COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

701 OCEAN STREET - 4TH FLOOR, SANTA CRUZ, CA 95060
(831) 454-2580 FAX: (831) 454-2131 TDD: (831) 454-2123

KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

February 12, 2016

Agenda Date: March 4, 2016
Agenda Item #: 2
Time: after 9:00 a.m.

Zoning Administrator
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

Subject: Appeal of Commercial Development Permit Application 141238 to construct a 3,000 square foot commercial building with 845 square feet of storage at the second floor.

Dear Zoning Administrator:

On December 28, 2015 application 141238 was approved administratively to allow for the construction of a 3,000 square foot retail building with 845 square feet of storage a the second floor and associated site improvements at Porter Street in Soquel.

On January 11, 2016, the administrative decision was appealed by Attorney Donald Schwartz on behalf of Anthony and Kandy Silveira. The grounds for the appeal are that the project does not include a condition of approval requiring the applicant (Fazekas) to grant a vehicular access easement to the appellant (Silveira, owners of 4630 West Walnut Street). Additionally, the appellant asserts there were procedural irregularities in the processing of application 141238.

Regarding Assertion of Easements

In prior correspondence, the appellant asserts that a vehicular easement exists on the project site which historically serves as a means of ingress and egress (and associated parking) for the property at 4630West Walnut Street. Though several documents from a prior court case have been submitted into the record, these documents do not appear to prove the existence of said easement. Rather, the court documents show evidence of the removal of a previously recorded Road Maintenance and Circulation Agreement and parking agreements that resulted from a prior County approval that were never exercised. Further, the applicant (Fazekas) insists that no easements exist on the subject property, as shown on a recent survey of the property and a Title Report.

It should be noted that the applicant has incorporated an existing driveway located between the Fazekas and Silveira properties into the design of the proposed development. Though no shared parking or circulation agreement between Fazekas and Silveira has been reached at this time, the design of the proposed development would not prevent shared use of the existing driveway currently or in the future. Though the driveway would be a primary means of access for Fazekas, it would be a secondary access for Silveira because the main access to Silveira's property is off West Walnut Street.

Due to the lack of definitive evidence supporting of the existence of an easement on the subject property serving 4630 West Walnut the project has been conditioned as follows: "The final plans shall not block or impede use of existing easements and that placement of improvements within such easements is done so at his or her risk of adjudication in civil court."

Regarding Assertion of Planning Irregularities

The appellant assets there were irregularities in the noticing for the proposal. The original proposal was for a 6,000 square foot commercial building and Master Occupancy Program which required a Level 5 Commercial Development Permit (Public Hearing). Prior to the public hearing on 9/4/15, the applicant requested a continuance so that he could consider input from the community.

In consideration of input from the community, the applicant redesigned/reduced the project to 3,000 square feet of commercial space with 845 square feet of storage at the second floor and omitted the Master Occupancy Program. These changes result in a project that requires a Level 4 Commercial Development Permit as indicated in SCCC 13.10.332 (Commercial Uses Chart).

Upon determining the project then qualified for a Level 4 Commercial Development Permit, noticing procedures outlined in SCCC 18.10.222 were followed. Evidence of such noticing is on file with the County of Santa Cruz.

Staff Recommendation

Based on a review of the issues raised by the appellant, staff recommends upholding the determination that the project is exempt from further environmental review under the California Environmental Quality Act and approval of application 141238.

Sincerely,

Nathan MacBeth
Project Planner
Development Review

Exhibits:

A. Appeal Letter from Donald Schwartz dated January 11, 2016
B. Applicant Response to Appeal dated January 17, 2016
C. Letter from Applicant's Attorney, Nathan Benjamin dated September 25, 2015
D. Staff Report with Findings and Conditions of Approval
E. Project Plans

Received 1-11-16 PM

Law Office of
Donald Charles Schwartz

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Tel (831) 331-9909 – Fax (815) 301-6556
Email: trialllaw@cruzio.com

January 11, 2016

County of Santa Cruz
Planning Department
701 Ocean Street
Santa Cruz, CA 95060

[Hand Delivered with ~~$400~~ $800 Appeal Filing Fee]

Re: 2601 Porter Street, Soquel, CA (Daryl Fazekas) Planning Matter
APNs: 030-201-74, -75
APPLICATION NUMBER: 141238

NOTICE OF APPEAL

Please be advised that on behalf of Anthony P. Silveira, and Kandie L. Silveira, Trustees of the Silveira Family Trust Dated November 18, 1992, we are filing this appeal of the planning decision to approve this project.

The grounds for the appeal are as follows:

The project does not include a condition that a recorded grant of easement be effectuated as set forth herein -- see attached Exhibit 1.

The Applicant (Daryl Fazekas) has agreed to have recorded onto the title of the proposed to be developed properties (APNs: 030-201-74, -75) the attached Exhibit 1 grant of easement to the benefit of my client's property located at 4630 West Walnut Street, Soquel, CA.

To-date, the parties have not completed their agreement relating to terms and conditions of the Exhibit 1 easement (which will include, inter alia, a maintenance agreement and right so signage) and necessary recordation thereof.

It is fully expected that such an agreement and necessary recordation will be completed forthwith.

Thus, in an abundance of caution, appellant also appeals for those reasons set forth as Exhibit 2.

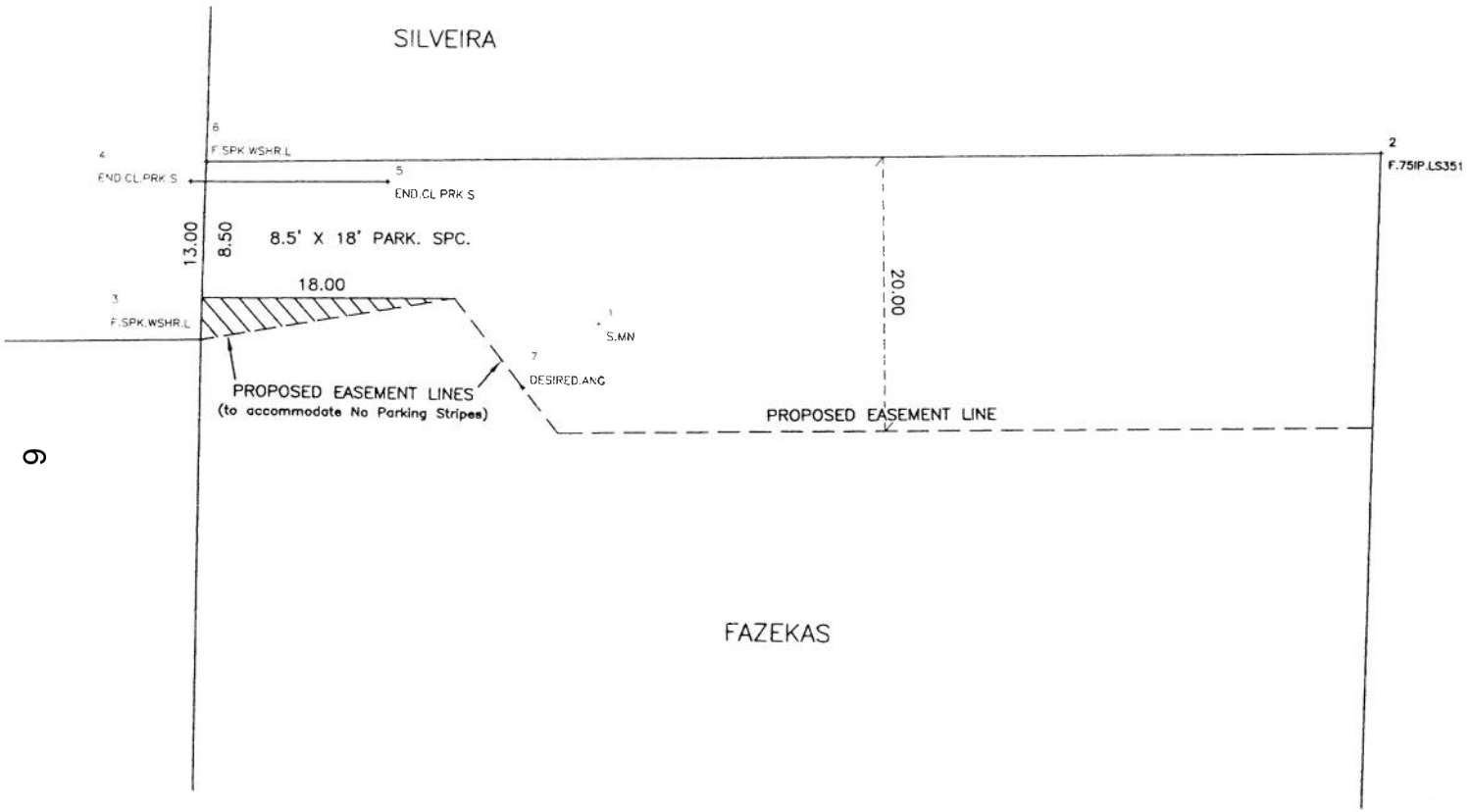
EXHIBIT A

Sincerely,

Donald Charles Schwartz

Enc – Exhibits 1 and 2

EXHIBIT 1


SILVEIRA
6
F.SPK.WSHR.L
4
END.CL.PRK.S
5
END.CL.PRK.S
2
F.75IP.LS351
13.00
8.50
8.5' X 18' PARK. SPC.
18.00
20.00
3
F.SPK.WSHR.L
1
S.MN
7
DESIRED ANG
PROPOSED EASEMENT LINES
(to accommodate No Parking Stripes)
PROPOSED EASEMENT LINE
FAZEKAS

6

EXHIBIT 2

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November 17, 2015

Nathan MacBeth
County of Santa Cruz
Planning Department
701 Ocean Street
Santa Cruz, CA 95060

[Hand Delivered]

Re: 2601 Porter Street, Soquel, CA (Fazekas) Planning Matter
APNs: 030-201-74, -75
APPLICATION NUMBER: 141238

Dear Mr. MacBeth:

As you know, this office represents an adjacent landowner to the above-referenced real property. My client is: Anthony Silveira whose property is located at 4630 West Walnut Street, Soquel, CA.

Mr. Silveira has deep concerns related to an ingress/egress easement (and associated parking) that traverses the 2601 Porter Street property. The (new) proposed development plans are not clear enough so as to determine whether or not the project interferes with Mr. Silveira's rights.

Planning Irregularities

As noted to you in a recent email, there may be a procedural irregularity taking place in the planning process of this project. The project was scheduled for a "Notice of Public Hearing" on September 4, 2015. When you were contacted about an easement issue asserted by Mr. Silveira you stated that the project proponent (Fazekas) was going to re-draw his plans and there was no need to appear at the hearing (in an abundance of caution, Mr. Silveira did appear to contest the project anyway and alert the County of Santa Cruz to the easement issue.)

Mr. Fazekas did completely re-design and re-submit the project, yet without a properly noticed Public Hearing on the re-design, the project is now scheduled for "Notice of Pending Action" on November 17, 2015. You have assured me that this letter is timely if served today by email or personal delivery. We will do both.

You have stated because the size of the project is downgraded, the planning procedures are streamlined. Thank you for this clarification, nevertheless, we need additional explanation of the Public Hearing processes utilized for this project. The new plans have not been subjected to the Public Hearing process and significant issues remain to be clarified related to the Silveira ("Michael Liles") easement.

Easement Issues

I am in receipt of the letter written to you by Nathan Benjamin on behalf of the owner at 2601 Porter Street, Soquel, CA (e.g., Daryl Fazekas). Mr. Benjamin's assertion that all of Mr. Silveira's claims against the Fazekas property were previously asserted and resolved in the referenced litigation is simply not true.

Mr. Silveira's 'entire claim of easement'[1] on the 4630 West Walnut Property was most certainly **not** resolved in the court case of Alan B. Palmer, et v. Anthony P. Silveira, Santa Cruz County Superior Court, Civil Action No. CV163244) Appellate No. H037588.

First, with regard to the "Road Maintenance and Circulation Agreement" the condition precedent to the rights it encompasses has only now arisen by the Fazekas' Application for Commercial Use Permit. During the entire time of the referenced litigation there was no condition precedent since there was no new application for any commercial use permit, as stated in the recorded documents. Now that Fazekas has applied for the commercial use permit, the rights established in the recorded "Road Maintenance and Circulation Agreement" have sprung-forward - since that condition precedent will have also have been established. Since this result is exactly what was briefed by Fazekas' predecessor-in-interest (Palmer), then the doctrine(s) of judicial estoppel and/or equitable estoppel apply to any change in legal position in the matter now.

Second, the entirety of Mr. Silveira's easement claims were **not** even placed into issue in the cited court case between Fazekas' previous owner and Anthony Silveira. The so-called "Michael Liles Easement" and other prescriptive and equitable easement(s) now raised by the proposed 2601 Porter Street development plans were expressly excluded from the litigation by the parties thereto. [Neither Daryl Fazekas or his attorney (Benjamin) were parties nor present during the litigation and cannot credibly opine thereon.]

A simple reading of the Opinion of the Sixth District Court of Appeal in the matter of Alan B. Palmer, et v. Anthony P. Silveira, Santa Cruz County Superior Court, Civil Action No. CV163244) Appellate No. H037588, at page 8 (Exhibit 1), reveals the parties' open court stipulation and agreement (stated on the record between the parties to the action):

[1] Claims include, inter alia, prescriptive and equitable easement to driveway and parking areas.

> ". . . When it was heard, counsel for defendants (Silveira) appeared and stated that he had communicated a concern to plaintiffs'' (Palmer's) counsel that the proposed judgment included an easement that had not been at issue in the litigation, When the court asked whether the documents as so amended "meet with your approval," he replied, "Yes. **I just want to make it clear for the record that the Michael Liles easement is not part of this litigation," Plaintiffs' counsel affirmed that he understood this to be the case**. The court indicated that it was signing the modified judgment."[2] [emphasis supplied.]

Moreover, a reading of the operative pleadings in the case, e.g., the Complaint for Declaratory Relief (filed 3/25/09) and the Amended Cross-Complaint (filed 10/26/10) – Exhibits 2 and 3, respectively) reveal that nowhere was the "Michael Liles Easement" or associated claims litigated. Certainly, no court judgment can be construed by fortuitous outsiders to studiously manufacture and interpose issues after-the-fact that were not litigated between parties to a court case. Further, a reading of the entire litigation file (beyond the scope of this letter) reveals that the entire litigation cautiously excluded the so-called Michael Liles easement issues (which excluded issues include both as stated in the "Road Maintenance and Circulation Agreement" and as a matter of law vis-à-vis the prescriptive and/or equitable easements).

The "Michael Liles Easement" and associated claims are a driveway ingress-egress and parking area that my client, Anthony Silveira, has been using for some 30 years. This easement traverses the Fazekas property and is the most important ingress, egress and parking areas needed for the Silveira property to function as a commercial property in the County of Santa Cruz. Proceeding to grant development rights to the applicant here (Fazekas) is nothing short of an inverse condemnation as well as, perhaps, a violation of administrative procedure by the County of Santa Cruz. Mr. Silveira has at all times, in good faith, dutifully followed the express conditions and instructions of the County of Santa Cruz Planning Department. To pull the rug out from under him now is patently unfair.

You state that the County cannot be in the business of interpreting legal rights. The fact is that no matter how you slice it, the County either gets in the business of interpreting the parties' legal rights, **or facilitates resolution**. No matter how anyone chooses to look at it, the simple fact remains that there is a history of recorded documents in the chain of title of the subject APNs (030-201-74, -75). There is no choice but to interpret what these documents mean. (See, partial Preliminary Title Report re: APNs 030-201-74, -75 attached hereto as Exhibit 4) The County cannot simply pretend the recorded instruments are not the recorded instruments. The County cannot also pretend it did not require the "Parking Agreement" and "Road Maintenance and Circulation Agreement" recorded on both the servient and dominant parcels here (Fazekas and Silveira) as a condition to the Silveira improvement. See, County of Santa Cruz Planning

[2] When you and I spoke yesterday you had not read this appellate court language and were in no way informed of the limited issues advanced by the parties to the court case.

Letter dated October 16, 1985 and "APPROVED County of Santa Cruz Planning Department" easement plan (Exhibits 5 and 6)

Meeting with Daryl Fazekas: Prior to the September 4, 2015 Public Hearing ("that never took place"), in trying to resolve the matter without fanfare, Mr. Silveira and I met with Daryl Fazekas and he agreed to redesign his 2601 Porter development plans so as to not interfere with the Silveira easements. Mr. Silveira and I were comforted to learn that your Planning Department did receive corrected plans from Mr. Fazekas for his 2601 Porter Street, Soquel, CA development project. While it appears that the new plans are not exclusive of Mr. Silveira's longstanding "Michael Liles easement" rights we simply cannot be sure. If there is an issue, then my client will have no choice but to initiate an appropriate litigation with associated claims procedures. Now, apparently encouraged by your Planning Department, Mr. Fazekas has chosen to block-off Mr. Silveira's ingress, egress and parking easements with cyclone fencing – the exact same areas of ingress and egress stated in the new development plans to be used by his own commercial tenants! We simply do not understand what game is being played here (e.g., blocking his own ingress and egress as well as the "Michael Liles easement") Our concern is that Mr. Fazekas says one thing and appears to do another – as it now appears so does the County of Santa Cruz Planning Department.

I look forward to hearing from you and working with you on this matter. It would seem that a very simple use agreement entered at this stage of the Fazekas planning process can be entered to avoid years of protracted litigation between the County of Santa Cruz, Daryl Fazekas and Anthony Silveira. We ask that you facilitate resolution procedures in that regard.

Sincerely,

Donald Charles Schwartz

Enc – Exhibits 1-6

EXHIBIT 1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ALAN B. PALMER, as Trustee, etc., et al., Plaintiffs, Cross-defendants, and Respondents, v. ANTHONY P. SILVEIRA, as Trustee, etc., et al., Defendants, Cross-complainants and Appellants.	H037588 (Santa Cruz County Super. Ct. No. CV163244)

Plaintiffs Alan Palmer and Santa Cruz Properties LLC brought this action against neighboring landowners Anthony and Kandy Silveira, to expunge certain recorded agreements between defendants and the parties' common predecessors in interest insofar as those agreements might establish or give record notice of servitudes burdening plaintiffs' property. From a judgment in plaintiffs' favor, defendants appeal. Plaintiffs contend that defendants have not preserved their challenges to the judgment. We reject this contention, but conclude that defendants have not carried their burden of establishing reversible error. Accordingly, we will affirm the judgment.

BACKGROUND

It is undisputed that defendants own property at 4630 West Walnut Street in Soquel, unincorporated Santa Cruz County.[1] Plaintiff Palmer owns property two doors to the west of defendants' parcel. Plaintiff Santa Cruz Properties owns two parcels fronting on Porter Street, the more northern of which touches defendants' southern boundary. Prior to 1986, all of these properties were apparently owned by May Gravenhorst Stauffer and Peter J. Gravenhorst (collectively, Gravenhorst/Stauffer).

On June 21, 1985, defendants entered into an agreement to purchase 4630 Walnut Street from Gravenhorst/Stauffer. Although the record fails to competently establish many of the pertinent details of the sale, recitals in the documents at issue suggest that by the time the sale closed, the property was being used for partly residential and partly commercial purposes.[2] According to defendants' trial brief, the purchase agreement "was conditioned upon [their] ability to convert this property from residential to commercial property." They assert that among the permit conditions was the provision of eight parking spaces, which was four more than were located on the 4630 Walnut parcel. The county also required that defendants enter into a joint parking and circulation agreement with Gravenhorst/Stauffer, to be reviewed and approved by county planners.

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[1] Exemplifying the seeming insouciance with which both sides seem have conducted this litigation, defendants' property is erroneously identified in both the complaint and cross-complaint as "4630 Porter Street." Moreover, in their trial brief plaintiffs describe defendants' property as being situated "at the corner of Walnut Street and Porter Street," though six lines later they describe it as "parcel 11" on an attached map, which clearly shows a parcel 12 separating parcel 11 from Porter Street.

[2] An October 1985 permit recites that a house on the property had burned down and been replaced by a structure "constructed to meet the building code standards of a commercial building." The document recited that the building was then being "used as a dwelling," but that its "current proposed uses would include three offices on the first floor and two apartments on the second floor." A year later , the use agreement referred to the building's "partial current use as residential property." The record does not competently establish the present use of the building.

In June 1986, the parties executed, and defendants recorded, the two agreements that are the subject of this action. One of them, entitled "Use Agreement," recited the parties' intention to address certain requirements "to be imposed by" county planning authorities "on the said property related to its partial current use as residential property." As here relevant it provided that "[i]n the event the County . . . imposed [*sic*] additional parking requirements and a recreational area requirement covering the residential use," the sellers would "make available to Buyer on adjacent properties owned by Seller . . . , . . . four parking spaces, and a required 400 Sq. Ft. vacant parcel to be improved and landscaped at Sellers[']s expense as required by Santa Cruz County." Defendants would pay $8,000 for the parking spaces and $6,000 for the vacant parcel. Under stated circumstances, defendants would be obligated to sell these spaces back to the sellers at the same price. The agreement addressed other matters as well, but is discussed by the parties only as it called for the sale of the parking spaces; we will therefore refer to it as the "parking agreement."

The second agreement, entitled "Road Maintenance and Circulation Agreement," recited that it "pertain[ed] to" a "right of way described as Parcel Four" in an attached exhibit. The exhibit depicted a road or causeway apparently traversing or touching upon five properties, including defendants' property, two of plaintiffs' four parcels, and another property owned by the Bermans, who were named in the pleadings below but not brought into the action. The agreement set out certain rights and obligations with respect to the depicted roadway, stated that "the rights and responsibilities contained in the Agreement shall constitute covenants running with the land," and expressed the parties' intent "to obligate themselves, their heirs, personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement." However the agreement further provided that "[d]epending on when the commercial development/improvements are approved" for the remaining parcels,

"vehicle, pedestrian, parking and circulation arrangements shall be planned and agreed in writing between each parcel mentioned above." In addition, it was said to be the sellers' intention that they or their successors would "further develop the existing vehicle and pedestrian right of way to enter off Porter Street to run through [three specified parcels] and cut out of [one of them] to ultimately exit into West Walnut." The agreement also referred to an existing "recorded right of way" already serving defendants' property. We will refer to this agreement as the "road agreement."

Plaintiffs commenced this action on March 25, 2009, by a verified complaint in which they alleged that they were "engaged in a business enterprise involving potential integration of their properties in connection with parking and traffic flow for . . . improvements to be constructed under the Santa Cruz County permit process." The first cause of action sought declaratory relief, in that plaintiffs contended that the parking and road agreements "rested upon specific conditions which never took place and for that reason endow[ed] defendants with no assertable rights," whereas defendants contended that the instruments "comprehend the eventual development of the properties now owned by plaintiffs and that the parking rights contained in these documents were paid for and persist in their vitality." Plaintiffs sought "a declaration of rights and duties of the parties respecting the validity" of the instruments in relation to plaintiffs' properties.

In the second cause of action, plaintiffs sought a decree quieting title in themselves and declaring their property "to be free and clear of any encumbrances, rights of way, or other obligations resulting or arising from the recordation of" the challenged instruments. In the third cause of action they sought "a judgment cancelling" those instruments "from the public records of Santa Cruz County, California."

On May 6, 2009, defendants filed an answer consisting of a general denial and a number of affirmative defenses.[3] They also filed a verified "Cross-Complaint for Damages (Slander of Title)" alleging that plaintiffs had wrongfully failed to disclose the road and use agreements in an application seeking permits to develop plaintiffs' parcels. This conduct was alleged to have "adversely impaired the vendibility of cross-complainants[']] property," causing damages in unspecified amounts. The conduct was also alleged to have been malicious, warranting punitive damages. Defendants subsequently sought and obtained leave to amend the cross-complaint to add the previously unnamed neighbors, Dale and Terry Berman, as necessary parties and to assert additional causes of action for declaratory relief, quiet title, and injunctive relief. It does not appear that the Bermans were ever served with the cross-complaint—or the complaint, in which they had also been named.

In a trial brief plaintiffs asserted that the road and parking agreements "address[ed] an entirely conditional set of circumstances which never took place." In essence, they claimed that the instruments were intended to address certain planning requirements that defendants might encounter in converting their property to commercial use, but that the county had never imposed these requirements and the instruments no longer served any purpose. "There has never been a 'road' in the parcels described," plaintiffs' counsel wrote; "instead, without any interference or additional conditions imposed by the County of Santa Cruz, Silveiras have continuously maintained their property with a commercial

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[3] In filing a general denial, counsel apparently overlooked the fact that the complaint was verified. This required that "the denial of [its] allegations . . . be made positively or according to the information and belief of the defendant." (Code Civ. Proc., § 431.30, subd. (d); see 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1061, p. 498.) Indeed the form answer filed by defendants plainly stated that it could only be used if "[t]he complaint is not verified" or "the action is subject to the economic litigation procedures of the municipal and justice courts." The answer was therefore vulnerable to a motion to strike, but its deficiencies apparently went unnoticed.

rental on the first floor and residential apartments on the second floor. Parking has never been an issue." The memorandum further asserted that in recent years, a parking district had been formed "providing more than ten public parking spaces . . . across from [defendants'] property." It described the parking agreement as a "hoax" under which plaintiffs could satisfy planning authorities, if necessary, by " 'buy[ing]' additional spaces for parking and then 'sell[ing] back' the spaces after satisfying the County requirements."

