST, 238.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 5.43 ACRES, MORE OR LESS.

TOGETHER WITH A 40 FOOT PRIVATE ROADWAY AND PUBLIC UTILITY EASEMENT, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY PROPERTY LINE OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS FROM WHICH THE NORTHEAST CORNER OF SAID PARCEL 3 BEARS NORTH 01° 33' 51" EAST, 21.83 FEET; THENCE FROM SAID POINT OF BEGINNING ALONG SAID CENTERLINE, SOUTH 67° 57' 35" WEST, 265.63 FEET TO THE EASTERLY PROPERTY OF THE REMAINDER PARCEL DESCRIBED ABOVE.

THE SIDELINES OF SAID EASEMENT TO BE EXTENDED OR SHORTENED TO BEGIN ON THE EASTERLY PROPERTY LINE OF PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN RECORD OF SURVEY FILED IN MAP CASE 2, DRAWER 39, PAGE 31, MENDOCINO COUNTY RECORDS AND END ON THE EASTERLY PROPERTY OF THE REMAINDER PARCEL DESCRIBED ABOVE.

APN 119-090-47