Defendants asserted in their trial brief that they bought their property from Gravenhorst/Stauffer on the condition that they would be able to convert it "from residential to commercial [use]." Toward that end, "application was made" to the county "for a development permit." A permit was granted, but required that four parking spaces be provided in addition to the four already on defendants' property, and that defendants and Gravenhorst/Stauffer "enter into a joint parking and circulation agreement to be reviewed and approved by the Planning Department." Defendants acknowledged that the county had not yet required them to actually furnish the additional four parking spaces prescribed by their use permit, but suggested that it might yet do so, stating, "[S]hould the County impose the actual parking requirements . . ., [defendants are] relying on the terms of the Use Agreement to meet the parking requirements and not lose the commercial use of their property."[4] In their legal discussion, defendants acknowledged that "A restriction or covenant may not be enforceable where there has been a material change in conditions to the extent that the original purpose for the restriction becomes obsolete." This test was not satisfied, however, by the mere fact that plaintiffs now sought to develop what had

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[4] Throughout the proceeding defendants have described the parking agreement as intended to accommodate the *commercial* use of their property. They ignore the plain recitals in the use agreement itself that its purpose was to accommodate requirements growing from the building's "partial current use as *residential* property." (Italics added.)

been the Gravenhorst/Stauffer property, since that was "precisely the event that both the County . . . and [defendants] considered in making these agreements with . . . the predecessor in interest to plaintiffs."

Trial took place on August 17, 2011. According to the minutes, testimony was received from plaintiff Alan Palmer and defendant Anthony Silveira. Seven exhibits were received, including a copy of a project, a planning document, a parcel map, and several color photos of the property. Plaintiffs' counsel made a motion for judgment, which the trial court denied, instead taking the matter under submission. The record contains no indication that any party requested a statement of decision.

On August 29, 2011, the court issued a document entitled "Judgment," stating in relevant part, "Judgment is rendered in favor of the Plaintiff and against the Defendants as to the Plaintiff's three causes of action: 1) Declaratory relief, 2) Quiet Title, and 3) Cancellation of Instruments. The Court considers this matter as a good faith dispute and appreciates the manner in which counsel and the parties presented their respective views. However, the subject Road Maintenance and Circulation Agreement and the Use Agreement were recorded in June, 1986. Over the next twenty-five years, none of the events which were contemplated with the creation of these agreements have taken place. A review of Civil Code Sections 885.010, 885.020 and 885.030 lead [*sic*] this Court to the conclusion that invalidation of these instruments, in order to remove whatever clouds upon title they may be causing, is appropriate. It should further be noted that circumstances have changed in relationship to the Santa Cruz County Ordinances adopted in 1995 and 2009.[5] Judgment in favor of the Plaintiff on the three causes of action outlined within the complaint. Judgment in favor of the Cross-Defendant on the related cross-action."

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[5] This was apparently a reference to ordinances, of which plaintiffs sought judicial notice, creating an "employee/owner permit parking program" to be "administered by the redevelopment agency administrator." (Santa Cruz County Code., § 9.43.135.)

On September 7, 2011, plaintiffs filed a motion to modify the judgment. Although only the notice of motion has been included in the clerk's transcript, we requested that the clerk also transmit copies of the supporting declaration and memorandum of points and authorities, which we have augmented the record to include. The gist of the motion was that the "Judgment" of August 29 omitted any descriptions of the affected properties, and was thus insufficient to give record notice of "the action taken by the Judge after the court trial . . . ." Defendants filed no opposition to the motion. When it was heard, counsel for defendants appeared and stated that he had communicated a concern to plaintiffs' counsel that the proposed judgment included an easement that had not been at issue in the litigation. He understood that plaintiffs' counsel had deleted the objectionable language. When the court asked whether the documents as so amended "meet with your approval," he replied, "Yes. I just want to make it clear for the record that the Michael Liles easement is not a part of this litigation." Plaintiff's counsel affirmed that he understood this to be the case. The court indicated that it was signing the modified judgment.

The modified judgment reiterated the language of the original "Judgment," but followed it with four paragraphs spelling out the relief to which plaintiffs were entitled. It also incorporated some 14 pages of attachments including property descriptions and the two challenged agreements. It declared that plaintiffs were "entitled to the ownership of their respective properties as set forth above free and clear of any claims or rights on the part of Defendants . . . in or to the said real property of plaintiffs," and that the two instruments "are hereby cancelled."

On November 10, 2011, defendants filed a notice of appeal "from the Order Granting Motion to Modify Judgment . . . entered on October 11, 2011 . . . ." In a notice designating the record on appeal, they requested a reporter's transcript only of the oral

proceedings at the hearing on the motion to modify the cross-complaint; no transcript of the trial was requested.

DISCUSSION

I. *Scope of Appeal*

Prior to the completion of briefing, plaintiffs filed a motion to dismiss the appeal on the ground that defendants' failure to appeal from the "underlying judgment" of August 29, 2011, precluded a challenge to the merits of the trial court's adjudication. They contended in effect that the later judgment was not separately appealable because it made no substantive change in the earlier one, and that insofar as it did effect a change, defendants' counsel had consented to it. We denied the motion.

In their brief on appeal plaintiffs again raise defendants' failure to appeal from the earlier "judgment," this time as a ground to hold that defendants are barred by "waiver and estoppel" from contesting the correctness of the trial court's determination on the merits. They assert that plaintiffs could have appealed from the first judgment, and that having failed to do so they can only challenge the second judgment to the extent that it differs from the first. Since their counsel consented to any differences, the argument continues, no part of the judgment is open to appellate review.

Plaintiffs could indeed have appealed from the "judgment" of August 29, in the sense that they could have filed a notice of appeal referring to it. We are not persuaded, however, that such an appeal would properly lie, i.e., would confer jurisdiction on this court over the substantive controversy between the parties. Rather we have concluded that the document issued on August 29 was not an appealable judgment. It did not fulfill the basic function of a judgment, which is to effect "the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) To perform this function, " ' "[a] judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by

specifically *denying or granting the remedy* sought by the action." ' " (*Kosloff v. Kosloff* (1944) 67 Cal.App.2d 374, 379-380, italics added, quoting *Makzoume v. Makzoume* (1942) 50 Cal.App.2d 229, 232.) A judgment in favor of a defendant must ordinarily include an "express declaration of the ultimate rights of the parties, such as that 'plaintiffs shall take nothing,' or 'the action is dismissed.' " (*Swain v. California Casualty Ins. Co.* (2002) 99 Cal.App.4th 1, 6; *Davis v. Superior Court* (2011) 196 Cal.App.4th 669, 673.) Where judgment is for the plaintiff, it must actually *award the relief* to which the court has found him entitled. (See *Hucke v. Kader* (1952) 109 Cal.App.2d 224, 229 [statement in judgment that " 'plaintiffs have judgment as prayed for in this complaint' " would be "deleted from the judgment" as "uncertain and indefinite"].)

Here plaintiffs sought three remedies: declaratory relief concerning the current validity of the road plan and the use plan, a decree quieting title as against those instruments, and a judgment cancelling them. The purported judgment of August 29 failed to properly award any of these remedies. It is most grievously deficient as a judgment quieting title. Such a judgment must *decree* the state of title as the court finds it to be. As with any judgment affecting title to real property, it must specifically identity the lands affected, using a description "so certain that a stranger may be able to clearly identify the particular tract." (*People v. Rio Nido Co.* (1938) 29 Cal.App.2d 486, 488.) It "must be as clear and explicit as a deed which purports to convey real property." (*Id.* at p. 489; *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 777.) That is, it must set forth the affected property interests with sufficient particularity that when recorded it will effectively convey notice of their status as determined by the court. A judgment which purports to adjudicate property rights, but in which "nothing is described," may be "pronounced a nullity for uncertainty of description." (*Newport v. Hatton* (1924) 195 Cal. 132, 156.) " '[A]n impossible, wrong, or uncertain description, or no description at all, renders the judgment erroneous and void.' " (*Newman v.*

Cornelius (1970) 3 Cal.App.3d 279, 284, quoting *Newport v. Hatton, supra,* 195 Cal. 132, 156; *Lechuza Villas West v. California Coastal Com'n* (1997) 60 Cal.App.4th 218, 242.)

Here the original judgment failed entirely to describe the affected property or the interests adjudicated. If accepted by the county recorder for recordation—a dubitable hypothesis—it would have failed to impart notice that the challenged agreements had ceased to burden plaintiffs' property. Indeed this is precisely why plaintiffs moved to "modify" the purported judgment. As counsel wrote in support of that motion, the August 29 instrument "d[id] not reflect with certainty in the Official Records of Santa Cruz County, California, the effect of rulings in favor of plaintiffs on the issues of declaratory relief, quiet title, and cancellation of instruments." This failure rendered that instrument ineffectual to clear plaintiffs' title of the cloud they brought this action to eliminate.

Much the same is true with respect to the remedy of cancellation of instruments. The statute governing such relief contemplates that a judgment for a successful plaintiff will not only adjudge the challenged instrument "void or voidable" but order that it be "delivered up or canceled." (Civ. Code, § 3412.) Indeed the original formulation was "delivered up *and* canceled," the latter term being used in its original sense of physically striking or obliterating the language found "void or voidable." (See *Upton v. Archer* (1871) 41 Cal. 85, 88 [judgment reversed "with directions to enter a judgment, ordering the deed to be delivered up and canceled"]; *Lewis v. Tobias* (1858) 10 Cal. 574, 576 [discussing equitable power "to order a written instrument to be delivered up and canceled"]; *Nelson v. Meadville* (1937) 19 Cal.App.2d 68, 69 [judgment "decree[d] that the instruments in question were void; that defendant was entitled to no rights thereunder; and that the instruments be canceled"]; American Heritage College Dict. (3d ed. 1997), p. 204 ["cancel" defined as "To cross out with lines or other markings"; originating in

Latin *cancellare*, "to cross out"]; Black's Law Dict. (9th ed. 2009), p. 233, col. 2 ["To destroy a written instrument by defacing or obliterating it"].)[6] In modern times courts typically forego the physical act of cancellation; but the judgment must still declare the invalidity of one or more specified instruments. (See *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 638 [judgment "provided, inter alia, that the deed of trust executed by Irene Basurto on October 20, 1976, is void.)

Even as a judgment for declaratory relief we find the instrument of August 29 deficient under the circumstances here. Such a judgment should, as the name indicates, take the form of a "declaration" concerning the rights and obligations in controversy. (Code Civ. Proc., § 1060.) Courts have often overlooked deficiencies in this regard where the intendment of the adjudication is sufficiently clear. (See, e.g., *Kelso v. Sargeant* (1936) 11 Cal.App.2d 170, 179 [declaratory judgment "should be entered in a peculiarly declaratory form," but judgment was sufficient where "in substance and effect" it fixed "not only of the rights of the respective parties, but a determination of the construction which should be given to" their agreement]; *McLean v. Tucker* (1938) 26 Cal.App.2d 126, 129 [despite failure to "specifically set forth the rights of the parties as a declaratory judgment," judgment adequately determined their rights by directing delivery of deed and quieting title in defendant]; *R.G. Hamilton Corp. v. Corum* (1933) 218 Cal. 92, 94-95 [judgment merely declaring parties' rights to be as stated in findings was

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[6] The concept of physical "cancellation" is illustrated by *Estate of Olmstead* (1898) 122 Cal. 224, 228, where the court used the term to describe some of the marks a decedent had made on a will: "[T]he lines, interlineations, erasions, cancellations, and new writings of words, phrases, or sentences were very numerous. . . . Each and all of [the decedent's seven signatures] were canceled by two ink lines drawn through and across their full length. . . . Some of the clauses in the will were canceled by ink lines drawn the full length of every line of the clause, and by cross lines extending from the top to the bottom. . . . The 'two' was canceled by two ink lines drawn through the word, and the word 'one' written in ink immediately over it."

"rather unusual" and "not a practice to be commended," but reviewing court could not say it "ha[d] rendered the judgment ineffectual as long as the rights and duties of the respective parties may be ascertained therefrom"; sufficiency "is to be judged from its substance rather than from its form"].) But a judgment in the form of the August 29 instrument was virtually useless to plaintiffs. Although it alluded to the road and parking agreements and by clear inference found them no longer enforceable, it did not define them with sufficient specificity to allow any stranger to the judgment to know what had been invalidated.[7]

It thus appears that the instrument of August 29, 2011, was ineffectual as a final judgment determining the rights of the parties. It was, in at least this sense, " 'void.' " (*Newman v. Cornelius*, *supra*, 3 Cal.App.3d at p. 284.) Some judgments are appealable even though void in some sense. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 93, p. 155.) But "[i]f the invalidity results from the failure to comply with the formal requirements of entry of a final judgment or order, it is more properly characterized as a preliminary order or purported judgment that is not a final judgment at all." (*Id.* at p. 156.) We believe this principle applies to the instrument of August 29, which is best characterized as a "purported judgment that is not a final judgment at all." (*Ibid.*) Indeed, if not for its label and the recitals that "[j]udgment is rendered," it would most readily be viewed as a notice of tentative or intended decision. It awards no relief of any

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[7] Moreover, even if the August 29 instrument is deemed sufficient as a judgment for declaratory relief, it cannot be deemed a final judgment on that basis because of its failure to effectively adjudicate the other two causes of action. "The rule has long been well settled that there can be but one final judgment in an action regardless of how many counts the complaint contains or how many issues of law or fact are presented. The purpose of this rule is to prevent piecemeal decisions and multiple appeals." (*McCarty v. Macy & Co.* (1957) 153 Cal.App.2d 837, 840; see *Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 ["Ordinarily, there can be only one final judgment in an action and that judgment must dispose of all the causes of action pending between the parties."].)

kind. It really does nothing more than identify the prevailing party and give some indication of the court's reasons for ruling in that party's favor. We conclude that it was not appealable, and that defendants' failure to appeal from it has no bearing on appellate jurisdiction or the scope of issues open to review.

A slight additional problem is presented by defendants' recital in the notice of appeal that the appeal is taken from the "Order Granting Motion to Modify Judgment," rather than the "modified" judgment itself. This designation is frankly bewildering, since the motion to "modify" the "judgment" was unopposed and counsel for defendant appeared at the hearing only to ensure that an amendment to the proposed judgment, which plaintiffs' counsel had agreed to make, was in fact made. Asked whether the documents submitted to the court for execution "meet with your approval," counsel replied, "Yes." Plaintiffs suggests that this assent itself precludes any challenge to the judgment, but we think it plain that counsel was consenting only to the form of the judgment as an expression of the court's determination—not to its substance, with which defendants obviously took issue. The fact remains that the notice of appeal fails to designate the judgment, instead purporting to appeal from the order authorizing the judgment to be entered.

We do not find this misstep fatal to the appeal. Where a notice of appeal purports to target an order preliminary to judgment, appellate courts commonly preserve their jurisdiction by construing the notice to refer to the subsequently entered judgment. (See, e.g., *Vesely v. Sager* (1971) 5 Cal.3d 153, 158, fn. 2 [notice designating order sustaining demurrer and granting motion to strike deemed to appeal from subsequently entered judgment of dismissal].) " 'Whether the error in the notice of appeal was merely one in describing the order or judgment or whether it was caused by appellant's ignorance, the notice may without prejudice to respondent reasonably be interpreted to apply to an appealable order or judgment rendered before the appeal was noticed.' " (*Hollister*

Convalescent Hosp., Inc. v. Rico (1975) 15 Cal.3d 660, 669, quoting *Vibert v. Berger* (1966) 64 Cal.2d 65, 70.)

We conclude that defendants' notice of appeal was sufficient to bring up the merits of the judgment for appellate review.

II. ***Defendants' Burden on Appeal***

Although defendants' brief is far from a model of clarity, we understand it to raise three claims of error: (1) The court relied on statutes first cited in a letter submitted by plaintiffs' counsel after trial, to which defendants were given insufficient opportunity to respond. (2) These statutes concerned powers of termination, and thus had no proper application here. (3) Insofar as the court's judgment depended on changed circumstances, there was no evidence to support it.

In presenting these arguments defendants offend a number of basic rules of appellate procedure and review. First and most fundamentally, "a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) This requires (1) a record sufficient to establish the nature and relevant circumstances of the *actions by the trial court* which are challenged on appeal; (2) *argument and authority* establishing that these actions offended governing legal principles; and (3) a particularized demonstration, again based on an adequate record, that the error was *prejudicial* to the appellant.

Defendants have not brought up a transcript of the trial; therefore any assertions about the state of the evidence must fall on deaf ears. Nor have defendants, for the most part, offered a coherent argument in support of their claims of error. They have, in short, failed to shoulder their burden as appellants. We have nonetheless detected sufficient *suggestion* of error in their brief to conclude that such error as they do assert has either not been demonstrated to have occurred, or has not been shown to be prejudicial.

III. *Error*

A. Reliance on Post-Trial Letter

Defendants assert that the court erred by relying upon authority and arguments first presented in a post-trial letter from plaintiffs' counsel to the court. The letter bears the date of November 9, 2009, which was nearly two years prior to trial, but both parties acknowledge that this was an error and that the letter was sent some time after trial.[8] In the letter, counsel for plaintiffs argued that statutes governing the duration of powers of termination (Civil Code sections 895.010 et seq.) furnished authority "[b]y analogy" for granting relief here. In its judgment, the trial court alluded to those statutes in concluding that "invalidation of these instruments, in order to remove whatever clouds upon title they may be causing, is appropriate."

Defendants argue that the letter was in effect a supplemental trial brief, and as such was deficient in form, lacking in particular the proof of service required by Code of Civil Procedure sections 1012, 1013, and 1013a. Assuming this premise is sound, mere defects in form can rarely if ever justify a reversal on appeal. Rather we must "disregard any error . . . or defect, in the pleadings or proceedings which," in our opinion, "does not affect the substantial rights of the parties." (Code Civ. Proc., § 475.) We cannot set aside a judgment unless it "appear[s] from the record" that the error or defect complained of "was prejudicial," and that by reason thereof, the complaining party "sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed." (*Ibid.*)

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[8] Further illustrating the level of care seemingly exercised by both sides in this case is the statement in plaintiffs' brief that the letter was mailed "[a]t some point after the trial date, October 17, 2011." In fact trial occurred on *August* 17, 2011. No relevant event occurred on October 17.

Defendants make little effort to demonstrate that plaintiffs' post-trial letter inflicted any prejudice on them. They only assert that they were "never formally afforded the opportunity to respond" to it. The pregnant use of the qualifier "formally" grounds an inference that defendants in fact received the letter, which bears the notation, "Copy: Reid Schantz," indicating—according to familiar conventions of business correspondence—that a copy of the letter was sent to defendants' attorney. Beyond that the record is entirely silent with respect to the extent of defendants' opportunity to respond. Even the timing cannot be inferred because the date of the letter is unknown.

Plaintiffs' counsel asserts that the foregoing notation is sufficient to raise "the presumption of receipt under Evidence Code §641." This contention is specious; the presumption would require evidence, entirely lacking here, that the letter was "correctly addressed and properly mailed." (Evid. Code, § 641.) Still, an *inference* that defendants' counsel received the letter seems warranted by the facts that the letter alludes to transmission, that counsel has never denied receipt, and that he objects only to the form of the letter and the absence of a "formal" opportunity to respond.

In any event all defendants have shown is that the court adopted a legal rationale that was submitted to it in an irregular, and perhaps improper, form. It is impossible to say that the irregularities had any effect on the outcome. As will appear below, we are confident that they did not.

B. Reliance on Inapposite Statutes

Defendants suggest that the power-of-termination statutes had no bearing on the issues here. We agree that the statutes' pertinence is at best extremely attenuated. They address situations where the grantor of a fee simple estate has reserved the power to terminate the estate upon the occurrence of a specified condition. (Civ. Code, § 885.010, subd. (a)(1).) This action, in contrast, concerns servitudes imposed and assumed by

adjoining property owners by mutual assent. We see no particular resemblance between any of these servitudes and a power of termination.

However, the mere fact that the court relied on dubious authority cannot by itself lead to reversal. An appellate court "review[s] the judgment, not the reasoning of the court below. [Citation.] '. . . [A] ruling or decision correct in law will not be disturbed on appeal merely because it was given for the wrong reason. If correct upon any theory of law applicable to the case, the judgment will be sustained regardless of the considerations that moved the lower court to its conclusion. [Citations.]' (*Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 568.)" (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 769-770.) "Two theories seem to be involved here: *first*, that the appellate court reviews the action of the lower court and not the reasons for its action; *second*, that there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct." (9 Witkin, *supra*, Appeal, § 346, p. 397.)

As we read the judgment, the trial court only cited the power-of-termination statutes as a guide to what might constitute a reasonable time for defendants to exercise whatever rights they had under the agreements at issue here. As discussed in greater detail below, we believe the agreements could be reasonably understood to create interests that were both conditional and limited in duration. It was apparently in reference to that aspect of the controversy that the court viewed the statutes governing powers of termination as possessing some analogical force. While we find the court's reliance on them somewhat questionable, we cannot say that it inflicted any prejudice on defendants, because we think the judgment is sustained on the grounds set forth below.

*C. **Parking Agreement***

We find ample grounds on the face of the parking agreement to conclude that it was unenforceable and subject to cancellation insofar as it might affect plaintiffs or their

title. The language of the agreement indicates that the obligations it created were explicitly predicated on a condition that never came to pass, that they were expressly limited in duration, and that they were not intended to bind Gravenhorst/Stauffer's successors in interest, including plaintiffs.

The chief right conferred on defendants by the parking agreement—indeed the only one discussed by the parties—was a right to purchase four parking spaces on neighboring properties. Although neither side mentions the fact, the agreement also granted defendants a right to purchase a 400 square foot "recreational area," sometimes apparently referred to as a "sitting yard." The agreement plainly stated, however, that these rights would only come into being "[i]n the event the County of Santa Cruz imposed additional parking requirements and a recreational area requirement . . . ." Defendants conceded below that as of the time of trial, the county "ha[d] not required . . . [defendants to] obtain the additional 4 parking spaces contemplated in the Use Agreement."

It is of course the rule that an interest depending on a condition passes in or out of existence in accordance with its conditional nature. (See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382, pp. 446-447.) Thus the right to purchase parking and recreational spaces here never came into existence. Defendants implied, however, that it might yet do so, stating that "should the County impose the actual parking requirements," they were "relying on the terms of the Use Agreement" to satisfy those requirements and "not lose the commercial use of their property." They thus asserted a right that was in effect *perpetual*. But the agreement itself squarely contradicts such a claim, stating that the right was to be a "temporary" one lasting only so long as the existing "partial residential use" of the property, which defendants intended to end by converting the property entirely to commercial use. This at any rate is how we read the

language set forth in the margin.[9] Defendants have offered no alternative reading; indeed the parties have scarcely troubled themselves with the language of the agreements at all. But the agreement explicitly contemplated that the rights granted would be of limited duration, which must be taken to mean that defendants were granted a reasonable time within which to exercise it, at the conclusion of which the obligation would be extinguished whether they had done so or not. (See Civ. Code, § 1657 ["If no time is specified for the performance of an act required to be performed, a reasonable time is allowed."].)

The agreement also contains intrinsic indications that the time contemplated by the parties was well short of the 25 years that had elapsed at trial. It provided that payment for the parking and recreational spaces—both when purchased by defendants, and when sold back to Gravenhorst/Stauffer—would be made by adding the purchase price to, or subtracting it from, the balance of an existing loan between the parties. It appears highly unlikely that this payment mechanism would remain available after a sale of the burdened property by Gravenhorst/Stauffer, because the purchase price would then be payable to their successors, who could not be expected to assume the loan in question. Certainly this payment mechanism would cease to exist when the loan was paid off. Although the term of the loan is not unmistakably disclosed by the record, the agreement refers to "amortization over a 20-year period." The failure to provide for an alternative payment

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[9] "It is the intention and agreement of the parties that the acquisition of the adjacent properties from Seller will be a *temporary one only* to meet the residential requirements imposed by the County of Santa Cruz. *Buyer intends to convert the entire improvements at 4630 West Walnut to commercial use.* To implement the foregoing Buyer and Seller agree that Buyer has option [*sic*] to construct a second story decking on the rear and/or on the side of the subject property to meet the recreational space requirements of the County of Santa Cruz, and by doing so discontinue the requirement for the 400 Sq. Ft. parcel. *When that is accomplished, Buyer shall sell back to Seller and Seller shall purchase from Buyer the said 400 Sq. Ft. property at the original $6,000.00 price and the parking area for the sum of $2,000.00 per space.*" (Italics added.)

mechanism strongly suggests an intention that any purchase and resale would be completed at least that soon.

The parking agreement also expressly reserved to Gravenhorst/Stauffer the power to determine the *location* of the spaces to be sold. It provided that they could be situated on any of the "adjacent properties owned by Seller, with the location of such to be determined by Seller," provided that the locations (1) conformed to county requirements, and (2) were within 80 feet of defendants' property. The agreement provided no mechanism for determining the location of these spaces after the potentially burdened properties had come under separate ownership, as had occurred by the time this matter arose. For defendants to now exercise the purchase rights contemplated by the agreement, someone would have to determine which of their neighbors would provide space, and how much, and where. We doubt that any private actor could successfully claim the power to make such a selection, or that any court would undertake to do so. In any event, the agreement's failure to provide for the selection of locations after Gravenhorst/Stauffer no longer owned the properties is more evidence that the obligation to provide parking and recreational space was personal to them and that if defendants were to exercise the correlative right at all, they had to do so before the promisors divested themselves of the means to perform.

That the obligation to provide parking and recreational space was personal to Gravenhorst/Stauffer is also readily inferred from the agreement's complete failure to provide otherwise. This failure cannot be attributed to mere oversight, because the Use Agreement pointedly declares another obligation, not at issue here, binding on the parties' successors in title. Paragraph 6 states that the occurrence of specified conditions will cause an "existing stairway easement" benefiting defendants' property to undergo "diminishment," such that it becomes "only a fire easement," to be "appropriately marked and signed" as such. The next paragraph states, "This agreement for modification of the

easement shall . . . run with the land and be binding upon the parties hereto, their successors, or assigns." There is no similar recital with respect to any other provision of the agreement, including the right to purchase additional parking and recreational spaces. The use of language of appurtenance in reference to the stairway easement, but *not* in reference to the parking/recreational spaces, supports an inference that the latter obligation was intended to bind only Gravenhorst/Stauffer.

So far as this record shows, the trial court was bound to reach the conclusion it did with respect to the parking agreement. That agreement plainly did not grant defendants a perpetual right to purchase space on neighboring properties. To the extent it burdened those properties at all—a doubtful proposition with respect to the rights at issue here—the right could readily be found to have become unenforceable by the time the matter was adjudicated. The court acted quite properly in expunging from plaintiffs' title whatever shadow remained of that erstwhile right.

D. Road Agreement

The road agreement presents a more difficult case than the parking agreement because we see nothing on its face rendering it unenforceable against plaintiffs. It purports to create a number of mutually binding covenants, explicitly running with the land, concerning the use, maintenance, repair, and improvement of a "right of way" that traverses or touches upon plaintiffs' and defendants' property, as well as the property of the neighboring Bermans, who are not parties here.[10] Nothing in the record affirmatively demonstrates that those mutual obligations have become unenforceable. The absence of a trial record, however, makes it impossible to say that the trial court erred in so finding.

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[10] The road agreement states, "The Parties agree that the rights and responsibilities contained in the Agreement shall constitute covenants running with the land," and, "The parties hereto further agree to obligate themselves, their heirs. personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement."

Both parties agree that the underlying purpose of the road agreement was to fulfill a condition imposed by county planners on the development of defendants' property. Beyond that its intended effect—particularly on the property rights of the parties—is far from clear. It does not plainly *create* a right of way, but rather declares certain mutual rights and obligations with respect to a right-of-way that may or may not already exist. The paradigmatic term "grant" nowhere appears. (See Civ. Code, § 1092 ["grant of an estate . . . may be made in substance" by stating, " 'I, A B, grant to CD' " the described property]; *Klamath Land & Cattle Co. v. Roemer* (1970) 12 Cal.App.3d 613, 618 ["The essential of such a [grant] deed has long been held to be the word 'grant' [citation] and it appears that in California this word has been applicable to the transfer of *all* estates in real property, and not solely estates in fee simple, since sometime prior to 1845."].) Of course we are long past the days when the law depended on ritual incantations, and a conveyance may be effective despite failure to use the word "grant." (See *Carman v. Athearn* (1947) 77 Cal.App.2d 585, 596 ["No precise words are necessary to constitute a present conveyance."].) The dispositive question is whether the words used "are sufficient to show an intention to pass a present title." (*Id.* at p. 597.) However we see no other language in the agreement—or anywhere else in the record—establishing such an intent.[11]

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[11] "An instrument creating an easement is subject to the same rules of construction applicable to deeds and is interpreted in the same manner as a contract. [¶] . . . . The conveyance is interpreted in the first instance by the language of the document. When the intent of the parties can be derived from the plain meaning of the words used in the deed, the court should not rely on the statutory rules of construction. . . . [¶] . . . When the document creating the easement is ambiguous, the court looks to the surrounding circumstances, the relationship between the parties, the properties, and the nature and purpose of the easement in order to establish the intention of the parties. The cardinal rule of interpretation is to ascertain and enforce the intentions of both the grantor and the grantee." (6 Miller & Starr (3d ed.) Cal. Real Estate, § 15:16, at pp. 62–63 (fns. omitted); see Civ. Code, § 806 ["The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was

The agreement opens with a recital that it "pertains to that right of way described as Parcel Four in the attached exhibit." This language suggests the agreement then proceeds to declare rights and obligations concerning the use, repair, governance, maintenance, and improvement, of the right of way. The ninth paragraph clearly refers to a right of way that already exists for the benefit of defendants' parcel, stating that vehicles and pedestrians may "[c]urrently" enter a "recorded" right of way meeting "the parking and circulation necessities for the existing 4630 West Walnut Building."[12] The tenth paragraph then recites the "*intention* of May Gravenhorst Stauffer or her assigns to *further develop the existing vehicle and pedestrian right of way* to enter off Porter Street to run through [other parcels] and then cut out of [a specified parcel] to ultimately exit into West Walnut"—a description that appears to match "Parcel 4." Adding yet more uncertainty is a statement that "vehicle, pedestrian, parking and circulation arrangements shall be *planned and agreed* to in writing between each parcel mentioned above"—language suggesting only an agreement to agree, a type of contract generally viewed as illusory and unenforceable.

The absence of a trial transcript leaves a factual vacuum about the actual circumstances in which the agreements were entered, but both sides asserted in their trial briefs that they were intended to satisfy requirements of county planners.[13] Plaintiffs

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acquired."]; Civ.Code, § 1066 ["Grants are to be interpreted in like manner with contracts in general"].)

[12] This was apparently the "Liles easement" which counsel mentioned at the hearing on the motion to modify the judgment, and which both attorneys agreed was not affected by the present judgment.

[13] Attached to defendants' trial brief were planning documents stating that "A joint parking and circulation agreement shall be established between the following parcels: 30-201-11, 25, 34, 36, and 37"—i.e., plaintiffs' and defendants' parcels, plus the parcel(s) of the Bermans.

went further, asserting that the parking agreement, and by extension both agreements, were a "hoax" intended solely to satisfy planning requirements and not, inferentially, to create genuine property rights. Plaintiffs further asserted in their brief "[t]here never has been a 'road' in the parcels described." Defendants did not, so far as this record shows, take issue with this assertion.

It thus appears that the road agreement spells out the parties' rights and obligations with respect to maintenance of a posited roadway which may or may not be entirely hypothetical. The rights and obligations are extremely ambiguous and may even be illusory insofar as the agreement anticipates future agreement among the owners. Given these circumstances the record before us affords no basis to say that the trial court was compelled to find that the road agreement created a valid and subsisting interest in defendants burdening the neighboring properties.

Nor does the record permit us to say that the court could not find such a material change in conditions as to justify the extinguishment of whatever beneficial interest the road agreement might otherwise vest in defendants. In their trial brief and again on appeal, defendants concede that a servitude or similar burden on land may be rendered unenforceable by "a material change in conditions to the extent that the original purpose for the restriction becomes obsolete." In fact the rule is somewhat broader than this. In *Wolff v. Fallon* (1955) 44 Cal.2d 695, 696-697, the court wrote that the plaintiffs were entitled to relief from a restriction limiting their property to residential use where the trial court found the property no longer suitable for residential use and that enforcement of the restriction "would be inequitable and oppressive and would harass plaintiff *without benefiting the adjoining owners*." (Italics added; see also *Hirsch v. Hancock* (1959) 173 Cal.App.2d 745, 758-759 [rejecting as "groundless," in light of *Wolff*, contention that "the termination of restrictions by judicial decree is justified only when their original purpose has become obsolete"]; *Bolotin v. Rindge* (1964) 230 Cal.App.2d 741, 744

[invalidation of restriction reversed where trial court made "no finding that the purposes of the restrictions have become obsolete, *or that the enforcement of the restrictions on the plaintiffs' property will no longer benefit the defendants*"] italics added.)

The question of changed conditions was clearly tendered by the pleadings and addressed by the trial court. Plaintiffs alleged in their complaint that the agreements "endow[ed] defendants with no assertable rights" because they contemplated the devotion of defendants' parcel to "the conversion of a single family dwelling into commercial offices with interim use of two apartments," and "rested upon specific conditions which never took place." Similarly they asserted in their trial brief that the agreements "address[ed] an entirely conditional set of circumstances which never took place." The trial court wrote in its judgment that "[o]ver the . . . twenty-five years" since the agreements had been recorded, "none of the events which were contemplated with the creation of these agreements have taken place." The court also stated that "circumstances have changed in relationship to the Santa Cruz County Ordinances adopted in 1995 and 2009."

Defendants have failed to show that these facts, or the rationales they imply, were not sufficient to sustain the judgment. Defendants merely assert that "there is no written evidence whatsoever before the Court that circumstances had changed in relationship to the Santa Cruz Ordinances adopted in 1995 and 2009." But this denial of the presence of "written" evidence is pregnant with the possibility, and indeed may be understood as an implicit admission, that the trial court received other evidence—such as oral testimony—of such a change in circumstances. In any event an appellate reversal cannot be predicated on claimed deficiencies in the evidence where the evidence before the trial court has not been brought up on appeal and affirmatively shown to be legally insufficient. " 'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*,

and *show how and why it is insufficient.* [Citation.]' (*Roemer v. Pappas* (1988) 203 Cal.App.3d 201, 208, italics added.)" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) Obviously it is impossible to accomplish this task when the relevant evidence is absent from the record.

In short, the present record will not allow us to say that the trial court erred in finding the road agreement, along with the parking agreement, unenforceable. If the court erred, it was incumbent upon defendants to present a sufficient record—and sufficient legal argument—to establish as much. They have failed to do so.

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

Palmer et al. v. Silveira et al.
H037588

EXHIBIT 2

Austin B. Comstock (33123)
COMSTOCK, THOMPSON, KONTZ & BRENNER
340 Soquel Avenue, Suite 205
Santa Cruz, CA 95062
Telephone: (831) 427-2727
Facsimile: (831) 458-1165

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES LLC, a California Limited Liability Company,

Plaintiffs,

vs.

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, and DOES 1 through 20,

Defendants.

/

No. CV 163244

COMPLAINT FOR DECLARATORY RELIEF, QUIET TITLE, AND CANCELLATION OF INSTRUMENTS

Plaintiffs allege:

1. At all times relevant:

A. Alan Blair Palmer, Trustee of the Palmer Trust created May 4, 1999 (Palmer), was and is the owner of real property in the unincorporated area of Soquel, Santa Cruz County, California, known as APN 030-201-33 and 34, more particularly described in Exhibit A, attached and made a part hereof by this reference.

B. Santa Cruz Properties LLC (LLC) is a limited liability company organized under the laws of California with a principal place of business in Santa Cruz County, California, and was and is owner of real property located in the unincorporated area of Soquel, California, known as APN 030-201-25 and 37, more particularly described in Exhibit B, attached and made a part hereof by this reference.

C. Defendants Anthony P. and Kandie L. Silveira, Trustees of the Silveira Family Trust dated November 18, 1992, were and are owners of real property located in the unincorporated area of Santa Cruz County known as 4630 Porter Street, Soquel, more particularly described in Exhibit C, attached and made a part hereof.

D. Defendants Dale B. Berman and Terry Lee Berman, husband and wife, were and are owners of real property located in the unincorporated area of Soquel, California, known as APN 030-201-36, more particularly described in Exhibit D, attached and made a part hereof by this reference. The defendants Berman are nominally named in this complaint because the right-of-way described in paragraph 4 below as "Parcel Four" traverses the southerly boundary of the Berman property.

E. On June 18, 1986, defendants Silveira caused to be recorded in Santa Cruz County Official Records a Road Maintenance and Circulation Agreement recorded at Book 3993, Page 69, and a Use Agreement recorded at Book 3993, Page 76, both of which are attached as Exhibits E and F, respectively, and incorporated by this reference as though fully set forth.

2. DOES 1 through 20 are sued herein under fictitious names because as of the date of filing of the complaint in this cause plaintiffs do not know the true names and capacities of said DOE defendants, who may have some claims to the matters described in this complaint. Plaintiffs pray leave to amend this complaint when the true names and capacities of the said DOE

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ATTORNEYS AT LAW
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SANTA CRUZ, CALIFORNIA 95062-2328

defendants have been ascertained.

3. Plaintiffs Palmer and LLC are engaged in a business enterprise involving potential integration of their respective properties in connection with parking and traffic flow for office buildings and related improvements to be constructed under the Santa Cruz County permit process.

4. A purported easement described in Exhibit E as "Parcel Four", as depicted on Page 75 of Book 3993 of the Official Records of Santa Cruz County was predicated on events described in Exhibits E and F which never occurred. At no time after June 18, 1986, has there ever been created any right of way for ingress or egress on the area above-described. As such, the rights and duties purported to be created in Exhibits E and F are illusory, have never materialized, and comprise clouds on the title of the properties of plaintiffs.

5. Plaintiffs incorporate paragraphs 1 through 5 of this complaint into each of the causes of action set forth below.

FIRST CAUSE OF ACTION

(Declaratory Relief – §1060 Code of Civil Procedure)

6. Plaintiffs take the position that the language of Exhibits E and F relating to the conversion of a single family dwelling into commercial offices with interim use of two apartments on APN 30-201-11, rested upon specific conditions which never took place and for that reason endows defendants with no assertable rights. Defendants Silveira argue that the Road Maintenance and Circulation Agreement and Use Agreement comprehend the eventual development of the properties now owned by plaintiffs and that the parking rights contained in these documents were paid for and persist in their vitality.

7. Plaintiffs are entitled under C.C.P. §1060 to a declaration of rights and duties of the

parties respecting the validity of the language in Exhibits E and F as of 2009 in relation to the properties described in Exhibits A and B.

SECOND CAUSE OF ACTION

(Quiet Title – §760.020 Code of Civil Procedure)

8. Plaintiffs incorporate by this reference as though fully set forth paragraphs 6 and 7 above.

9. By reason of the conditional nature of the rights of anyone in or to the use of the 12' right of way described as Parcel 4 in Exhibit E and the absence of performance of any of the development contemplated in Exhibits E and F, the entitlements under the said recorded documents have no substantive effect on the parcels described therein or on the parcels described in Exhibits A or B; therefore, plaintiffs are entitled to a decree from this Court quieting title in plaintiffs declaring that the real property described in Exhibits A and B to be free and clear of any encumbrances, rights of way, or other obligations resulting or arising from the recordation of Exhibits E and F.

THIRD CAUSE OF ACTION

(Cancellation of Instruments – §3412-3415 Civil Code)

10. Plaintiffs incorporate by this reference as though fully set forth paragraphs 8 and 9 above.

11. The purported entitlements created in Exhibits E and F, if left outstanding, may cause serious injuries to plaintiffs, whose rights to develop their respective properties to their highest and best use will be impaired if not defeated altogether. Plaintiffs seek cancellation of the recorded instruments set forth as Exhibits E and F.

WHEREFORE, plaintiffs pray judgment as follows:

COMSTOCK, THOMPSON, KONTZ & BRENNER
ATTORNEYS AT LAW
340 SOQUEL AVENUE, SUITE 205
SANTA CRUZ, CALIFORNIA 95062-2328

1. For a declaration that defendants have no rights assertable against plaintiffs' properties under the Road Maintenance and Circulation Agreement and Use Agreement recorded June 18, 1986, in Santa Cruz County Official Records;

2. For a decree quieting title to plaintiffs' properties free and clear from any rights, rights of way, or other entitlements described in Exhibits E and F;

3. For a judgment cancelling from the public records of Santa Cruz County, California, those documents recorded as Exhibits E and F;

4. For all costs of suit incurred herein; and

5. For such other relief as may be proper.

Comstock, Thompson, Kontz & Brenner

Dated: March 25, 2009

By: Austin B. Comstock
Austin B. Comstock
Attorneys for Plaintiffs

COMSTOCK, THOMPSON, KONTZ & BRENNER
ATTORNEYS AT LAW
340 SOQUEL AVENUE, SUITE 205
SANTA CRUZ, CALIFORNIA 95062-2328

Exhibit A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT THE NORTHWEST CORNER OF A LOT OF LAND OWNED AND OCCUPIED BY J. L. GROVER, ON NOVEMBER 25, 1868, AND RUNNING THENCE NORTH 89 DEGREES WEST 77.22 FEET TO A POST IN LINE OF ORCHARD FENCE, NOW OR FORMERLY OF JOHN DAUBENBISS; THENCE NORTH ALONG LINE OF SAID FENCE 194 FEET AND 8 INCHES TO THE SOUTH SIDE OF DIESING STREET, NOW CALLED WALNUT STREET; THENCE EASTERLY ALONG THE SOUTH SIDE OF SAID DIESING STREET, NOW CALLED WALNUT STREET, 81 FEET AND 3 INCHES TO A STAKE; THENCE SOUTHERLY 194 FEET AND 8 INCHES PARALLEL WITH LINE OF SAID ORCHARD FENCE TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE LANDS CONVEYED TO RAYMOND O. PETERSON AND WIFE BY DEED DATED JULY 15, 1958, RECORDED JULY 23, 1958 IN VOLUME 1195 OF OFFICIAL RECORDS AT PAGE 513, SANTA CRUZ COUNTY RECORDS.

PARCEL TWO:

BEING A PART OF THE LANDS CONVEYED TO J.L. MEEKS, ET UX., BY DEED DATED SEPTEMBER 2, 1954 AND RECORDED SEPTEMBER 28, 1954 IN VOLUME 984, AT PAGE 561, OFFICIAL RECORDS OF SANTA CRUZ COUNTY, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EASTERN BOUNDARY OF SAID LANDS OF MEEKS AND AT THE NORTHWEST CORNER OF PARCEL NO. 1 OF LANDS CONVEYED TO RAYMOND O. PETERSON, ET UX., BY DEED DATED NOVEMBER 18, 1957 AND RECORDED JANUARY 21, 1958 IN VOLUME 1167, AT PAGE 479, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE NORTH 89 DEGREES WEST 77.22 FEET, MORE OR LESS, TO THE WEST BOUNDARY OF SAID LANDS OF MEEKS; THENCE SOUTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF MEEKS, 38.00 FEET, MORE OR LESS, TO THE SOUTH BOUNDARY OF SAID LAND OF MEEKS; THENCE ALONG THE SOUTH BOUNDARY OF SAID LAND OF MEEKS, SOUTH 89 DEGREES EAST 77.22 FEET TO WEST BOUNDARY OF LANDS CONVEYED TO RAYMOND O. PETERSON; THENCE NORTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF PETERSON 38.00 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL THREE:

A RIGHT OF WAY, 20 FEET IN WIDTH, FOR INGRESS, EGRESS AND UTILITIES AS RESERVED IN THE DEED RECORDED JUNE 25, 1991 IN BOOK 4856, PAGE 191, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 030-201-34 PARCEL ONE
030-201-33 PARCEL TWO

EXHIBIT A
PAGE 1 OF 1

EXHIBIT "A"

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING ON THE WESTERLY SIDE OF PORTER STREET 72.00 FEET SOUTHERLY FROM THE SOUTHEASTERLY CORNER OF PORTER AND WALNUT STREETS AT THE SOUTHEASTERLY CORNER OF THE LANDS AGREED TO BE CONVEYED TO ORPHA A. NASH AND ROBERT O. NASH, AS HEREINAFTER SET OUT; THENCE ALONG THE WESTERLY SIDE OF PORTER STREET SOUTH 0 DEGREES 41' WEST 52 FEET TO THE NORTHEASTERLY CORNER OF THE LANDS FORMERLY OF THE ESTATE OF JOSEPH LANE, DECEASED, NOW BELONGING TO B.F.P. SMITH; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LAST MENTIONED LANDS WESTERLY 148 FEET, MORE OR LESS, TO THE EASTERLY BOUNDARY OF THE LANDS FORMERLY OF J.P. HODGES, LATER OF WILLIAM BROWN, AND NOW UNDER AGREEMENT OF SALE TO M.L. LEWELLEN; THENCE ALONG SAID LAST MENTIONED BOUNDARY NORTHERLY 124.00 FEET, MORE OR LESS, TO THE SOUTHERLY SIDE OF WALNUT STREET; THENCE ALONG THE SOUTHERLY SIDE OF WALNUT STREET NORTH 88 DEGREES 39' EAST 64.00 FEET, MORE OR LESS, TO THE NORTHWESTERLY CORNER OF THE LANDS AGREED TO BE CONVEYED BY NELSON B. JONES AND LYDIA A. JONES, HIS WIFE, TO ORPHA A. NASH, AND ROBERT O. NASH, BY AGREEMENT, DATED MAY 12, 1925 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SANTA CRUZ COUNTY, IN VOLUME 44, PAGE 113, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID LAST MENTIONED LANDS SOUTH 0 DEGREES 41' WEST 72.00 FEET TO THE SOUTHWESTERLY CORNER THEREOF, AND THENCE NORTH 88 DEGREES 39' EAST 84.00 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED IN THE DEED TO J. REUBEN DAVIS, ET UX, RECORDED AUGUST 6, 1959, IN VOLUME 1263. PAGE 320, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

PARCEL TWO:

BEGINNING ON THE WESTERLY SIDE OF PORTER STREET 124.00 FEET SOUTHERLY FROM THE SOUTHWESTERLY CORNER OF PORTER AND WALNUT STREETS, WHICH POINT IS ALSO THE SOUTHEASTERLY CORNER OF LANDS NOW OR FORMERLY OF F. M. HOLDAWAY, ET UX.; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LANDS OF HOLDAWAY, WESTERLY 148.00 FEET, MORE OR LESS, TO THE EASTERLY BOUNDARY OF LANDS NOW OR FORMERLY OF WILLIAM BROWNE; THENCE ALONG THE SAID LAST MENTIONED BOUNDARY SOUTHERLY 55.00 FEET TO A POINT; THENCE EASTERLY 148.00 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF PORTER STREET, FROM WHICH THE POINT OF BEGINNING BEARS NORTH 0 DEGREES 15' EAST 55.00 FEET; THENCE NORTH 0 DEGREES 15' EAST 55.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED IN THE DEED TO HELEN HAYNES VOLCH, RECORDED AUGUST 16, 1951 IN VOLUME 835, PAGE 139, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 030-201-37 PARCEL ONE
030-201-25 PARCEL TWO

EXHIBIT B

PAGE 1 OF 1

00703/0005//153473.WPD

PARCEL ONE:

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said Street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

PARCEL TWO:

A non-exclusive easement for ingress and egress, 4 feet in width, the Eastern line of which is the Eastern line of the lands conveyed to May Gravenhorst, by Deed recorded on July 28, 1980, in Book 3218, Page 574, Official Records of Santa Cruz County.

PARCEL THREE:

A right of way for ingress and egress, 12 feet in width, the Northern line of which is the Southern line of the lands conveyed to Michael D. Liles, et. al., by Deed recorded on July 22, 1982, in Book 3445, Page 670, Official Records of Santa Cruz County and of the lands conveyed to May Gravenhorst, et. al., recorded on July 17, 1978, in Book 2937, Page 88, Official Records of Santa Cruz County.

EXHIBIT C

PAGE 1 OF 1

BEING A PART OF THE LANDS CONVEYED TO F.M. HOLDAWAY, ET UX, BY DEED RECORDED DECEMBER 31, 1946 IN VOLUME 607, PAGE 419, OFFICIAL RECORDS OF SANTA CRUZ COUNTY AND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF WALNUT STREET AND THE NORTHWEST CORNER OF THE LANDS CONVEYED TO CHARLES N. DRAKE, BY DEED RECORDED DECEMBER 12, 1950 IN VOLUME 802, PAGE 312, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE ALONG THE WESTERLY LINE OF SAID LANDS OF DRAKE, SOUTH 0 DEGREES 41' WEST 85.0 FEET TO A POINT; THENCE SOUTH 88 DEGREES 39' WEST 64.0 FEET, MORE OR LESS, TO THE WESTERLY LINE OF SAID LANDS OF HOLDAWAY; THENCE NORTHERLY, ALONG THE WESTERLY LINE OF SAID LANDS OF HOLDAWAY 85.0 FEET TO THE SOUTHERLY SIDE OF WALNUT STREET; THENCE ALONG THE SOUTHERLY SIDE OF WALNUT STREET, NORTH 88 DEGREES 39' EAST 64.0 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

EXHIBIT D

PAGE 1 OF 1

HEN RECORDED MAIL TO

nthony and Kandie Silveria
223 Soquel Drive
anta Cruz, CA 95065

BOOK 3993 PAGE 69

032535

RECORDED AT THE REQUEST OF
FOUNDERS TITLE CO.
JUN 18 1986
RICHARD W. BIGAL, Recorder
SANTA CRUZ COUNTY, Official Records

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ROAD MAINTENANCE & CIRCULATION AGREEMENT

This Agreement is entered into this 20th day of May 1986, by and among the owners of that real property located in the County of Santa Cruz, State of California, as described in Exhibit "A" attached hereto and made a part hereof and pertaining to that right of way described as Parcel Four in the aforementioned Exhibit.

Each of the owners of these parcels or any future division of these parcels shall have equal right to, and obligation for, the benefits to this road and shall have one vote per parcel in matters pertaining the same. The cost of improvements shall be limited to within each owners parcel boundaries.

The owners of these parcels or any subsequent division of these parcels agree that each owner shall be responsible for damage to the road caused by themselves, family, friends or any service people or vendors doing service or handling goods ordered by or for themselves. In the event any damage is done to the road, the owners responsible shall perform or initiate necessary work to return the damaged portion of road to its prior condition. Necessary work shall be completed as soon as practicable or within 45 days from first noted damage. The parties agree to maintain the road to minimum standards which shall consist of whatever work is needed to keep the road mud-free, dust-free, safe, and adequate for year-round two-way traffic, and the storm drainage facilities functioning effectively. All work shall be done by a contractor or other qualified person acceptable to the majority of the parties.

Improvements to the road shall be ordered, implemented and paid for upon mutual approval of the owners party to the Agreement and shall be paid for in equal portions by all owners. Excepting owner(s) of APN's 30-201-25, 34,36, & 37 shall be solely responsible for the initial similar improvement of each of their lot portions lying within their property lines meeting the existing improved borders of APN 30-201-11 & 37.

All sums assessed in accordance with the provisions of this Agreement shall constitute a lien on each respective parcel owned by those party thereto.

The Parties agree that the rights and responsibilities contained in the Agreement shall constitute covenants running with the land.

Should any provision of this Agreement be unlawful or unenforceable through statute or law, the parties agree that this shall not cause the total Agreement to terminate, and that they shall be bound by the remaining

(1)

EXHIBIT E

PAGE 1 OF 7

covenants and promises herein contained.

The parties intend by this Agreement to impose mutually beneficial covenants concerning the maintenance and repair of Parcel Four. The parties hereto further agree to obligate themselves, their heirs, personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement.

Currently to meet the parking and circulation necessities for the existing 4630 West Walnut Building know as APN 30-201-11, vehicles or pedestrians may enter a recorded right of way described as follows: A right of way for ingress and egress, 12 feet in width, the Northern line of which is the Southern line of the lands conveyed to Michael D. Liles, et.al., by Deed recorded on July 22, 1982, in Book 3465, Page 670, Official Records of Santa Cruz County and of the lands conveyed to May Gravenhorst, et.al., recorded on July 17, 1978, in Book 2937, Page 88, Official Records of Santa Cruz County.

Depending on when the commercial development/improvements are approved for each separate parcels of APN's 30-201-25, 34, 36 and 37, vehicle, pedestrian, parking and circulation arrangements shall be planned and agreed in writing between each parcel mentioned above.

It is the intention of May Gravenhorst Stauffer or her assigns to further develop the existing vehicle and pedestrian right of way to enter off Porter Street to run through APN 30-201-34, 36 and 37 and then cut out of APN 30-201-34 to ultimately exit into West Walnut.
(See Exhibit "A" attached).

WITNESS OUR HANDS this 17th day of June 1986.

Anthony Silveira

Kandi Silveira

EXHIBIT E

PAGE 2 OF 7

BOOK 3993 PAGE 71

(General)

STATE OF CALIFORNIA
COUNTY OF Santa Cruz } ss

On June 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared May Gravenhorst Stauffer, Peter J. Gravenhorst, Anthony Silveira and Kindie Silveira

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz County
My Commission Expires Nov 18

OFC-2056

This Form Furnished By Founders Title Company
STAPLE HERE

EXHIBIT E
PAGE 3 OF 7

PARCEL ONE:

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

EXHIBIT E

PAGE 4 OF 7

PARCEL ONE:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 72.00 feet Southerly from the Southeasterly corner of Porter and Walnut Streets, at the Southeasterly corner of the lands agreed to be conveyed to Orpha A. Nash and Robert O. Nash, as hereinafter set out; thence along the Westerly side of Porter Street South 0° 41' West 52 feet to the Northeasterly corner of the lands formerly of the estate of Joseph Lane, deceased, now belonging to B. F. P. Smith; thence along the Northerly boundary of said last mentioned lands Westerly 146 feet, more or less, to the Easterly boundary of the lands formerly of J. P. Hodges, later of William Brown, and now under Agreement of Sale to H. L. Lewellen; thence along said last mentioned boundary Northerly 124.00 feet, more or less, to the Southerly side of Walnut Street; thence along the Southerly side of Walnut Street North 83° 39' East 64.00 feet, more or less, to the Northwesterly corner of the lands agreed to be conveyed by Nelson B. Jones, and Lydia A. Jones, his wife, to Orpha A. Nash, and Robert O. Nash, by Agreement, dated May 12, 1925 and recorded in the office of the County Recorder of said Santa Cruz County, in Volume 44, Page 113, Official Records of Santa Cruz County; thence along the Westerly boundary of said last mentioned lands South 0° 41' West 72.00 feet to the Southwesterly corner thereof, and thence North 88° 39' East 84.00 feet to the place of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to J. Reuben Davis, et ux, recorded August 6, 1959 in Volume 1263, Page 320, Official Records of Santa Cruz County.

PARCEL TWO:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 124.0 feet Southerly from the Southwesterly corner of Porter and Walnut Streets, which point is also the Southeasterly corner of lands now or formerly of F.M. Holdaway, et ux,; thence along the Southerly boundary of said lands of Holdaway, Westerly 148.0 feet, more or less, to the Easterly boundary of lands now or formerly of William Browne; thence along the said last mentioned boundary Southerly 55.0 feet to a point; thence Easterly 148.0 feet, more or less, to a point on the Westerly line of Porter Street, from which the point of beginning bears North 0° 15' East 55.0 feet; thence North 0° 15' East 55.0 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Baynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

EXHIBIT E

PAGE 5 OF 7

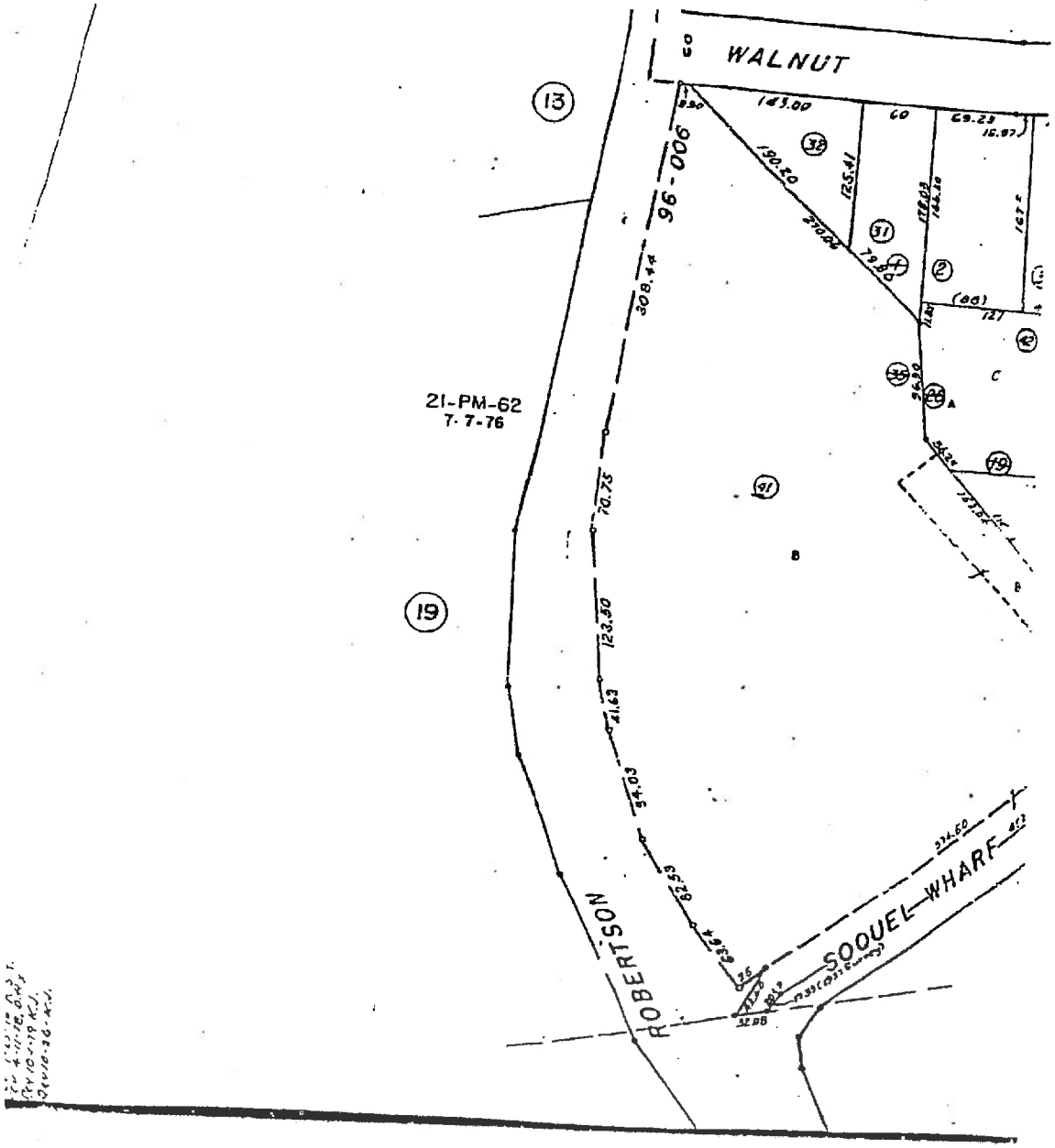
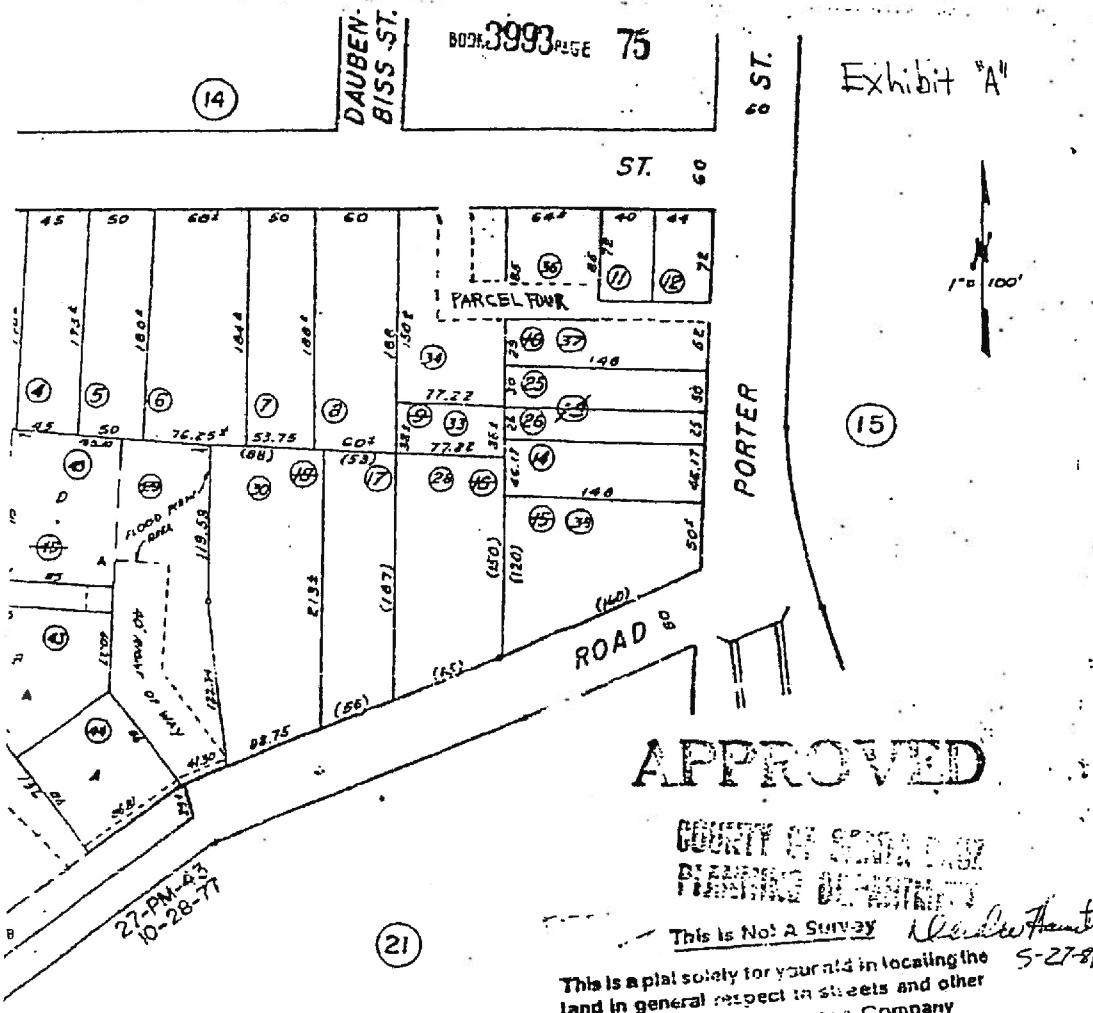


EXHIBIT E

PAGE 6 OF 7



Note - Assessor's Parcel Block & Lot Numbers Shown in Circles

Assessor's Map No. 30-20
County of Santa Cruz, Calif.
July 1950

EXHIBIT E
PAGE 7 OF 7

RETN RECORDED MAIL TO

Anthony and Kandie Silveria
123 Soquel Drive
Santa Cruz, CA 95065

BOOK 3993 PAGE 76

RECORDED AT THE REQUEST OF
FOUNDERS TITLE CO.
JUN 18 1986
RICHARD W. WIEKING, County Recorder
SANTA CRUZ COUNTY, Official Records

032536

USE AGREEMENT

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The undersigned parties hereby amend their Real Estate Purchase Contract and Receipt for Deposit dated June 21, 1985, relating to the purchase by Silveira ("Buyer") from Stauffer ("Seller") of that certain property located at and commonly known as 4630 West Walnut Avenue, Soquel, CA, bearing assessor's parcel no. 30-201-11.

Because of additional requirements to be imposed by the County of Santa Cruz, California, on the said property related to its partial current use as residential property, the parties hereto further agree as follows:

1. In the event the County of Santa Cruz imposed additional parking requirements and a recreational area requirement covering the residential use, it is agreed that Seller shall make available to Buyer on adjacent properties owned by Seller, with the location of such to be determined by Seller in conformance with the requirements of Santa Cruz County Authorities, the necessary four parking spaces, and a required 400 Sq. Ft. vacant parcel to be improved and landscaped at Sellers expense as required by Santa Cruz County.

2. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the additional four spaces at a total price of $8,000.00. In addition, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the 400 Sq. Ft. parcel for the sum of $6,000.00.

3. While Seller shall have the right to designate the general location on her adjacent properties of the said parcels as required by the County of Santa Cruz, the same will be located within an 80-foot radius from the nearest property line of 4630 West Walnut Street, and shall be reserved for the 4630 West Walnut Street building.

4. The purchase price shall be added as the total amount to the existing loan modified to 10% interest per annum carried by Seller with the monthly payment of said note to be adjusted to provide for amortization over a 20-year period. The adjusted monthly payments shall start after completion of required conditions and improvements as per the already approved plans by the Santa Cruz County Building and Zoning Department.

(1)

EXHIBIT F

PAGE 1 OF 5

5. It is the intention and agreement of the parties that the acquisition of the adjacent properties from Seller will be a temporary one only to meet the residential requirements imposed by the County of Santa Cruz. Buyer intends to convert the entire improvements at 4630 West Walnut to commercial use. To implement the foregoing Buyer and Seller agree that Buyer has option to construct a second story decking on the rear and/or on the side of the subject property to meet the recreational space requirements of the County of Santa Cruz, and by doing so discontinue the requirement for the 400 Sq. Ft. parcel. When that is accomplished, Buyer shall sell back to Seller and Seller shall purchase from Buyer the said 400 Sq. Ft. property at the original $6,000.00 price and the parking area for the sum of $2,000.00 per space. The purchase price will be paid by adjusting the Buyer's note downward in the total amount of the repurchase price and adjustment in the monthly payment.

6. It is further agreed by the parties that as and when Seller or her successors develop the adjacent property at 4622 West Walnut (Assessor's Parcel No. 030-201-36), such improvements will provide for access to the street and to parking for the said 4622 West Walnut Development and to bring about the diminishment of the existing stairway easement used for access to the upstairs units at the subject property, 4630 West Walnut. A copy of said easement is attached hereto as Exhibit "A" and made a part hereof. Thereafter, that easement will be only a fire easement and will be appropriately marked and signed as so as to indicate that restricted and limited use.

7. This agreement for modification of the easement shall be separately executed by the parties, recorded in Santa Cruz County, and shall run with the land and be binding upon the parties hereto, their successors, or assigns.

8. Buyer hereby acknowledges performance by Seller of Paragraphs No. 5,7,8, and 9 of the said Real Estate Purchase Contract of June 21, 1985. Subject to the terms and conditions contained in this agreement, Seller warrants that "The Property" has met all Santa Cruz County requirements for commercial use.

SEE NEXT PAGE FOR NOTARY ACKNOWLEDGEMENT.

EXHIBIT F

PAGE 2 OF 5

WITNESS OUR HANDS this 17th day of June, 1986.

Anthony Silveira
(Buyer)

May Gravenhorst Stauffer
(Seller)

Kandie Silveira
(Buyer)

Peter J. Gravenhorst
(Seller)

(General)

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ } ss.

On June 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony Silveira Kandie Silveira, May Gravenhorst Stauffer and Peter J Gravenhorst

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFC-2056

This Form Furnished By Founders Title Company — STAPLE HERE

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz County
My Commission Expires Nov. 12, 1988

(3)

EXHIBIT F
PAGE 3 OF 5

PARCEL ONE:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 72.00 feet Southerly from the Southeasterly corner of Porter and Walnut Streets at the Southeasterly corner of the lands agreed to be conveyed to Orpha A. Nash and Robert O. Nash, as hereinafter set out; thence along the Westerly side of Porter Street South 0° 41' West 52 feet to the Northeasterly corner of the lands formerly of the estate of Joseph Lane, deceased, now belonging to B. P. P. Smith; thence along the Northerly boundary of said last mentioned lands Westerly 148 feet, more or less, to the Easterly boundary of the lands formerly of J. P. Hodges, later of William Brown, and now under Agreement of Sale to M. L. Lewellen; thence along said last mentioned boundary Northerly 124.00 feet, more or less, to the Southerly side of Walnut Street; thence along the Southerly side of Walnut Street North 83° 39' East 64.00 feet, more or less, to the Northwesterly corner of the lands agreed to be conveyed by Nelson B. Jones, and Lydia A. Jones, his wife, to Orpha A. Nash, and Robert O. Nash, by Agreement, dated May 12, 1925 and recorded in the office of the County Recorder of said Santa Cruz County, in Volume 44, Page 113, Official Records of Santa Cruz County; thence along the Westerly boundary of said last mentioned lands South 0° 41' West 72.00 feet to the Southwesterly corner thereof, and thence North 88° 39' East 84.00 feet to the place of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to J. Rauben Davis, et ux, recorded August 6, 1959 in Volume 1263, Page 320, Official Records of Santa Cruz County.

PARCEL TWO:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 124.0 feet Southerly from the Southwesterly corner of Porter and Walnut Streets, which point is also the Southeasterly corner of lands now or formerly of F.M. Holdaway, et ux,; thence along the Southerly boundary of said lands of Holdaway, Westerly 148.0 feet, more or less, to the Easterly boundary of lands now or formerly of William Browne; thence along the said last mentioned boundary Southerly 55.0 feet to a point; thence Easterly 148.0 feet, more or less, to a point on the Westerly line of Porter Street, from which the point of beginning bears North 0° 15' East 55.0 feet; thence North 0° 15' East 55.0 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Haynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

EXHIBIT F

PAGE 4 OF 5

PARCEL ONE: BOOK 2993 PAGE 79

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

EXHIBIT F

PAGE 5 OF 5

VERIFICATION

I am a plaintiff in this action. I have read the **COMPLAINT FOR DECLARATORY RELIEF, QUIET TITLE, AND CANCELLATION OF INSTRUMENTS** and know the contents thereof. The allegations stated therein are true of my own knowledge, except matters that are stated on my information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 25, 2009, at Santa Cruz, California.

Alan B. Palmer

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Anthony P. Silveira, and Kandie L. Silveira, Trustees of the Silveira Family Trust Dated November 18, 1992, and Does 1 through 20

FILED
MAR 25 2009
ALEX CALVO, CLERK
BY [signature]
DEPUTY, SANTA CRUZ COUNTY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Alan B. Palmer, Trustee of the Palmer Trust created May 4, 1999, Santa Cruz Properties LLC, a California Limited Liability Company

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

CASE NUMBER: (Número del Caso): CV 163244

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, SANTA CRUZ COUNTY
701 Ocean Street
701 Ocean Street
Santa Cruz, CA 95060

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Austin B. Comstock (831) 427-2727
Comstock, Thompson, Kontz & Brenner
340 Soquel Ave., Ste. 205

DATE: MAR 25 2009 ALEX CALVO Clerk, by [signature] Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

Page 1 of 1

Austin B. Comstock (33123)
COMSTOCK, THOMPSON, KONTZ & BRENNER
340 Soquel Avenue, Suite 205
Santa Cruz, CA 95062
Telephone: (831) 427-2727
Facsimile: (831) 458-1165

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES LLC, a California Limited Liability Company,

Plaintiffs,

vs.

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, and DOES 1 through 20,

Defendants.

/

No. CV 163244

NOTICE OF PENDING ACTION [C.C.P. §872.250]

NOTICE IS HEREBY GIVEN that the captioned action concerning and affecting real property as described below commenced on March 25, 2009, in the above-entitled court by ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, Plaintiff, against ANTHONY P. SILVEIRA and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, and DOES 1 through 20, Defendants. The action is now pending in the above-named court.

The action for Declaratory Relief, Quiet Title, and Cancellation of Instruments concerns the title and right of possession of real property situated in the unincorporated area of Soquel, Santa Cruz County, California, known as APN 030-201-11, more particularly described on Exhibit A, attached hereto and incorporated by this reference.

Plaintiffs seek a declaration that defendants have no rights assertable against plaintiffs' properties arising from the Road Maintenance and Circulation Agreement and Use Agreement recorded June 18, 1986, in the Santa Cruz County Official Records.

Comstock, Thompson, Kontz & Brenner

Dated: March 25, 2009 By: Austin B Comstock

Austin B. Comstock
Attorney for Plaintiff Alan B. Palmer, Trustee

COMSTOCK, THOMPSON, KONTZ & BRENNER
ATTORNEYS AT LAW
340 SOQUEL AVENUE, SUITE 205
SANTA CRUZ, CALIFORNIA 95062-2328

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CRUZ)

On this the 25th day of March, 2009, before me, Amanda Russo, the undersigned Notary Public, personally appeared Austin B. Comstock, who proved to me on the basis of satisfactory evidence to be the person 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.

Amanda Russo
Notary's Signature

AMANDA RUSSO
Commission # 1686934
Notary Public - California
Santa Cruz County
My Comm. Expires Aug 10, 2010

Exhibit "A"

PARCEL ONE:

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

PARCEL TWO:

A non-exclusive easement for ingress and egress, 4 feet in width, the Eastern line of which is the Eastern line of the lands conveyed to May Gravenhorst, by Deed recorded on July 28, 1980, in Book 3218, Page 574, Official Records of Santa Cruz County.

PARCEL THREE:

A right of way for ingress and egress, 12 feet in width, the Northern line of which is the Southern line of the lands conveyed to Michael D. Liles, et. al., by Deed recorded on July 22, 1982, in Book 3445, Page 670, Official Records of Santa Cruz County and of the lands conveyed to May Gravenhorst, et. al., recorded on July 17, 1978, in Book 2937, Page 88, Official Records of Santa Cruz County.

EXHIBIT A

PAGE 1 OF 1

EXHIBIT 3

10-28-19 4

FILED
OCT 26 2019
ALEX CALL
BY
DEPUTY, SANTA CRUZ COUNTY

REID P. SCHANTZ, ESQ., SBN 112048
133 MISSION STREET, SUITE 230
SANTA CRUZ, CA 95060
TELEPHONE: (831) 425-1986
FACSIMILE: (831) 425-1975

ATTORNEY FOR: DEFENDANTS AND CROSS COMPLAINANTS: ANTHONY P. SILVEIRA and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES, LLC, a California limited liability company,

Plaintiffs,

v.

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992

Defendants.
_____/

CASE NO.: CV 163244

AMENDED CROSS-COMPLAINT

1. Slander of Title
2. Declaratory Relief
3. Quiet Title
4. Injunctive Relief

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992,

Cross-complainants,

v.

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES, LLC, a California limited liability company, DALE B. BERMAN and TERRY LEE BERMAN, and DOES 1 through 20, inclusive,

Cross-defendants.
_____/

Cross-complainants ANTHONY P. SILVEIRA and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, allege as follows:

1. Cross-defendant ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, is and at all times herein mentioned was a resident of Santa Cruz County, California, and the owner of real property in Santa Cruz County known as APN 030-201-33 and 34, more particularly described in Exhibit A attached to plaintiffs' complaint.

2. Cross-defendant SANTA CRUZ PROPERTIES, LLC, is a limited liability company organized under the laws of California with its principal place of business in Santa Cruz County, California, and the owner of real property in Santa Cruz County known as APN 030-201-25 and 37,.more particularly described in Exhibit B attached to plaintiffs' complaint.

3. Cross-defendants DALE B. BERMAN and TERRY LEE BERMAN, are and at all times herein mentioned were residents of Santa Cruz County, California, and the owners of real property in Santa Cruz County known as APN 030-201-36, more particularly described in Exhibit D attached to plaintiffs' complaint.

4. Cross-complainants are ignorant of the true names and capacities of cross-defendants sued herein as DOES 1 to 20, inclusive, and therefore sues these defendants by such fictitious names. Cross-complainants will amend this cross-complaint to allege their true names and capacities when ascertained. Cross-complainants are informed and believe and thereon allege that each of the fictitiously named cross-defendants is responsible in some manner for the occurrences herein alleged, and that cross-complainant's damages as herein alleged were proximately caused by their conduct.

5. Cross-defendants at all times herein mentioned were the agents and employees of their co-cross-defendants and in doing the things hereinafter alleged were acting within the course and scope of such agency and the permission and consent of their co-cross-defendants.

6. Cross-complainants were and are owners of real property located in the unincorporated area of Santa Cruz County commonly known as 4630 Porter Street in

Soquel, the legal description of which is attached hereto as Exhibit A, and made a part hereof.

7. As a part of the purchase of said real property on or about June 18, 1986, cross-complainants entered into a Road Maintenance & Circulation Agreement and a Use Agreement with the sellers which was recorded on June 18, 1986, in Book 3993, pages 69 to 80, a copy of which is attached hereto as Exhibit B, and made a part hereof. The sellers, May Gravenhorst Stauffer and Peter J. Gravenhorst, are also the predecessors in interest of the real property owned by all cross-defendants and said agreements expressly run with the land and are binding on successors or assigns which include all cross-defendants.

FIRST CAUSE OF ACTION
(Slander of title against Alan B. Palmer, Trustee and Santa Cruz Properties, LLC)

8. Cross-complainants reallege and incorporate herein by this reference each and every foregoing paragraph of this Cross-complaint as though fully set forth herein.

9. Notwithstanding the terms contained in the Road Maintenance & Circulation Agreement and Use Agreement, cross-defendants Alan B. Palmer, Trustee and Santa Cruz Properties, LLC, wilfully, wrongfully, without justification, and without privilege, concealed and failed to disclose said agreements in Application Number 05-0721 with the County of Santa Cruz to develop their adjoining parcels.

10. Cross-defendants' concealment and failure to disclose were intended to deceive the County of Santa Cruz in cross-defendants' development application and has had the effect to cast doubt on cross-complainants' rights conferred by the Road Maintenance & Circulation Agreement and Use Agreements.

11. The conduct of cross-defendants as herein alleged has adversely impaired the vendibility of cross-complainants property in an amount to be submitted upon proof at trial.

12. Furthermore, the conduct of cross-defendants, and each of them, were motivated by oppression, fraud, and malice therefore justifying the awarding of exemplary

and punitive damages in an amount to be submitted upon proof at trial.

WHEREFORE, Cross-complainants pray for relief as set forth below.

SECOND CAUSE OF ACTION
(Declaratory Relief against all parties)

13. Cross-complainants reallege and incorporate herein by this reference each and every foregoing paragraph of this Cross-complaint as though fully set forth herein.

14. An actual controversy has arisen and now exists relating to the rights and duties of the parties herein in that Cross-complainants contend that the duly recorded Road Maintenance & Circulation Agreement, and Use Agreement are valid and enforceable in all respects, envisioning the eventual development of all of the affected parcels, whereas Cross-defendants contend that said agreements are invalid and unenforceable, in that the events contained in said agreements never took place. Cross-complainants dispute Cross-defendants' contention and assert that the proposed development by Cross-defendants is precisely the event contemplated by said agreements.

15. Cross-complainants desire a judicial determination of their rights and duties, and a declaration as to whether the Road Maintenance & Circulation Agreement, and Use Agreement is valid and enforceable.

WHEREFORE, Cross-complainants pray for relief as set forth below.

THIRD CAUSE OF ACTION
(Quiet Title against all parties)

16. Cross-complainants reallege and incorporate herein by this reference each and every foregoing paragraph of this Cross-complaint as though fully set forth herein.

17. Cross-complainants are seeking to quiet title against the claim of Cross-defendants that the duly recorded Road Maintenance & Circulation Agreement, and Use Agreement endows no assertable rights by Cross-complainants. Cross-defendants claims are completely without any merit.

18. Cross-complaints seek to quiet title as of June 18, 1986, the date the Road Maintenance & Circulation Agreement, and Use Agreement were recorded.

WHEREFORE, Cross-complainants pray for relief as set forth below.

FOURTH CAUSE OF ACTION
(Injunctive Relief against Alan B. Palmer, Trustee and Santa Cruz Properties, LLC)

19. Cross-complainants reallege and incorporate herein by this reference each and every foregoing paragraph of this Cross-complaint as though fully set forth herein.

20. The Road Maintenance & Circulation Agreement, and Use Agreement was executed and recorded envisioning the eventual development of Cross-defendants parcels in conjunction with the use of Cross-complainants property.

21. Cross-defendants Alan B. Palmer, Trustee and Santa Cruz Properties, LLC, in Application Number 05-0721 with the County of Santa Cruz to develop their parcels fail to acknowledge or incorporate the terms and conditions contained in said agreements. Unless the development is enjoined by this Court, the development will be completed and maintained by said Cross-defendants in violation of, and contrary to, the provisions of the Road Maintenance & Circulation Agreement, and Use Agreement.

22. Cross-defendants wrongful conduct, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to Cross-complainants in that the Master Use Permit for Cross-complainants' property requires a total of eight parking spaces and there are only four existing parking spaces located on Cross-complainants' property. The loss of the right to acquire the additional four parking spaces and the loss of the traffic circulation as envisioned in the Road Maintenance & Circulation Agreement will greatly impair the value of Cross-complainants' property.

23. Cross-complainants have no adequate remedy at law for the injuries which are threatened in that it will be impossible for Cross-complainants to determine the precise amount of damage which they will suffer if Cross-defendants are not restrained

WHEREFORE, cross-complainants pray for judgment as follows:

First Cause of Action, Slander of Title against Alan B. Palmer, Trustee, and Santa Cruz Properties, LLC:

1. For general damages in excess of $50,000.00 to be submitted upon proof at trial.

2. For punitive damages to be submitted upon proof at trial.

Second Cause of Action, Declaratory Relief against all parties:

1. For a declaration that the Road Maintenance & Circulation Agreement, and Use Agreement are valid and enforceable in all respects.

Third Cause of Action, Quiet Title against all parties:

1. For a judgment quieting title as to the adverse claims of Cross-defendants to the Road Maintenance & Circulation Agreement, and Use Agreement.

Fourth Cause of Action, Injunctive Relief as to all parties:

1. For a permanent injunction, enjoining Cross-defendants, and each of them, and their agents, servants, and employees, and all persons acting under, in concert with, or for them from disregarding the terms and conditions contained in the Road Maintenance & Circulation Agreement, and Use Agreement.

As to all Causes of Action:

1. For costs of suite incurred herein.

2. For such other and further relief as the Court may deem proper.

Dated: October 20, 2010

REID P. SCHANTZ, ESQ.
Attorney for defendants and
cross-complainants
ANTHONY P. SILVEIRA and
KANDIE L. SILVEIRA, Trustees
of the Silveira Family Trust Dated
November 18, 1992

Exhibit A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT THE NORTHWEST CORNER OF A LOT OF LAND OWNED AND OCCUPIED BY J. L. GROVER, ON NOVEMBER 25, 1868, AND RUNNING THENCE NORTH 89 DEGREES WEST 77.22 FEET TO A POST IN LINE OF ORCHARD FENCE, NOW OR FORMERLY OF JOHN DAUBENBISS; THENCE NORTH ALONG LINE OF SAID FENCE 194 FEET AND 8 INCHES TO THE SOUTH SIDE OF DIESING STREET, NOW CALLED WALNUT STREET; THENCE EASTERLY ALONG THE SOUTH SIDE OF SAID DIESING STREET, NOW CALLED WALNUT STREET, 81 FEET AND 3 INCHES TO A STAKE; THENCE SOUTHERLY 194 FEET AND 8 INCHES PARALLEL WITH LINE OF SAID ORCHARD FENCE TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE LANDS CONVEYED TO RAYMOND O. PETERSON AND WIFE BY DEED DATED JULY 15, 1958, RECORDED JULY 23, 1958 IN VOLUME 1195 OF OFFICIAL RECORDS AT PAGE 513, SANTA CRUZ COUNTY RECORDS.

PARCEL TWO:

BEING A PART OF THE LANDS CONVEYED TO J.L. MEEKS, ET UX., BY DEED DATED SEPTEMBER 2, 1954 AND RECORDED SEPTEMBER 28, 1954 IN VOLUME 984, AT PAGE 561, OFFICIAL RECORDS OF SANTA CRUZ COUNTY, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EASTERN BOUNDARY OF SAID LANDS OF MEEKS AND AT THE NORTHWEST CORNER OF PARCEL NO. 1 OF LANDS CONVEYED TO RAYMOND O. PETERSON, ET UX., BY DEED DATED NOVEMBER 18, 1957 AND RECORDED JANUARY 21, 1958 IN VOLUME 1167, AT PAGE 479, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE NORTH 89 DEGREES WEST 77.22 FEET, MORE OR LESS, TO THE WEST BOUNDARY OF SAID LANDS OF MEEKS; THENCE SOUTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF MEEKS, 38.00 FEET, MORE OR LESS, TO THE SOUTH BOUNDARY OF SAID LAND OF MEEKS; THENCE ALONG THE SOUTH BOUNDARY OF SAID LAND OF MEEKS, SOUTH 89 DEGREES EAST 77.22 FEET TO WEST BOUNDARY OF LANDS CONVEYED TO RAYMOND O. PETERSON; THENCE NORTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF PETERSON 38.00 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL THREE:

A RIGHT OF WAY, 20 FEET IN WIDTH, FOR INGRESS, EGRESS AND UTILITIES AS RESERVED IN THE DEED RECORDED JUNE 25, 1991 IN BOOK 4856, PAGE 191, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 030-201-34 PARCEL ONE
030-201-33 PARCEL TWO

Exhibit 1

WHEN RECORDED MAIL TO
Anthony and Kandie Silveria
2223 Soquel Drive
Santa Cruz, CA 95065

BOOK 3993 PAGE 69

032535

RECORDED AT THE REQUEST OF
FOUNDERS TITLE CO.
JUN 18 1986
RICHARD W. BEDAL, Recorder
SANTA CRUZ COUNTY, Official Records

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ROAD MAINTENANCE & CIRCULATION AGREEMENT

This Agreement is entered into this 20th day of May 1986, by and among the owners of that real property located in the County of Santa Cruz, State of California, as described in Exhibit "A" attached hereto and made a part hereof and pertains to that right of way described as Parcel Four in the aforementioned Exhibit.

Each of the owners of these parcels or any future division of these parcels shall have equal right to, and obligation for, the benefits to this road and shall have one vote per parcel in matters pertaining the same. The cost of improvements shall be limited to within each owners parcel boundaries.

The owners of these parcels or any subsequent division of these parcels agree that each owner shall be responsible for damage to the road caused by themselves, family, friends or any service people or vendors doing service or handling goods ordered by or for themselves. In the event any damage is done to the road, the owners responsible shall perform or initiate necessary work to return the damaged portion of road to its prior condition. Necessary work shall be completed as soon as practicable or within 45 days from first noted damage. The parties agree to maintain the road to minimum standards which shall consist of whatever work is needed to keep the road mud-free, dust-free, safe, and adequate for year-round two-way traffic, and the storm drainage facilities functioning effectively. All work shall be done by a contractor or other qualified person acceptable to the majority of the parties.

Improvements to the road shall be ordered, implemented and paid for upon mutual approval of the owners party to the Agreement and shall be paid for in equal portions by all owners. Excepting owner(s) of APN's 30-201-25, 34,36, & 37 shall be solely responsible for the initial similar improvement of each of their lot portions lying within their property lines meeting the existing improved borders of APN 30-201-11 & 37.

All sums assessed in accordance with the provisions of this Agreement shall constitute a lien on each respective parcel owned by those party thereto.

The Parties agree that the rights and responsibilities contained in the Agreement shall constitute covenants running with the land.

Should any provision of this Agreement be unlawful or unenforceable through statute or law, the parties agree that this shall not cause the total Agreement to terminate, and that they shall be bound by the remaining

Exhibit 2

ROAD MAINTENANCE & CIRCULATION AGREEMENT (CON'T)

covenants and promises herein contained.

The parties intend by this Agreement to impose mutually beneficial covenants concerning the maintenance and repair of Parcel Four. The parties hereto further agree to obligate themselves, their heirs, personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement.

Currently to meet the parking and circulation necessities for the existing 4630 West Walnut Building know as APN 30-201-11, vehicles or pedestrians may enter a recorded right of way described as follows: A right of way for ingress and egress, 12 feet in width, the Northern line of which is the Southern line of the lands conveyed to Michael D. Liles, et.al., by Deed recorded on July 22, 1982, in Book 3465, Page 670, Official Records of Santa Cruz County and of the lands conveyed to May Gravenhorst, et.al., recorded on July 17, 1978, in Book 2937, Page 88, Official Records of Santa Cruz County.

Depending on when the commercial development/improvements are approved for each separate parcels of APN's 30-201-25, 34, 36 and 37, vehicle, pedestrian, parking and circulation arrangements shall be planned and agreed in writing between each parcel mentioned above.

It is the intention of May Gravenhorst Stauffer or her assigns to further develop the existing vehicle and pedestrian right of way to enter off Porter Street to run through APN 30-201-34, 36 and 37 and then cut out of APN 30-201-34 to ultimately exit into West Walnut.
(See Exhibit "A" attached).

WITNESS OUR HANDS this 17th day of June 1986.

Anthony Silveira

Kendi L. Silveira

BOOK 3993 PAGE 71

(General)

STATE OF CALIFORNIA
COUNTY OF Santa Cruz } ss

On June 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared May Crawenbuit Stouffer Peter J. Crawenbuit, Anthony Silveira and Elodie Silveira

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFC-3056

This Form Furnished By Founders Title Company

STAPLE HERE

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz
My Commission Expires June 10

PARCEL ONE:

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

PARCEL ONE:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 72.00 feet Southerly from the Southeasterly corner of Porter and Walnut Streets at the Southeasterly corner of the lands agreed to be conveyed to Orpha A. Nash and Robert O. Nash, as hereinafter set out; thence along the Westerly side of Porter Street South 0° 41' West 52 feet to the Northeasterly corner of the lands formerly of the estate of Joweph Lane, deceased, now belonging to B. F. P. Smith; thence along the Northerly boundary of said last mentioned lands Westerly 146 feet, more or less, to the Easterly boundary of the lands formerly of J. P. Hodges, later of William Brown, and now under Agreement of Sale to M. L. Lowellen; thence along said last mentioned boundary Northerly 124.00 feet, more or less, to the Southerly side of Walnut Street; thence along the Southerly side of Walnut Street North 83° 39' East 64.00 feet, more or less, to the Northwesterly corner of the lands agreed to be conveyed by Nelson B. Jones, and Lydia A. Jones, his wife, to Orpha A. Nash, and Robert O. Nash, by Agreement, dated May 12, 1925 and recorded in the office of the County Recorder of said Santa Cruz County, in Volume 44, Page 113, Official Records of Santa Cruz County; thence along the Westerly boundary of said last mentioned lands South 0° 41' West 72.00 feet to the Southwesterly corner thereof, and thence North 88° 39' East 84.00 feet to the place of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to J. Reuben Davis, et ux, recorded August 6, 1959 in Volume 1263, Page 320, Official Records of Santa Cruz County.

PARCEL TWO:

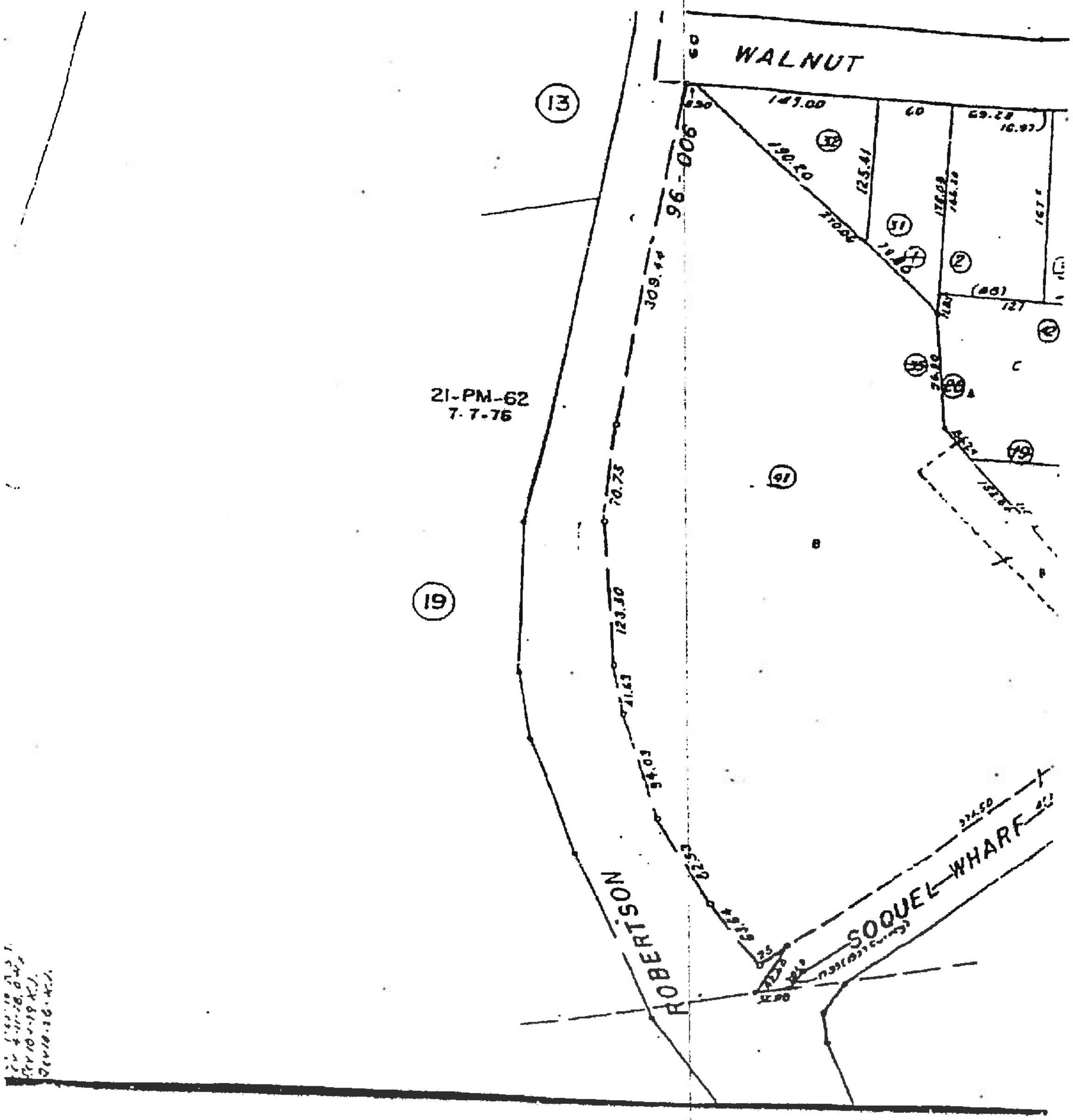
SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

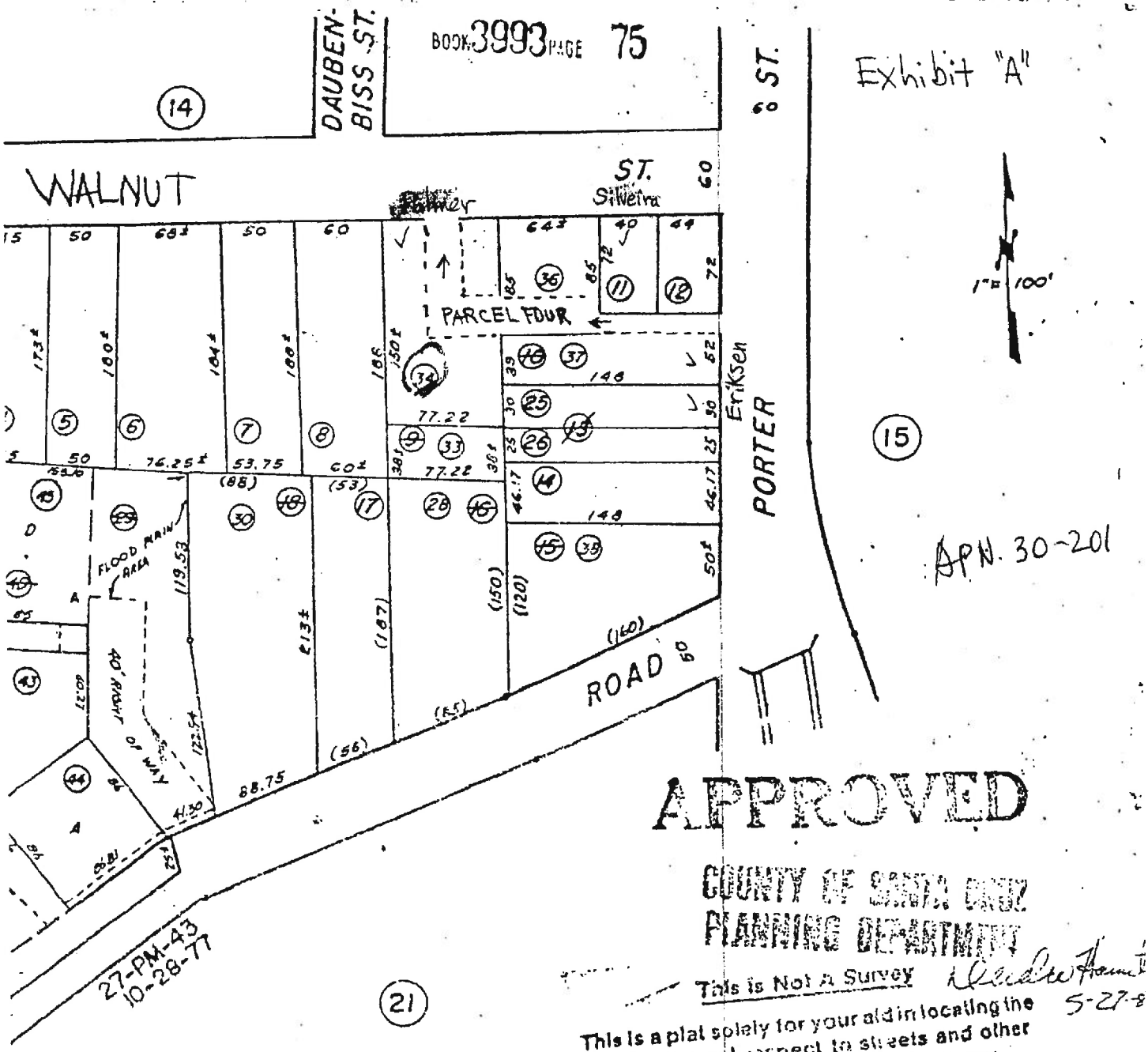
BEGINNING on the Westerly side of Porter Street 124.0 feet Southerly from the Southwesterly corner of Porter and Walnut Streets, which point is also the Southeasterly corner of lands now or formerly of F.M. Holdaway, et ux.; thence along the Southerly boundary of said lands of Holdaway, Westerly 148.0 feet, more or less, to the Easterly boundary of lands now or formerly of William Browne; thence along the said last mentioned boundary Southerly 55.0 feet to a point; thence Easterly 148.0 feet, more or less, to a point on the Westerly line of Porter Street, from which the point of beginning bears North 0° 15' East 55.0 feet; thence North 0° 15' East 55.0 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Baynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

BOOK 3993 PAGE 74





Note - Assessor's Parcel Block & Lot Numbers Shown in Circles

Assessor's Map No. 30-20 County of Santa Cruz Calif.

WHEN RECORDED MAIL TO

Anthony and Kandie Silveria
2223 Soquel Drive
Santa Cruz, CA 95065

BOOK 3993 PAGE 76

032536

RECORDED AT THE REQUEST OF
FOUNDERS TITLE CO.
JUN 18 1986
RICHARD W. BEDAL, Recorder
SANTA CRUZ COUNTY, Official Records

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USE AGREEMENT

The undersigned parties hereby amend their Real Estate Purchase Contract and Receipt for Deposit dated June 21, 1985, relating to the purchase by Silveira ("Buyer") from Stauffer ("Seller") of that certain property located at and commonly known as 4630 West Walnut Avenue, Soquel, CA, bearing assessor's parcel no. 30-201-11.

Because of additional requirements to be imposed by the County of Santa Cruz, California, on the said property related to its partial current use as residential property, the parties hereto further agree as follows:

1. In the event the County of Santa Cruz imposed additional parking requirements and a recreational area requirement covering the residential use, it is agreed that Seller shall make available to Buyer on adjacent properties owned by Seller, with the location of such to be determined by Seller in conformance with the requirements of Santa Cruz County Authorities, the necessary four parking spaces, and a required 400 Sq. Ft. vacant parcel to be improved and landscaped at Sellers expense as required by Santa Cruz County.

2. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the additional four spaces at a total price of $8,000.00. In addition, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the 400 Sq. Ft. parcel for the sum of $6,000.00.

3. While Seller shall have the right to designate the general location on her adjacent properties of the said parcels as required by the County of Santa Cruz, the same will be located within an 80-foot radius from the nearest property line of 4630 West Walnut Street, and shall be reserved for the 4630 West Walnut Street building.

4. The purchase price shall be added as the total amount to the existing loan modified to 10% interest per annum carried by Seller with the monthly payment of said note to be adjusted to provide for amortization over a 20-year period. The adjusted monthly payments shall start after completion of required conditions and improvements as per the already approved plans by the Santa Cruz County Building and Zoning Department.

5. It is the intention and agreement of the parties that the acquisition of the adjacent properties from Seller will be a temporary one only to meet the residential requirements imposed by the County of Santa Cruz. Buyer intends to convert the entire improvements at 4630 West Walnut to commercial use. To implement the foregoing Buyer and Seller agree that Buyer has option to construct a second story decking on the rear and/or on the side of the subject property to meet the recreational space requirements of the County of Santa Cruz, and by doing so discontinue the requirement for the 400 Sq. Ft. parcel. When that is accomplished, Buyer shall sell back to Seller and Seller shall purchase from Buyer the said 400 Sq. Ft. property at the original $6,000.00 price and the parking area for the sum of $2,000.00 per space. The purchase price will be paid by adjusting the Buyer's note downward in the total amount of the repurchase price and adjustment in the monthly payment.

6. It is further agreed by the parties that as and when Seller or her successors develop the adjacent property at 4622 West Walnut (Assessor's Parcel No. 030-201-36), such improvements will provide for access to the street and to parking for the said 4622 West Walnut Development and to bring about the diminishment of the existing stairway easement used for access to the upstairs units at the subject property, 4630 West Walnut. A copy of said easement is attached hereto as Exhibit "A" and made a part hereof. Thereafter, that easement will be only a fire easement and will be appropriately marked and signed as so as to indicate that restricted and limited use.

7. This agreement for modification of the easement shall be separately executed by the parties, recorded in Santa Cruz County, and shall run with the land and be binding upon the parties hereto, their successors, or assigns.

8. Buyer hereby acknowledges performance by Seller of Paragraphs No. 5,7,8, and 9 of the said Real Estate Purchase Contract of June 21, 1985. Subject to the terms and conditions contained in this agreement, Seller warrants that "The Property" has met all Santa Cruz County requirements for commercial use.

SEE NEXT PAGE FOR NOTARY ACKNOWLEDGEMENT.

WITNESS OUR HANDS this 17th day of June, 1986.

Anthony Silveira
Anthony Silveira
(Buyer)

May Gravenhorst Stauffer
(Seller)

Kandie Silveira
Kandie Silveira
(Buyer)

Peter J. Gravenhorst
(Seller)

(General)

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ } SS.

On June 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony Silveira, Kandie Silveira, May Gravenhorst Stauffer, and Peter J. Gravenhorst

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFC-2056

This Form Furnished By Founders Title Company — STAPLE HERE

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz County
My Commission Expires Nov. 12, 1988

(This area for official notarial seal)

(3)

PARCEL ONE:

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BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

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EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Haynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

EXHIBIT 4

Example of how the Recorded Documents appear

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions contained in said Policy form would be as follows:

1. GENERAL AND SPECIAL COUNTY TAXES FOR THE FISCAL YEAR 1988-1989, A LIEN NOT YET PAYABLE.

2. THE LIEN OF SUPPLEMENTAL TAXES, IF ANY, ASSESSED PURSUANT TO THE PROVISIONS OF CHAPTER 3.5 (COMMENCING WITH SECTION 75) OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

3. A DEED OF TRUST TO SECURE AN INDEBTEDNESS OF THE AMOUNT STATED HEREIN

DATED	:	JANUARY 3, 1975
AMOUNT	:	$12,000.00
TRUSTOR	:	PETER J. GRAVENHORST, A SINGLE MAN AND MAY GRAVENHORST, AN UNMARRIED WOMAN
TRUSTEE	:	GUARANTEE LAND TITLE COMPANY, A CALIFORNIA CORPORATION
BENEFICIARY	:	MAY BEIQUE
RECORDED	:	JANUARY 3, 1975, IN BOOK 2468, PAGE 509, OFFICIAL RECORDS
INSTRUMENT NO.	:	000296
MAILED TO	:	MAY BEIQUE 2600 OLD SAN JOSE ROAD SOQUEL, CALIFORNIA 95073
LOAN NO.	:	NONE SHOWN

4. AN ABSTRACT OF JUDGMENT FOR THE AMOUNT HEREIN STATED AND ANY OTHER AMOUNTS DUE

CASE NO.	:	20 82 2455 MUNICIPAL COURT SANTA CRUZ CALIFORNIA
DEBTOR	:	GRAVENHORST (STAUFFER) MAY
CREDITOR	:	CRANDALL, JAMES WILLIAM
AMOUNT	:	$1,073.00
ENTERED	:	NOVEMBER 17, 1982
RECORDED	:	DECEMBER 20, 1982 IN BOOK 3514 PAGE 387 OFFICIAL RECORDS

5. A COVENANT AND AGREEMENT

EXECUTED BY	:	MAY GRAVENHORST-STAUFFER
IN FAVOR OF	:	COUNTY OF SANTA CRUZ
RECORDED	:	DECEMBER 6, 1984 IN BOOK 3783 PAGE 467 OFFICIAL RECORDS

WHICH, AMONG OTHER THINGS, PROVIDES THE HEREIN DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA THAT IS SUBJECT TO GEOLOGIC HAZARDS. POSSIBLE HAZARDS INCLUDE FLOODING DUE TO OVERBANK FLOODS ALONG SOQUEL CREEK

6. AN AGREEMENT, AFFECTING THE PREMISES HEREIN STATED, BY AND BETWEEN THE PARTIES NAMED HEREIN RELATIVE TO THE MATTERS SHOWN HEREIN UPON THE TERMS AND COVENANTS THEREIN

DATED	:	MAY 20, 1986
EXECUTED BY	:	MAY GRAVENHORST, ET AL
RELATIVE TO	:	ROAD MAINTENANCE AND CIRCULATION AGREEMENT
RECORDED	:	JUNE 18, 1986 IN BOOK 3993 PAGE 69 OFFICIAL RECORDS
AFFECTS	:	PORTION OF SAID LAND AND OTHER PROPERTY

ATTENTION BEING DIRECTED TO THE RECORD FOR FULL PARTICULARS.

SAID INSTRUMENT, AMONG OTHER THINGS, PROVIDES FOR SHARED COSTS.

AN EASEMENT AFFECTING THE PORTION OF SAID LAND AND FOR THE PURPOSES STATED HEREIN, AND INCIDENTAL PURPOSES
IN FAVOR OF : ANTHONY SILVEIRA, ET UX, ET AL
FOR : INGRESS AND EGRESS
AS DISCLOSED BY : ROAD MAINTENANCE AND CIRCULATION AGREEMENT RECORDED JUNE 18, 1986 IN BOOK 3993 PAGE 69 OFFICIAL RECORDS

NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID EASEMENT.
AFFECTS : THE NORTHERLY 12 FEET OF SAID LAND

8. OTHER MATTERS OF RECORD WHICH DO NOT DESCRIBE SAID LAND, BUT WHICH, IF ANY EXIST, MAY AFFECT THE TITLE. THE NECESSARY SEARCH AND EXAMINATION WILL BE COMPLETED WHEN A STATEMENT OF INFORMATION HAS BEEN RECEIVED FROM MAY GRAVENSHORST.

PLEASE FORWARD AS SOON AS POSSIBLE TO ASSIST IN THE EARLY CLEARANCE OF MATTERS OF RECORD AGAINST PERSONS WITH THE SAME OR SIMILAR NAMES.

9. A.L.T.A. MATTERS AS FOLLOWS:

a) WATER RIGHTS, CLAIMS OR TITLE TO WATER, WHETHER OR NOT SHOWN BY THE PUBLIC RECORDS.

b) ANY EASEMENTS NOT DISCLOSED BY THOSE PUBLIC RECORDS WHICH IMPART CONSTRUCTIVE NOTICE AND WHICH ARE NOT VISIBLE AND APPARENT FROM AN INSPECTION OF THE SURFACE OF SAID LAND.

c) ANY FACTS, RIGHTS, INTERESTS OR CLAIMS WHICH ARE NOT SHOWN BY THE PUBLIC RECORDS BUT WHICH COULD BE ASCERTAINED BY AN INSPECTION OF THE LAND OR BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF.

NOTES

A. TITLE OF THE VESTEE HEREIN WAS ACQUIRED BY AN INSTRUMENT PRIOR TO SIX MONTHS FROM THE DATE THEREOF.

B. LAST INSURED DATE: 0

C. THE REAL PROPERTY TAXES BASED UPON THE LATEST AVAILABLE TAX ROLL FOR 1987-1988, WITHOUT REGARD TO ANY REASSESSMENT OR SUBSEQUENT CHANGES FOR SAID COUNTY AND/OR CITY GENERAL AND SPECIAL TAXES, WERE:

FIRST INSTALLMENT	:	$133.46 PAID
SECOND INSTALLMENT	:	$133.46 PAID
ASSESSED LAND VALUE	:	$24,344.00
ASSESSED IMPROVEMENTS	:	$0.00
ASSESSED PERSONAL PROPERTY	:	$0.00
CODE AREA	:	96-006
HOMEOWNER EXEMPTION	:	$0.00
APN	:	030-201-25

EXHIBIT 5

PLANNING DEPARTMENT

COUNTY OF SANTA CRUZ

GOVERNMENTAL CENTER 701 OCEAN STREET SANTA CRUZ, CALIFORNIA 95060

KRIS SCHENK
Director

COPY

October 16, 1985

May Gravenhorst
2190 Camino Los Cerros
Menlo Park, Calif. 94025

SUBJECT: DEVELOPMENT PERMIT - LEVEL IV
PROJECT: APN 30-201-11 APPLICATION NO. 85-695-CDP,RDP,EP

Your application has been reviewed as follows:

Analysis and Discussion: The proposal would allow the conversion of a single family dwelling to an office use with a master occupancy program to allows various C-2 uses. The current proposed uses would include three offices on the first floor and two apartments on the second floor. Originally this building had been constructed as a single family dwelling. A fire destroyed the house and it has since been rebuilt and is currently being used as a dwelling even though it was constructed to meet the building code standards of a commercial building. Both of the proposed uses are allowed in the C-2 Zone District. The attached conditions of approval address the mitigation measures needed to be consistent with the zoning ordinance and the general plan. Any future users will be reviewed under the Level I permit process for consistency. All finding can be made and therefore staff recommends approval.

Findings are on file in the Planning Department.

Staff Recommendation: Approval of 85-695-CDP,RDP,EP according to Exhibit "A" and the attached conditions.

Conditions of approval:

Driveway width shall be a minimum of 24 feet,(12 feet for one-way circulation). Curb cuts shall not exceed 25 feet.

2) Parking Plans shall include at least 7 standard spaces (8 1/2 ft x 18ft.), 1 compact spaces (7 1/2 ft. x 16 ft), and 3 bicycle spaces (2 ft. x 6 ft.).

3) Any proposed lighted in the parking area shall be low-rise light standards (maximum 10-15 feet in height) or light fixtures attached to the building. All lighting fixtures shall be of a non-glare type and directed onto the site and away from adjacent properties and roadways.All light fixtures shall be in keeping with the Soquel Village Design Plan.

4) On-site pedestrian pathways shall be provided for clients and employees to walk safely from parking and street sidewalk areas to the central use area.

5) Electrical power and telephone lines shall be installed underground.

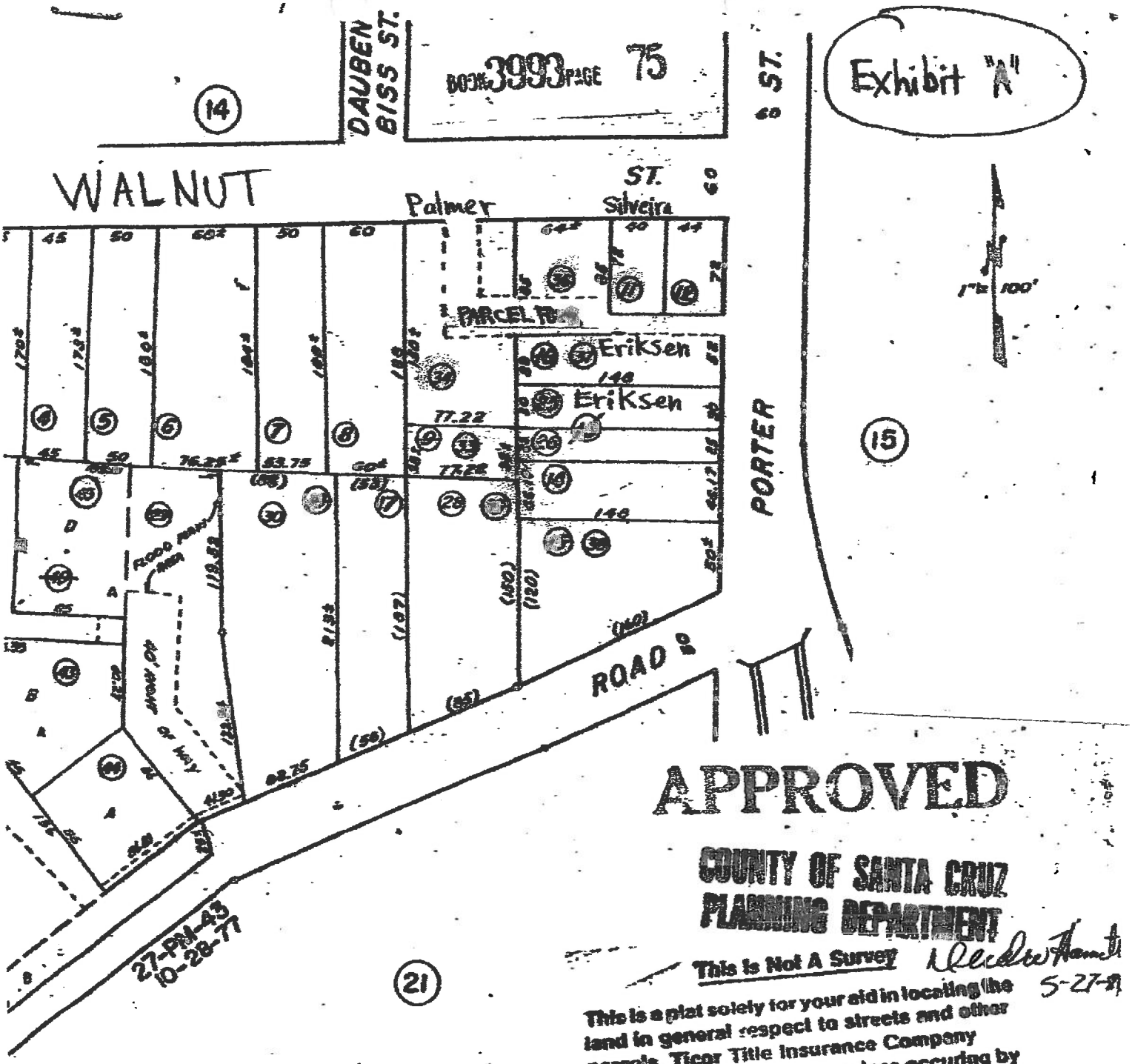
6) A joint parking and circulation agreement shall be established between the following parcels: 30-201-11,25,34,36, and 37. This agreement shall be reviewed and approved by the Planning Department prior to recordation.

c. Landscape Plan

1) A comprehensive landscape and irrigation plan shall be prepared for the entire site, designating all existing and proposed species, gallonage and placement. Irrigation features and a maintenance program shall be specified on the plans. Landscape plans shall be prepared by a registered landscape architect. Native plant species and drought tolerant species shall be used wherever possible. Exotic species are discouraged. Those species specifically adapted to climate and soils on the site are encouraged. (Refer to Landscape Criteria).

2) Outdoor garbage maintenance areas and outdoor equipment storage areas shall be screened from public streets and adjacent properties with a

EXHIBIT 6



Note - Assessor's Parcel Block & Lot Numbers Shown in Circles

Assessor's Map No. 30-20
County of Santa Cruz, Calif.
July 1950

Daryl Fazekas Architect
15621 Loma Vista Ave
Los Gatos, Ca 95032
408 395 9400

Nate MacBeth
Planning Department
1.17.16

Summary, Response to Appeal

I oppose the appeal by Anthony Silveira

He claims that there is an easement across my property. There are no easements of any kind on my property. I have had Bowman and Williams research this claim and prepare a recent Record of Survey. This recorded document clearly shows that no such easement exists. We have submitted it to the Planning Department.

I also submitted to the County the recorded legal documents that prove the removal of all previous easements. My attorney wrote a letter to the county explaining the legal judgement that favors me.

I have invited Silveira to prove his claims by showing me another recorded document that shows an existing easement. He has not shown any such recorded document, because there is no such document.

Mr. Silveira is a sore loser. He was taken to court twice to remove the easements, and he lost twice. All easements have been extinguished from my property, and he knows it. Why does he keep trying to convince me and the County otherwise? I can only venture that he suffers a severe delusion.

Nevertheless, to keep my project moving, I eliminated the planting strip along the border with his property in case a future court rules that there is an easement... which is highly unlikely. We met to discuss a negotiated easement between the two of us, but I have not received any offer from him yet. He brought no proof of easement to the meeting. This is his admission that no easement exists.

EXHIBIT B

In any case, the planning department has added language to the approval, that states that if Mr Silveira can show a recorded easement across my property, he can then remove the fence and drive on my driveway. Until he can show such a recorded document, the fence will stay up. Since the asphalt on my driveway aligns with his driveway, there will be no impediment to the driveways connecting in the future. This protects the County and me if a future judge creates a new easement.

Response to claims by neighbor

Claim 1: My plans do not show any driveway easements on my property.

Response: Why would they? There are no easements on my property. My recorded Record of Survey proves it. Why has he not recorded a Record of Survey showing these imaginary easements? Because there are none.

Claim 2: A proposed easement is attached to his letter.

Response: The little drawing he attached is something he had drawn by some draftsman. There is no name of who drew it on the drawing. It has certainly never been approved by the county, or recorded.

Claim 3: He is still upset that the public hearing was cancelled.

Response: Items on the agenda get continued all the time. In my case, I had already redrawn the plans in response to neighborhood concerns. I reduced the size of the building from 6000 sf to 4000 sf. Since this dropped the building below the 5000 sf level, it now became a Directors Approval project. I also relocated my driveway to border his property, just in case we decided to have cross easements.

Claim 4: He still thinks an easement exists.

Response: This is typical Silveira, he never gives up, even after two losses in court. I have asked him several times to show me the recorded easements he claims are there, but he can't, because there are none.

Claim 5: He will sue for an easement.

Response: Knowing him, I don't doubt it. But this has nothing to do with the County. We have revised the plans so that they allow for a future cross easement. If Silveira

wants to sue during the construction of the building, that is his decision. People sue neighbors, but the county is not involved.

In conclusion, please deny the appeal.

Notice that his only concern is the easement issue. He has not commented on the site plan, or the design and location of the building. I held two events in Capitola to meet with the Soquel Neighbors Association to show them the model and plans of the new building. They love the new design, and can't wait for it to be built.

What I do not understand is.... what happens if he wins the appeal? Does that mean that the County will force me to grant him an easement? The County is not in the business of forcing people to grant easements to neighbors, for no apparent reason. He has street access to Walnut St, he is not landlocked.

He is appealing simply to give me a hard time and to stall the project.

Thank you for your help,

Daryl Fazekas
Architect

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Los Gatos, CA 95032
408 395 9400
DarylFazekas@Gmail.com

THE LAW OFFICE OF
BENJAMIN | LEIBROCK

September 25, 2015

Nathan MacBeth
County of Santa Cruz
Planning Department

Re: 2601 Porter Street, Soquel, CA. / Fazekas

Mr. MacBeth:

This letter serves to address some concerns you may have regarding a claim of an easement at 2601 Porter Street. My client, Daryl Fazekas, is developing a commercial building on the 2601 Porter Street parcel. It is my understanding that neighboring property owner, Anthony Silveira, may have asserted a claim regarding an easement or right over a northerly portion of my client's property, benefiting the Silveira property, situated at 4630 West Walnut Street.

Simply stated, the claim of easement was resolved by the issuance of a Modified Judgment filed October 14, 2011 containing the following language: "Plaintiffs PALMER and SANTA CRUZ PROPERTIES LLC are entitled to the ownership of their respective properties as set forth above free and clear of any claims or rights on the part of Defendants SILVEIRA in or to the said real property of plaintiffs." The Modified Judgment is expressly applicable to the 2601 Porter Street parcel.

Mr. Silviera had previously asserted easement claims, and those claims were litigated with the prior owner of the 2601 Porter Street parcel. The claims in that suit related to easements and the effect of certain "Use" and "Road Maintenance" agreements. That litigation resulted in a Modified Judgment filed October 14, 2011, a copy of which is attached. Per Code of Civil Procedure section 577, "A judgment is the final determination of the rights of the parties in an action or proceeding." That Modified Judgment was upheld on appeal, and is the final and operative judgment in the case.

The Modified Judgment, on its face, did away with "Use" and "Road Maintenance" agreements, and the right under those agreements to obtain parking spaces and recreational space on neighboring properties. The Modified Judgment also, as mentioned above, contained general language establishing the property to be **"free and clear of any claims or rights on the part of Defendants SILVEIRA...."**

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www.NBCLLAW.com

EXHIBIT C

Mr. Silveira - apparently unhappy with the outcome - appealed, and in the end the appellate court upheld and affirmed the Modified Judgment filed October 14, 2011.

At paragraph 2, that Modified Judgment states that "Plaintiffs PALMER and SANTA CRUZ PROPERTIES LLC are entitled to the ownership of their respective properties as set forth above free and clear of any claims or rights on the part of Defendants SILVEIRA in or to the said real property of plaintiffs." That plain and unambiguous language indicates there to be no claim of Silveira.

While Mr. Silviera may once again be unhappy with the outcome of the case, and in particular with the language stating that the subject property is "free and clear of any claims or rights on the part of Defendants SILVEIRA" the simple fact is that the plain language of the Judgment overcomes his effort to interfere with my client's effort to secure permits and develop the property.

Finally, my client recently recorded a Record of Survey, by Bowman and Williams Land Surveyors, showing no easement on the 2601 Porter Street parcel. We find no Record of Survey disputing this. Based on the plain language of the judgment and the survey, this project should move forward. If you would like to discuss any aspect of this letter, please let me know. I remain available.

Sincerely,

NATHAN BENJAMIN

NCB:adb
Cc: client

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

ALAN B. PALMER, as Trustee, etc., et al., Plaintiffs, Cross-defendants, and Respondents, v. ANTHONY P. SILVEIRA, as Trustee, etc., et al., Defendants, Cross-complainants and Appellants.	H037588 (Santa Cruz County Super. Ct. No. CV163244)

Plaintiffs Alan Palmer and Santa Cruz Properties LLC brought this action against neighboring landowners Anthony and Kandy Silveira, to expunge certain recorded agreements between defendants and the parties' common predecessors in interest insofar as those agreements might establish or give record notice of servitudes burdening plaintiffs' property. From a judgment in plaintiffs' favor, defendants appeal. Plaintiffs contend that defendants have not preserved their challenges to the judgment. We reject this contention, but conclude that defendants have not carried their burden of establishing reversible error. Accordingly, we will affirm the judgment.

BACKGROUND

It is undisputed that defendants own property at 4630 West Walnut Street in Soquel, unincorporated Santa Cruz County.[1] Plaintiff Palmer owns property two doors to the west of defendants' parcel. Plaintiff Santa Cruz Properties owns two parcels fronting on Porter Street, the more northern of which touches defendants' southern boundary. Prior to 1986, all of these properties were apparently owned by May Gravenhorst Stauffer and Peter J. Gravenhorst (collectively, Gravenhorst/Stauffer).

On June 21, 1985, defendants entered into an agreement to purchase 4630 Walnut Street from Gravenhorst/Stauffer. Although the record fails to competently establish many of the pertinent details of the sale, recitals in the documents at issue suggest that by the time the sale closed, the property was being used for partly residential and partly commercial purposes.[2] According to defendants' trial brief, the purchase agreement "was conditioned upon [their] ability to convert this property from residential to commercial property." They assert that among the permit conditions was the provision of eight parking spaces, which was four more than were located on the 4630 Walnut parcel. The county also required that defendants enter into a joint parking and circulation agreement with Gravenhorst/Stauffer, to be reviewed and approved by county planners.

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[1] Exemplifying the seeming insouciance with which both sides seem have conducted this litigation, defendants' property is erroneously identified in both the complaint and cross-complaint as "4630 Porter Street." Moreover, in their trial brief plaintiffs describe defendants' property as being situated "at the corner of Walnut Street and Porter Street," though six lines later they describe it as "parcel 11" on an attached map, which clearly shows a parcel 12 separating parcel 11 from Porter Street.

[2] An October 1985 permit recites that a house on the property had burned down and been replaced by a structure "constructed to meet the building code standards of a commercial building." The document recited that the building was then being "used as a dwelling," but that its "current proposed uses would include three offices on the first floor and two apartments on the second floor." A year later , the use agreement referred to the building's "partial current use as residential property." The record does not competently establish the present use of the building.

In June 1986, the parties executed, and defendants recorded, the two agreements that are the subject of this action. One of them, entitled "Use Agreement," recited the parties' intention to address certain requirements "to be imposed by" county planning authorities "on the said property related to its partial current use as residential property." As here relevant it provided that "[i]n the event the County . . . imposed [*sic*] additional parking requirements and a recreational area requirement covering the residential use," the sellers would "make available to Buyer on adjacent properties owned by Seller . . . , . . . four parking spaces, and a required 400 Sq. Ft. vacant parcel to be improved and landscaped at Sellers[']expense as required by Santa Cruz County." Defendants would pay $8,000 for the parking spaces and $6,000 for the vacant parcel. Under stated circumstances, defendants would be obligated to sell these spaces back to the sellers at the same price. The agreement addressed other matters as well, but is discussed by the parties only as it called for the sale of the parking spaces; we will therefore refer to it as the "parking agreement."

The second agreement, entitled "Road Maintenance and Circulation Agreement," recited that it "pertain[ed] to" a "right of way described as Parcel Four" in an attached exhibit. The exhibit depicted a road or causeway apparently traversing or touching upon five properties, including defendants' property, two of plaintiffs' four parcels, and another property owned by the Bermans, who were named in the pleadings below but not brought into the action. The agreement set out certain rights and obligations with respect to the depicted roadway, stated that "the rights and responsibilities contained in the Agreement shall constitute covenants running with the land," and expressed the parties' intent "to obligate themselves, their heirs, personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement." However the agreement further provided that "[d]epending on when the commercial development/improvements are approved" for the remaining parcels,

"vehicle, pedestrian, parking and circulation arrangements shall be planned and agreed in writing between each parcel mentioned above." In addition, it was said to be the sellers' intention that they or their successors would "further develop the existing vehicle and pedestrian right of way to enter off Porter Street to run through [three specified parcels] and cut out of [one of them] to ultimately exit into West Walnut." The agreement also referred to an existing "recorded right of way" already serving defendants' property. We will refer to this agreement as the "road agreement."

Plaintiffs commenced this action on March 25, 2009, by a verified complaint in which they alleged that they were "engaged in a business enterprise involving potential integration of their properties in connection with parking and traffic flow for . . . improvements to be constructed under the Santa Cruz County permit process." The first cause of action sought declaratory relief, in that plaintiffs contended that the parking and road agreements "rested upon specific conditions which never took place and for that reason endow[ed] defendants with no assertable rights," whereas defendants contended that the instruments "comprehend the eventual development of the properties now owned by plaintiffs and that the parking rights contained in these documents were paid for and persist in their vitality." Plaintiffs sought "a declaration of rights and duties of the parties respecting the validity" of the instruments in relation to plaintiffs' properties.

In the second cause of action, plaintiffs sought a decree quieting title in themselves and declaring their property "to be free and clear of any encumbrances, rights of way, or other obligations resulting or arising from the recordation of" the challenged instruments. In the third cause of action they sought "a judgment cancelling" those instruments "from the public records of Santa Cruz County, California."

On May 6, 2009, defendants filed an answer consisting of a general denial and a number of affirmative defenses.[3] They also filed a verified "Cross-Complaint for Damages (Slander of Title)" alleging that plaintiffs had wrongfully failed to disclose the road and use agreements in an application seeking permits to develop plaintiffs' parcels. This conduct was alleged to have "adversely impaired the vendibility of cross-complainants['] property," causing damages in unspecified amounts. The conduct was also alleged to have been malicious, warranting punitive damages. Defendants subsequently sought and obtained leave to amend the cross-complaint to add the previously unnamed neighbors, Dale and Terry Berman, as necessary parties and to assert additional causes of action for declaratory relief, quiet title, and injunctive relief. It does not appear that the Bermans were ever served with the cross-complaint—or the complaint, in which they had also been named.

In a trial brief plaintiffs asserted that the road and parking agreements "address[ed] an entirely conditional set of circumstances which never took place." In essence, they claimed that the instruments were intended to address certain planning requirements that defendants might encounter in converting their property to commercial use, but that the county had never imposed these requirements and the instruments no longer served any purpose. "There has never been a 'road' in the parcels described," plaintiffs' counsel wrote; "instead, without any interference or additional conditions imposed by the County of Santa Cruz, Silveiras have continuously maintained their property with a commercial

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[3] In filing a general denial, counsel apparently overlooked the fact that the complaint was verified. This required that "the denial of [its] allegations . . . be made positively or according to the information and belief of the defendant." (Code Civ. Proc., § 431.30, subd. (d); see 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1061, p. 498.) Indeed the form answer filed by defendants plainly stated that it could only be used if "[t]he complaint is not verified" or "the action is subject to the economic litigation procedures of the municipal and justice courts." The answer was therefore vulnerable to a motion to strike, but its deficiencies apparently went unnoticed.

rental on the first floor and residential apartments on the second floor. Parking has never been an issue." The memorandum further asserted that in recent years, a parking district had been formed "providing more than ten public parking spaces . . . across from [defendants'] property." It described the parking agreement as a "hoax" under which plaintiffs could satisfy planning authorities, if necessary, by " 'buy[ing]' additional spaces for parking and then 'sell[ing] back' the spaces after satisfying the County requirements."

Defendants asserted in their trial brief that they bought their property from Gravenhorst/Stauffer on the condition that they would be able to convert it "from residential to commercial [use]." Toward that end, "application was made" to the county "for a development permit." A permit was granted, but required that four parking spaces be provided in addition to the four already on defendants' property, and that defendants and Gravenhorst/Stauffer "enter into a joint parking and circulation agreement to be reviewed and approved by the Planning Department." Defendants acknowledged that the county had not yet required them to actually furnish the additional four parking spaces prescribed by their use permit, but suggested that it might yet do so, stating, "[S]hould the County impose the actual parking requirements . . ., [defendants are] relying on the terms of the Use Agreement to meet the parking requirements and not lose the commercial use of their property."[4] In their legal discussion, defendants acknowledged that "A restriction or covenant may not be enforceable where there has been a material change in conditions to the extent that the original purpose for the restriction becomes obsolete." This test was not satisfied, however, by the mere fact that plaintiffs now sought to develop what had

[4] Throughout the proceeding defendants have described the parking agreement as intended to accommodate the *commercial* use of their property. They ignore the plain recitals in the use agreement itself that its purpose was to accommodate requirements growing from the building's "partial current use as *residential* property." (Italics added.)

been the Gravenhorst/Stauffer property, since that was "precisely the event that both the County . . . and [defendants] considered in making these agreements with . . . the predecessor in interest to plaintiffs."

Trial took place on August 17, 2011. According to the minutes, testimony was received from plaintiff Alan Palmer and defendant Anthony Silveira. Seven exhibits were received, including a copy of a project, a planning document, a parcel map, and several color photos of the property. Plaintiffs' counsel made a motion for judgment, which the trial court denied, instead taking the matter under submission. The record contains no indication that any party requested a statement of decision.

On August 29, 2011, the court issued a document entitled "Judgment," stating in relevant part, "Judgment is rendered in favor of the Plaintiff and against the Defendants as to the Plaintiff's three causes of action: 1) Declaratory relief, 2) Quiet Title, and 3) Cancellation of Instruments. The Court considers this matter as a good faith dispute and appreciates the manner in which counsel and the parties presented their respective views. However, the subject Road Maintenance and Circulation Agreement and the Use Agreement were recorded in June, 1986. Over the next twenty-five years, none of the events which were contemplated with the creation of these agreements have taken place. A review of Civil Code Sections 885.010, 885.020 and 885.030 lead [*sic*] this Court to the conclusion that invalidation of these instruments, in order to remove whatever clouds upon title they may be causing, is appropriate. It should further be noted that circumstances have changed in relationship to the Santa Cruz County Ordinances adopted in 1995 and 2009.[5] Judgment in favor of the Plaintiff on the three causes of action outlined within the complaint. Judgment in favor of the Cross-Defendant on the related cross-action."

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[5] This was apparently a reference to ordinances, of which plaintiffs sought judicial notice, creating an "employee/owner permit parking program" to be "administered by the redevelopment agency administrator." (Santa Cruz County Code., § 9.43.135.)

On September 7, 2011, plaintiffs filed a motion to modify the judgment. Although only the notice of motion has been included in the clerk's transcript, we requested that the clerk also transmit copies of the supporting declaration and memorandum of points and authorities, which we have augmented the record to include. The gist of the motion was that the "Judgment" of August 29 omitted any descriptions of the affected properties, and was thus insufficient to give record notice of "the action taken by the Judge after the court trial . . . ." Defendants filed no opposition to the motion. When it was heard, counsel for defendants appeared and stated that he had communicated a concern to plaintiffs' counsel that the proposed judgment included an easement that had not been at issue in the litigation. He understood that plaintiffs' counsel had deleted the objectionable language. When the court asked whether the documents as so amended "meet with your approval," he replied, "Yes. I just want to make it clear for the record that the Michael Liles easement is not a part of this litigation." Plaintiff's counsel affirmed that he understood this to be the case. The court indicated that it was signing the modified judgment.

The modified judgment reiterated the language of the original "Judgment," but followed it with four paragraphs spelling out the relief to which plaintiffs were entitled. It also incorporated some 14 pages of attachments including property descriptions and the two challenged agreements. It declared that plaintiffs were "entitled to the ownership of their respective properties as set forth above free and clear of any claims or rights on the part of Defendants . . . in or to the said real property of plaintiffs," and that the two instruments "are hereby cancelled."

On November 10, 2011, defendants filed a notice of appeal "from the Order Granting Motion to Modify Judgment . . . entered on October 11, 2011 . . . ." In a notice designating the record on appeal, they requested a reporter's transcript only of the oral

proceedings at the hearing on the motion to modify the cross-complaint; no transcript of the trial was requested.

DISCUSSION

I. *Scope of Appeal*

Prior to the completion of briefing, plaintiffs filed a motion to dismiss the appeal on the ground that defendants' failure to appeal from the "underlying judgment" of August 29, 2011, precluded a challenge to the merits of the trial court's adjudication. They contended in effect that the later judgment was not separately appealable because it made no substantive change in the earlier one, and that insofar as it did effect a change, defendants' counsel had consented to it. We denied the motion.

In their brief on appeal plaintiffs again raise defendants' failure to appeal from the earlier "judgment," this time as a ground to hold that defendants are barred by "waiver and estoppel" from contesting the correctness of the trial court's determination on the merits. They assert that plaintiffs could have appealed from the first judgment, and that having failed to do so they can only challenge the second judgment to the extent that it differs from the first. Since their counsel consented to any differences, the argument continues, no part of the judgment is open to appellate review.

Plaintiffs could indeed have appealed from the "judgment" of August 29, in the sense that they could have filed a notice of appeal referring to it. We are not persuaded, however, that such an appeal would properly lie, i.e., would confer jurisdiction on this court over the substantive controversy between the parties. Rather we have concluded that the document issued on August 29 was not an appealable judgment. It did not fulfill the basic function of a judgment, which is to effect "the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) To perform this function, " ' "[a] judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by

specifically *denying or granting the remedy* sought by the action." ' " (*Kosloff v. Kosloff* (1944) 67 Cal.App.2d 374, 379-380, italics added, quoting *Makzoume v. Makzoume* (1942) 50 Cal.App.2d 229, 232.) A judgment in favor of a defendant must ordinarily include an "express declaration of the ultimate rights of the parties, such as that 'plaintiffs shall take nothing,' or 'the action is dismissed.' " (*Swain v. California Casualty Ins. Co.* (2002) 99 Cal.App.4th 1, 6; *Davis v. Superior Court* (2011) 196 Cal.App.4th 669, 673.) Where judgment is for the plaintiff, it must actually *award the relief* to which the court has found him entitled. (See *Hucke v. Kader* (1952) 109 Cal.App.2d 224, 229 [statement in judgment that " 'plaintiffs have judgment as prayed for in this complaint' " would be "deleted from the judgment" as "uncertain and indefinite"].)

Here plaintiffs sought three remedies: declaratory relief concerning the current validity of the road plan and the use plan, a decree quieting title as against those instruments, and a judgment cancelling them. The purported judgment of August 29 failed to properly award any of these remedies. It is most grievously deficient as a judgment quieting title. Such a judgment must *decree* the state of title as the court finds it to be. As with any judgment affecting title to real property, it must specifically identity the lands affected, using a description "so certain that a stranger may be able to clearly identify the particular tract." (*People v. Rio Nido Co.* (1938) 29 Cal.App.2d 486, 488.) It "must be as clear and explicit as a deed which purports to convey real property." (*Id.* at p. 489; *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742, 777.) That is, it must set forth the affected property interests with sufficient particularity that when recorded it will effectively convey notice of their status as determined by the court. A judgment which purports to adjudicate property rights, but in which "nothing is described," may be "pronounced a nullity for uncertainty of description." (*Newport v. Hatton* (1924) 195 Cal. 132, 156.) " '[A]n impossible, wrong, or uncertain description, or no description at all, renders the judgment erroneous and void.' " (*Newman v.*

Cornelius (1970) 3 Cal.App.3d 279, 284, quoting *Newport v. Hatton, supra,* 195 Cal. 132, 156; *Lechuza Villas West v. California Coastal Com'n* (1997) 60 Cal.App.4th 218, 242.)

Here the original judgment failed entirely to describe the affected property or the interests adjudicated. If accepted by the county recorder for recordation—a dubitable hypothesis—it would have failed to impart notice that the challenged agreements had ceased to burden plaintiffs' property. Indeed this is precisely why plaintiffs moved to "modify" the purported judgment. As counsel wrote in support of that motion, the August 29 instrument "d[id] not reflect with certainty in the Official Records of Santa Cruz County, California, the effect of rulings in favor of plaintiffs on the issues of declaratory relief, quiet title, and cancellation of instruments." This failure rendered that instrument ineffectual to clear plaintiffs' title of the cloud they brought this action to eliminate.

Much the same is true with respect to the remedy of cancellation of instruments. The statute governing such relief contemplates that a judgment for a successful plaintiff will not only adjudge the challenged instrument "void or voidable" but order that it be "delivered up or canceled." (Civ. Code, § 3412.) Indeed the original formulation was "delivered up *and* canceled," the latter term being used in its original sense of physically striking or obliterating the language found "void or voidable." (See *Upton v. Archer* (1871) 41 Cal. 85, 88 [judgment reversed "with directions to enter a judgment, ordering the deed to be delivered up and canceled"]; *Lewis v. Tobias* (1858) 10 Cal. 574, 576 [discussing equitable power "to order a written instrument to be delivered up and canceled"]; *Nelson v. Meadville* (1937) 19 Cal.App.2d 68, 69 [judgment "decree[d] that the instruments in question were void; that defendant was entitled to no rights thereunder; and that the instruments be canceled"]; American Heritage College Dict. (3d ed. 1997), p. 204 ["cancel" defined as "To cross out with lines or other markings"; originating in

Latin *cancellare*, "to cross out"]; Black's Law Dict. (9th ed. 2009), p. 233, col. 2 ["To destroy a written instrument by defacing or obliterating it"].)[6] In modern times courts typically forego the physical act of cancellation; but the judgment must still declare the invalidity of one or more specified instruments. (See *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 638 [judgment "provided, inter alia, that the deed of trust executed by Irene Basurto on October 20, 1976, is void.)

Even as a judgment for declaratory relief we find the instrument of August 29 deficient under the circumstances here. Such a judgment should, as the name indicates, take the form of a "declaration" concerning the rights and obligations in controversy. (Code Civ. Proc., § 1060.) Courts have often overlooked deficiencies in this regard where the intendment of the adjudication is sufficiently clear. (See, e.g., *Kelso v. Sargeant* (1936) 11 Cal.App.2d 170, 179 [declaratory judgment "should be entered in a peculiarly declaratory form," but judgment was sufficient where "in substance and effect" it fixed "not only of the rights of the respective parties, but a determination of the construction which should be given to" their agreement]; *McLean v. Tucker* (1938) 26 Cal.App.2d 126, 129 [despite failure to "specifically set forth the rights of the parties as a declaratory judgment," judgment adequately determined their rights by directing delivery of deed and quieting title in defendant]; *R.G. Hamilton Corp. v. Corum* (1933) 218 Cal. 92, 94-95 [judgment merely declaring parties' rights to be as stated in findings was

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[6] The concept of physical "cancellation" is illustrated by *Estate of Olmstead* (1898) 122 Cal. 224, 228, where the court used the term to describe some of the marks a decedent had made on a will: "[T]he lines, interlineations, erasions, cancellations, and new writings of words, phrases, or sentences were very numerous. . . . Each and all of [the decedent's seven signatures] were canceled by two ink lines drawn through and across their full length. . . . Some of the clauses in the will were canceled by ink lines drawn the full length of every line of the clause, and by cross lines extending from the top to the bottom. . . . The 'two' was canceled by two ink lines drawn through the word, and the word 'one' written in ink immediately over it."

"rather unusual" and "not a practice to be commended," but reviewing court could not say it "ha[d] rendered the judgment ineffectual as long as the rights and duties of the respective parties may be ascertained therefrom"; sufficiency "is to be judged from its substance rather than from its form"].) But a judgment in the form of the August 29 instrument was virtually useless to plaintiffs. Although it alluded to the road and parking agreements and by clear inference found them no longer enforceable, it did not define them with sufficient specificity to allow any stranger to the judgment to know what had been invalidated.[7]

It thus appears that the instrument of August 29, 2011, was ineffectual as a final judgment determining the rights of the parties. It was, in at least this sense, " 'void.' " (*Newman v. Cornelius*, *supra*, 3 Cal.App.3d at p. 284.) Some judgments are appealable even though void in some sense. (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 93, p. 155.) But "[i]f the invalidity results from the failure to comply with the formal requirements of entry of a final judgment or order, it is more properly characterized as a preliminary order or purported judgment that is not a final judgment at all." (*Id.* at p. 156.) We believe this principle applies to the instrument of August 29, which is best characterized as a "purported judgment that is not a final judgment at all." (*Ibid.*) Indeed, if not for its label and the recitals that "[j]udgment is rendered," it would most readily be viewed as a notice of tentative or intended decision. It awards no relief of any

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[7] Moreover, even if the August 29 instrument is deemed sufficient as a judgment for declaratory relief, it cannot be deemed a final judgment on that basis because of its failure to effectively adjudicate the other two causes of action. "The rule has long been well settled that there can be but one final judgment in an action regardless of how many counts the complaint contains or how many issues of law or fact are presented. The purpose of this rule is to prevent piecemeal decisions and multiple appeals." (*McCarty v. Macy & Co.* (1957) 153 Cal.App.2d 837, 840; see *Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 ["Ordinarily, there can be only one final judgment in an action and that judgment must dispose of all the causes of action pending between the parties."].)

kind. It really does nothing more than identify the prevailing party and give some indication of the court's reasons for ruling in that party's favor. We conclude that it was not appealable, and that defendants' failure to appeal from it has no bearing on appellate jurisdiction or the scope of issues open to review.

A slight additional problem is presented by defendants' recital in the notice of appeal that the appeal is taken from the "Order Granting Motion to Modify Judgment," rather than the "modified" judgment itself. This designation is frankly bewildering, since the motion to "modify" the "judgment" was unopposed and counsel for defendant appeared at the hearing only to ensure that an amendment to the proposed judgment, which plaintiffs' counsel had agreed to make, was in fact made. Asked whether the documents submitted to the court for execution "meet with your approval," counsel replied, "Yes." Plaintiffs suggests that this assent itself precludes any challenge to the judgment, but we think it plain that counsel was consenting only to the form of the judgment as an expression of the court's determination—not to its substance, with which defendants obviously took issue. The fact remains that the notice of appeal fails to designate the judgment, instead purporting to appeal from the order authorizing the judgment to be entered.

We do not find this misstep fatal to the appeal. Where a notice of appeal purports to target an order preliminary to judgment, appellate courts commonly preserve their jurisdiction by construing the notice to refer to the subsequently entered judgment. (See, e.g., *Vesely v. Sager* (1971) 5 Cal.3d 153, 158, fn. 2 [notice designating order sustaining demurrer and granting motion to strike deemed to appeal from subsequently entered judgment of dismissal].) " 'Whether the error in the notice of appeal was merely one in describing the order or judgment or whether it was caused by appellant's ignorance, the notice may without prejudice to respondent reasonably be interpreted to apply to an appealable order or judgment rendered before the appeal was noticed.' " (*Hollister*

Convalescent Hosp., Inc. v. Rico (1975) 15 Cal.3d 660, 669, quoting *Vibert v. Berger* (1966) 64 Cal.2d 65, 70.)

We conclude that defendants' notice of appeal was sufficient to bring up the merits of the judgment for appellate review.

II. *Defendants' Burden on Appeal*

Although defendants' brief is far from a model of clarity, we understand it to raise three claims of error: (1) The court relied on statutes first cited in a letter submitted by plaintiffs' counsel after trial, to which defendants were given insufficient opportunity to respond. (2) These statutes concerned powers of termination, and thus had no proper application here. (3) Insofar as the court's judgment depended on changed circumstances, there was no evidence to support it.

In presenting these arguments defendants offend a number of basic rules of appellate procedure and review. First and most fundamentally, "a party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) This requires (1) a record sufficient to establish the nature and relevant circumstances of the *actions by the trial court* which are challenged on appeal; (2) *argument and authority* establishing that these actions offended governing legal principles; and (3) a particularized demonstration, again based on an adequate record, that the error was *prejudicial* to the appellant.

Defendants have not brought up a transcript of the trial; therefore any assertions about the state of the evidence must fall on deaf ears. Nor have defendants, for the most part, offered a coherent argument in support of their claims of error. They have, in short, failed to shoulder their burden as appellants. We have nonetheless detected sufficient *suggestion* of error in their brief to conclude that such error as they do assert has either not been demonstrated to have occurred, or has not been shown to be prejudicial.

III. *Error*

A. Reliance on Post-Trial Letter

Defendants assert that the court erred by relying upon authority and arguments first presented in a post-trial letter from plaintiffs' counsel to the court. The letter bears the date of November 9, 2009, which was nearly two years prior to trial, but both parties acknowledge that this was an error and that the letter was sent some time after trial.[8] In the letter, counsel for plaintiffs argued that statutes governing the duration of powers of termination (Civil Code sections 895.010 et seq.) furnished authority "[b]y analogy" for granting relief here. In its judgment, the trial court alluded to those statutes in concluding that "invalidation of these instruments, in order to remove whatever clouds upon title they may be causing, is appropriate."

Defendants argue that the letter was in effect a supplemental trial brief, and as such was deficient in form, lacking in particular the proof of service required by Code of Civil Procedure sections 1012, 1013, and 1013a. Assuming this premise is sound, mere defects in form can rarely if ever justify a reversal on appeal. Rather we must "disregard any error . . . or defect, in the pleadings or proceedings which," in our opinion, "does not affect the substantial rights of the parties." (Code Civ. Proc., § 475.) We cannot set aside a judgment unless it "appear[s] from the record" that the error or defect complained of "was prejudicial," and that by reason thereof, the complaining party "sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed." (*Ibid.*)

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[8] Further illustrating the level of care seemingly exercised by both sides in this case is the statement in plaintiffs' brief that the letter was mailed "[a]t some point after the trial date, October 17, 2011." In fact trial occurred on *August* 17, 2011. No relevant event occurred on October 17.

Defendants make little effort to demonstrate that plaintiffs' post-trial letter inflicted any prejudice on them. They only assert that they were "never formally afforded the opportunity to respond" to it. The pregnant use of the qualifier "formally" grounds an inference that defendants in fact received the letter, which bears the notation, "Copy: Reid Schantz," indicating—according to familiar conventions of business correspondence—that a copy of the letter was sent to defendants' attorney. Beyond that the record is entirely silent with respect to the extent of defendants' opportunity to respond. Even the timing cannot be inferred because the date of the letter is unknown.

Plaintiffs' counsel asserts that the foregoing notation is sufficient to raise "the presumption of receipt under Evidence Code §641." This contention is specious; the presumption would require evidence, entirely lacking here, that the letter was "correctly addressed and properly mailed." (Evid. Code, § 641.) Still, an *inference* that defendants' counsel received the letter seems warranted by the facts that the letter alludes to transmission, that counsel has never denied receipt, and that he objects only to the form of the letter and the absence of a "formal" opportunity to respond.

In any event all defendants have shown is that the court adopted a legal rationale that was submitted to it in an irregular, and perhaps improper, form. It is impossible to say that the irregularities had any effect on the outcome. As will appear below, we are confident that they did not.

B. Reliance on Inapposite Statutes

Defendants suggest that the power-of-termination statutes had no bearing on the issues here. We agree that the statutes' pertinence is at best extremely attenuated. They address situations where the grantor of a fee simple estate has reserved the power to terminate the estate upon the occurrence of a specified condition. (Civ. Code, § 885.010, subd. (a)(1).) This action, in contrast, concerns servitudes imposed and assumed by

adjoining property owners by mutual assent. We see no particular resemblance between any of these servitudes and a power of termination.

However, the mere fact that the court relied on dubious authority cannot by itself lead to reversal. An appellate court "review[s] the judgment, not the reasoning of the court below. [Citation.] '. . . [A] ruling or decision correct in law will not be disturbed on appeal merely because it was given for the wrong reason. If correct upon any theory of law applicable to the case, the judgment will be sustained regardless of the considerations that moved the lower court to its conclusion. [Citations.]' (*Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 568.)" (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 769-770.) "Two theories seem to be involved here: *first*, that the appellate court reviews the action of the lower court and not the reasons for its action; *second*, that there can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct." (9 Witkin, *supra*, Appeal, § 346, p. 397.)

As we read the judgment, the trial court only cited the power-of-termination statutes as a guide to what might constitute a reasonable time for defendants to exercise whatever rights they had under the agreements at issue here. As discussed in greater detail below, we believe the agreements could be reasonably understood to create interests that were both conditional and limited in duration. It was apparently in reference to that aspect of the controversy that the court viewed the statutes governing powers of termination as possessing some analogical force. While we find the court's reliance on them somewhat questionable, we cannot say that it inflicted any prejudice on defendants, because we think the judgment is sustained on the grounds set forth below.

*C. **Parking Agreement***

We find ample grounds on the face of the parking agreement to conclude that it was unenforceable and subject to cancellation insofar as it might affect plaintiffs or their

title. The language of the agreement indicates that the obligations it created were explicitly predicated on a condition that never came to pass, that they were expressly limited in duration, and that they were not intended to bind Gravenhorst/Stauffer's successors in interest, including plaintiffs.

The chief right conferred on defendants by the parking agreement—indeed the only one discussed by the parties—was a right to purchase four parking spaces on neighboring properties. Although neither side mentions the fact, the agreement also granted defendants a right to purchase a 400 square foot "recreational area," sometimes apparently referred to as a "sitting yard." The agreement plainly stated, however, that these rights would only come into being "[i]n the event the County of Santa Cruz imposed additional parking requirements and a recreational area requirement . . . ." Defendants conceded below that as of the time of trial, the county "ha[d] not required . . . [defendants to] obtain the additional 4 parking spaces contemplated in the Use Agreement."

It is of course the rule that an interest depending on a condition passes in or out of existence in accordance with its conditional nature. (See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382, pp. 446-447.) Thus the right to purchase parking and recreational spaces here never came into existence. Defendants implied, however, that it might yet do so, stating that "should the County impose the actual parking requirements," they were "relying on the terms of the Use Agreement" to satisfy those requirements and "not lose the commercial use of their property." They thus asserted a right that was in effect *perpetual*. But the agreement itself squarely contradicts such a claim, stating that the right was to be a "temporary" one lasting only so long as the existing "partial residential use" of the property, which defendants intended to end by converting the property entirely to commercial use. This at any rate is how we read the

language set forth in the margin.[9] Defendants have offered no alternative reading; indeed the parties have scarcely troubled themselves with the language of the agreements at all. But the agreement explicitly contemplated that the rights granted would be of limited duration, which must be taken to mean that defendants were granted a reasonable time within which to exercise it, at the conclusion of which the obligation would be extinguished whether they had done so or not. (See Civ. Code, § 1657 ["If no time is specified for the performance of an act required to be performed, a reasonable time is allowed."].)

The agreement also contains intrinsic indications that the time contemplated by the parties was well short of the 25 years that had elapsed at trial. It provided that payment for the parking and recreational spaces—both when purchased by defendants, and when sold back to Gravenhorst/Stauffer—would be made by adding the purchase price to, or subtracting it from, the balance of an existing loan between the parties. It appears highly unlikely that this payment mechanism would remain available after a sale of the burdened property by Gravenhorst/Stauffer, because the purchase price would then be payable to their successors, who could not be expected to assume the loan in question. Certainly this payment mechanism would cease to exist when the loan was paid off. Although the term of the loan is not unmistakably disclosed by the record, the agreement refers to "amortization over a 20-year period." The failure to provide for an alternative payment

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[9] "It is the intention and agreement of the parties that the acquisition of the adjacent properties from Seller will be a *temporary one only* to meet the residential requirements imposed by the County of Santa Cruz. *Buyer intends to convert the entire improvements at 4630 West Walnut to commercial use.* To implement the foregoing Buyer and Seller agree that Buyer has option [*sic*] to construct a second story decking on the rear and/or on the side of the subject property to meet the recreational space requirements of the County of Santa Cruz, and by doing so discontinue the requirement for the 400 Sq. Ft. parcel. *When that is accomplished, Buyer shall sell back to Seller and Seller shall purchase from Buyer the said 400 Sq. Ft. property at the original $6,000.00 price and the parking area for the sum of $2,000.00 per space.*" (Italics added.)

mechanism strongly suggests an intention that any purchase and resale would be completed at least that soon.

The parking agreement also expressly reserved to Gravenhorst/Stauffer the power to determine the *location* of the spaces to be sold. It provided that they could be situated on any of the "adjacent properties owned by Seller, with the location of such to be determined by Seller," provided that the locations (1) conformed to county requirements, and (2) were within 80 feet of defendants' property. The agreement provided no mechanism for determining the location of these spaces after the potentially burdened properties had come under separate ownership, as had occurred by the time this matter arose. For defendants to now exercise the purchase rights contemplated by the agreement, someone would have to determine which of their neighbors would provide space, and how much, and where. We doubt that any private actor could successfully claim the power to make such a selection, or that any court would undertake to do so. In any event, the agreement's failure to provide for the selection of locations after Gravenhorst/Stauffer no longer owned the properties is more evidence that the obligation to provide parking and recreational space was personal to them and that if defendants were to exercise the correlative right at all, they had to do so before the promisors divested themselves of the means to perform.

That the obligation to provide parking and recreational space was personal to Gravenhorst/Stauffer is also readily inferred from the agreement's complete failure to provide otherwise. This failure cannot be attributed to mere oversight, because the Use Agreement pointedly declares another obligation, not at issue here, binding on the parties' successors in title. Paragraph 6 states that the occurrence of specified conditions will cause an "existing stairway easement" benefiting defendants' property to undergo "diminishment," such that it becomes "only a fire easement," to be "appropriately marked and signed" as such. The next paragraph states, "This agreement for modification of the

easement shall . . . run with the land and be binding upon the parties hereto, their successors, or assigns." There is no similar recital with respect to any other provision of the agreement, including the right to purchase additional parking and recreational spaces. The use of language of appurtenance in reference to the stairway easement, but *not* in reference to the parking/recreational spaces, supports an inference that the latter obligation was intended to bind only Gravenhorst/Stauffer.

So far as this record shows, the trial court was bound to reach the conclusion it did with respect to the parking agreement. That agreement plainly did not grant defendants a perpetual right to purchase space on neighboring properties. To the extent it burdened those properties at all—a doubtful proposition with respect to the rights at issue here—the right could readily be found to have become unenforceable by the time the matter was adjudicated. The court acted quite properly in expunging from plaintiffs' title whatever shadow remained of that erstwhile right.

D. Road Agreement

The road agreement presents a more difficult case than the parking agreement because we see nothing on its face rendering it unenforceable against plaintiffs. It purports to create a number of mutually binding covenants, explicitly running with the land, concerning the use, maintenance, repair, and improvement of a "right of way" that traverses or touches upon plaintiffs' and defendants' property, as well as the property of the neighboring Bermans, who are not parties here.[10] Nothing in the record affirmatively demonstrates that those mutual obligations have become unenforceable. The absence of a trial record, however, makes it impossible to say that the trial court erred in so finding.

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[10] The road agreement states, "The Parties agree that the rights and responsibilities contained in the Agreement shall constitute covenants running with the land," and, "The parties hereto further agree to obligate themselves, their heirs. personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement."

Both parties agree that the underlying purpose of the road agreement was to fulfill a condition imposed by county planners on the development of defendants' property. Beyond that its intended effect—particularly on the property rights of the parties—is far from clear. It does not plainly *create* a right of way, but rather declares certain mutual rights and obligations with respect to a right-of-way that may or may not already exist. The paradigmatic term "grant" nowhere appears. (See Civ. Code, § 1092 ["grant of an estate . . . may be made in substance" by stating, " 'I, A B, grant to CD' " the described property]; *Klamath Land & Cattle Co. v. Roemer* (1970) 12 Cal.App.3d 613, 618 ["The essential of such a [grant] deed has long been held to be the word 'grant' [citation] and it appears that in California this word has been applicable to the transfer of *all* estates in real property, and not solely estates in fee simple, since sometime prior to 1845."].) Of course we are long past the days when the law depended on ritual incantations, and a conveyance may be effective despite failure to use the word "grant." (See *Carman v. Athearn* (1947) 77 Cal.App.2d 585, 596 ["No precise words are necessary to constitute a present conveyance."].) The dispositive question is whether the words used "are sufficient to show an intention to pass a present title." (*Id.* at p. 597.) However we see no other language in the agreement—or anywhere else in the record—establishing such an intent. [11]

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[11] "An instrument creating an easement is subject to the same rules of construction applicable to deeds and is interpreted in the same manner as a contract. [¶] . . . . The conveyance is interpreted in the first instance by the language of the document. When the intent of the parties can be derived from the plain meaning of the words used in the deed, the court should not rely on the statutory rules of construction. . . . [¶] . . . When the document creating the easement is ambiguous, the court looks to the surrounding circumstances, the relationship between the parties, the properties, and the nature and purpose of the easement in order to establish the intention of the parties. The cardinal rule of interpretation is to ascertain and enforce the intentions of both the grantor and the grantee." (6 Miller & Starr (3d ed.) Cal. Real Estate, § 15:16, at pp. 62–63 (fns. omitted); see Civ. Code, § 806 ["The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was

The agreement opens with a recital that it "pertains to that right of way described as Parcel Four in the attached exhibit." This language suggests the agreement then proceeds to declare rights and obligations concerning the use, repair, governance, maintenance, and improvement, of the right of way. The ninth paragraph clearly refers to a right of way that already exists for the benefit of defendants' parcel, stating that vehicles and pedestrians may "[c]urrently" enter a "recorded" right of way meeting "the parking and circulation necessities for the existing 4630 West Walnut Building."[12] The tenth paragraph then recites the "*Intention* of May Gravenhorst Stauffer or her assigns to *further develop the existing vehicle and pedestrian right of way* to enter off Porter Street to run through [other parcels] and then cut out of [a specified parcel] to ultimately exit into West Walnut"—a description that appears to match "Parcel 4." Adding yet more uncertainty is a statement that "vehicle, pedestrian, parking and circulation arrangements shall be *planned and agreed* to in writing between each parcel mentioned above"—language suggesting only an agreement to agree, a type of contract generally viewed as illusory and unenforceable.

The absence of a trial transcript leaves a factual vacuum about the actual circumstances in which the agreements were entered, but both sides asserted in their trial briefs that they were intended to satisfy requirements of county planners.[13] Plaintiffs

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acquired."]; Civ.Code, § 1066 ["Grants are to be interpreted in like manner with contracts in general"].)

[12] This was apparently the "Liles easement" which counsel mentioned at the hearing on the motion to modify the judgment, and which both attorneys agreed was not affected by the present judgment.

[13] Attached to defendants' trial brief were planning documents stating that "A joint parking and circulation agreement shall be established between the following parcels: 30-201-11, 25, 34, 36, and 37"—i.e., plaintiffs' and defendants' parcels, plus the parcel(s) of the Bermans.

went further, asserting that the parking agreement, and by extension both agreements, were a "hoax" intended solely to satisfy planning requirements and not, inferentially, to create genuine property rights. Plaintiffs further asserted in their brief "[t]here never has been a 'road' in the parcels described." Defendants did not, so far as this record shows, take issue with this assertion.

It thus appears that the road agreement spells out the parties' rights and obligations with respect to maintenance of a posited roadway which may or may not be entirely hypothetical. The rights and obligations are extremely ambiguous and may even be illusory insofar as the agreement anticipates future agreement among the owners. Given these circumstances the record before us affords no basis to say that the trial court was compelled to find that the road agreement created a valid and subsisting interest in defendants burdening the neighboring properties.

Nor does the record permit us to say that the court could not find such a material change in conditions as to justify the extinguishment of whatever beneficial interest the road agreement might otherwise vest in defendants. In their trial brief and again on appeal, defendants concede that a servitude or similar burden on land may be rendered unenforceable by "a material change in conditions to the extent that the original purpose for the restriction becomes obsolete." In fact the rule is somewhat broader than this. In *Wolff v. Fallon* (1955) 44 Cal.2d 695, 696-697, the court wrote that the plaintiffs were entitled to relief from a restriction limiting their property to residential use where the trial court found the property no longer suitable for residential use and that enforcement of the restriction "would be inequitable and oppressive and would harass plaintiff *without benefiting the adjoining owners*." (Italics added; see also *Hirsch v. Hancock* (1959) 173 Cal.App.2d 745, 758-759 [rejecting as "groundless," in light of *Wolff*, contention that "the termination of restrictions by judicial decree is justified only when their original purpose has become obsolete"]; *Bolotin v. Rindge* (1964) 230 Cal.App.2d 741, 744

[invalidation of restriction reversed where trial court made "no finding that the purposes of the restrictions have become obsolete, *or that the enforcement of the restrictions on the plaintiffs' property will no longer benefit the defendants*"] italics added.)

The question of changed conditions was clearly tendered by the pleadings and addressed by the trial court. Plaintiffs alleged in their complaint that the agreements "endow[ed] defendants with no assertable rights" because they contemplated the devotion of defendants' parcel to "the conversion of a single family dwelling into commercial offices with interim use of two apartments," and "rested upon specific conditions which never took place." Similarly they asserted in their trial brief that the agreements "address[ed] an entirely conditional set of circumstances which never took place." The trial court wrote in its judgment that "[o]ver the . . . twenty-five years" since the agreements had been recorded, "none of the events which were contemplated with the creation of these agreements have taken place." The court also stated that "circumstances have changed in relationship to the Santa Cruz County Ordinances adopted in 1995 and 2009."

Defendants have failed to show that these facts, or the rationales they imply, were not sufficient to sustain the judgment. Defendants merely assert that "there is no written evidence whatsoever before the Court that circumstances had changed in relationship to the Santa Cruz Ordinances adopted in 1995 and 2009." But this denial of the presence of "written" evidence is pregnant with the possibility, and indeed may be understood as an implicit admission, that the trial court received other evidence—such as oral testimony—of such a change in circumstances. In any event an appellate reversal cannot be predicated on claimed deficiencies in the evidence where the evidence before the trial court has not been brought up on appeal and affirmatively shown to be legally insufficient. " 'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*,

and *show how and why it is insufficient*. [Citation.]' (*Roemer v. Pappas* (1988) 203 Cal.App.3d 201, 208, italics added.)" (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.) Obviously it is impossible to accomplish this task when the relevant evidence is absent from the record.

In short, the present record will not allow us to say that the trial court erred in finding the road agreement, along with the parking agreement, unenforceable. If the court erred, it was incumbent upon defendants to present a sufficient record—and sufficient legal argument—to establish as much. They have failed to do so.

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

Palmer et al. v. Silveira et al.
H037588

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

COPY

Austin B. Comstock
716 Ocean Street
Suite 100
Santa Cruz, CA 95060

RE: ALAN PALMER, as Trustee, etc. et al.,
Plaintiffs, Cross-defendants and Respondents,
v.
ANTHONY SILVEIRA, as Trustee, etc. et al.,
Defendants, Cross-complainants and Appellants.

H037588
Santa Cruz County No. CV163244

* * REMITTITUR * *

I, MICHAEL J. YERLY, Clerk of the Court of Appeal of the State of California, for the Sixth Appellate District, do hereby certify that the opinion or decision entered in the above-entitled cause on March 19, 2013, has now become final.

_____ Appellant ___X___ Respondent to recover costs
_____ Each party to bear own costs
_____ Costs are not awarded in this proceeding
_____ See decision for costs determination

MAY 24 2013

Witness my hand and the seal of the Court affixed at my office on

{SEAL}

MICHAEL J. YERLY, Clerk

By: L. BROOKS

Deputy

WHEN RECORDED MAIL TO:

Austin B. Comstock (SBN 33123)
716 Ocean Street, Suite 100
Santa Cruz, CA 95060

2013-0040616 08/12/2013 09:12:36 AM
OFFICIAL RECORDS OF Santa Cruz County
Sean Saldavia Recorder
RECORDING FEE: $159.00
COUNTY TAX: $0.00
CITY TAX: $0.00
DECL
49 PGS
RCD135

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF COUNSEL REGARDING CANCELLATION OF RECORDED INSTRUMENTS

I, Austin B. Comstock, an attorney duly licensed to practice in all courts of the State of California, declare under penalty of perjury under the laws of California as follows:

As the attorney of record for Plaintiffs in Santa Cruz County Superior Court action CV 163244, *Palmer v. Silveira*, I certify that the following documents are true and accurate as they relate to the history of this case:

1. Modified Judgment filed on October 14, 2011;
2. Affirmance of Modified Judgment in the Sixth District Court of Appeal (H037588) filed March 15, 2013;
3. Remittitur dated May 24, 2013.

The aforesaid documents are attached to this declaration as incorporated by this reference as though fully set forth.

This declaration has been recorded to show cancellation of recorded instruments in the Official Records of Santa Cruz County, California, on June 18, 1986, at Book 3993, Page 69 and Book 3993, Page 76.

Executed at Santa Cruz, California, this 12 day of August 2013.

Austin B. Comstock

ACKNOWLEDGMENT

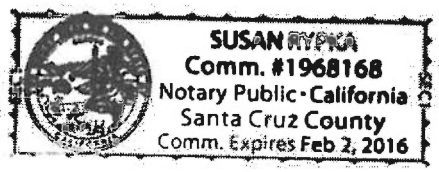
STATE OF CALIFORNIA)
)
COUNTY OF SANTA CRUZ)

On this the 12 day of August 2013, before me, Susan Rypka, the undersigned Notary Public, personally appeared **AUSTIN B. COMSTOCK** who proved to me on the basis of satisfactory evidence to be the person 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.

Signature Susan Rypka



(This area for official notarial seal)

Austin B. Comstock (33123)
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Telephone: (831) 427-2727
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Attorneys for Plaintiffs and Cross-Defendants

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES LLC, a California Limited Liability Company,

Plaintiffs,

vs.

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, and DOES 1 through 20,

Defendants.

/

ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992,

Cross-Complainants,

ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, SANTA CRUZ PROPERTIES, LLC, a California limited liability company and Does 1 through 20, inclusive,

Cross-Defendants

/

No. CV 163244

MODIFIED JUDGMENT

COMSTOCK, THOMPSON, KONTZ & BRENNER
ATTORNEYS AT LAW
340 SOQUEL AVENUE, SUITE 205
SANTA CRUZ, CALIFORNIA 95062-2328

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SANTA CRUZ, CALIFORNIA 95062-2328

This case came on regularly for court trial on August 17, 2011, in Department 4, the Honorable Timothy R. Volkmann presiding. Plaintiffs/Cross-Defendants were represented by Austin B. Comstock. Defendants/Cross-Complainants were represented by Reid Schantz. All parties were present. All parties offered testimony, along with offers of proof submitted by each attorney.

The Court has read all the pleadings, including the respective trial briefs and has reviewed the applicable case law and cited statutory authority. The Court has, additionally, reviewed and considered all of the evidence and filed its Judgment on August 29, 2011. Good cause appearing, the said Judgment is hereby modified as follows:

Judgment is rendered in favor of Plaintiffs and against Defendants as to the Plaintiffs' three causes of action. The Court considers this matter as a good faith dispute and appreciates the manner in which counsel and the parties presented their respective views. However, the subject Road Maintenance & Circulation Agreement and the Use Agreement were recorded in June, 1986. Over the next twenty-five years, none of the events which were contemplated with the creation of these agreements have taken place. A review of Civil Code Sections 885.010, 885,020 and 885.030 leads this Court to the conclusion that invalidation of these instruments, in order to remove whatever clouds of title they may be causing, is appropriate. It should be further noted that circumstances have changed in relationship to the Santa Cruz County Ordinances adopted in 1995 and 2009.

Judgment is in favor of Plaintiffs as follows:

1. Declaratory Relief: Plaintiffs ALAN B. PALMER, Trustee of the Palmer Trust

created May 4, 1999, as owner of real property in the unincorporated area of Soquel, Santa Cruz County, California (APN 030-201-33 and 34), more particularly described in Exhibit A, attached and made a part hereof, and SANTA CRUZ PROPERTIES LLC, a California Limited Liability Company, as owner of that certain real property located in the unincorporated area of Soquel, Santa Cruz County, California (APN 030-201-25 and 37), more particularly described in Exhibit B, attached and made a part hereof by this reference, are entitled to judgment against defendants ANTHONY P. SILVEIRA, and KANDIE L. SILVEIRA, Trustees of the Silveira Family Trust Dated November 18, 1992, as owners of real property located at 4630 Porter Street, Soquel, Santa Cruz County, California (APN 030-201-11), more particularly described in Exhibit C, attached and made a part hereof, as set forth below.

2. Quiet Title: Plaintiffs PALMER and SANTA CRUZ PROPERTIES LLC are entitled to the ownership of their respective properties as set forth above free and clear of any claims or rights on the part of Defendants SILVEIRA in or to the said real property of plaintiffs.

3. Cancellation: Plaintiffs PALMER and SANTA CRUZ PROPERTIES LLC are entitled to cancellation of that certain Road Maintenance & Circulation Agreement recorded at Book 3993, Page 69, Official Records of Santa Cruz County, California, on June 18, 1986, as Instrument No. 032535 (more particularly described in Exhibit E, attached and made a part herein) and that certain Use Agreement recorded at Book 3993, Page 76, Official Records of Santa Cruz County, California, on June 18, 1986, as Instrument No. 032536 (more particularly described in Exhibit F, attached and incorporated by this reference). These said instruments and all purported rights thereunder are hereby cancelled.

4. Cross-Complaint: Judgment is in favor of Cross-Defendants ALAN B. PALMER, Trustee of the Palmer Trust created May 4, 1999, and SANTA CRUZ PROPERTIES LLC, a

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California Limited Liability Company on the Cross-Complaint.

Dated: October 14, 2011

Timothy R. Volkmann
Judge of the Superior Court

COMSTOCK, THOMPSON, KONTZ & BRENNER
ATTORNEYS AT LAW
340 SOQUEL AVENUE, SUITE 205
SANTA CRUZ, CALIFORNIA 95062-2328

Exhibit A

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

COMMENCING AT THE NORTHWEST CORNER OF A LOT OF LAND OWNED AND OCCUPIED BY J. L. GROVER, ON NOVEMBER 25, 1868, AND RUNNING THENCE NORTH 89 DEGREES WEST 77.22 FEET TO A POST IN LINE OF ORCHARD FENCE, NOW OR FORMERLY OF JOHN DAUBENBISS; THENCE NORTH ALONG LINE OF SAID FENCE 194 FEET AND 8 INCHES TO THE SOUTH SIDE OF DIESING STREET, NOW CALLED WALNUT STREET; THENCE EASTERLY ALONG THE SOUTH SIDE OF SAID DIESING STREET, NOW CALLED WALNUT STREET, 81 FEET AND 3 INCHES TO A STAKE; THENCE SOUTHERLY 194 FEET AND 8 INCHES PARALLEL WITH LINE OF SAID ORCHARD FENCE TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE LANDS CONVEYED TO RAYMOND O. PETERSON AND WIFE BY DEED DATED JULY 15, 1958, RECORDED JULY 23, 1958 IN VOLUME 1195 OF OFFICIAL RECORDS AT PAGE 513, SANTA CRUZ COUNTY RECORDS.

PARCEL TWO:

BEING A PART OF THE LANDS CONVEYED TO J.L. MEEKS, ET UX., BY DEED DATED SEPTEMBER 2, 1954 AND RECORDED SEPTEMBER 28, 1954 IN VOLUME 984, AT PAGE 561, OFFICIAL RECORDS OF SANTA CRUZ COUNTY, DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EASTERN BOUNDARY OF SAID LANDS OF MEEKS AND AT THE NORTHWEST CORNER OF PARCEL NO. 1 OF LANDS CONVEYED TO RAYMOND O. PETERSON, ET UX., BY DEED DATED NOVEMBER 18, 1957 AND RECORDED JANUARY 21, 1958 IN VOLUME 1167, AT PAGE 479, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE NORTH 89 DEGREES WEST 77.22 FEET, MORE OR LESS, TO THE WEST BOUNDARY OF SAID LANDS OF MEEKS; THENCE SOUTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF MEEKS, 38.00 FEET, MORE OR LESS, TO THE SOUTH BOUNDARY OF SAID LAND OF MEEKS; THENCE ALONG THE SOUTH BOUNDARY OF SAID LAND OF MEEKS, SOUTH 89 DEGREES EAST 77.22 FEET TO WEST BOUNDARY OF LANDS CONVEYED TO RAYMOND O. PETERSON; THENCE NORTHERLY ALONG THE WEST BOUNDARY OF SAID LANDS OF PETERSON 38.00 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL THREE:

A RIGHT OF WAY, 20 FEET IN WIDTH, FOR INGRESS, EGRESS AND UTILITIES AS RESERVED IN THE DEED RECORDED JUNE 25, 1991 IN BOOK 4856, PAGE 191, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 030-201-34 PARCEL ONE
030-201-33 PARCEL TWO

EXHIBIT A

PAGE 1 OF 1

cription: Santa Cruz,CA Document-Year.DocID 2004.14216 Page: 2 of 2
er: a Comment:

EXHIBIT "A"

SITUATE IN THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA AND DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING ON THE WESTERLY SIDE OF PORTER STREET 72.00 FEET SOUTHERLY FROM THE SOUTHEASTERLY CORNER OF PORTER AND WALNUT STREETS AT THE SOUTHEASTERLY CORNER OF THE LANDS AGREED TO BE CONVEYED TO ORPHA A. NASH AND ROBERT O. NASH, AS HEREINAFTER SET OUT; THENCE ALONG THE WESTERLY SIDE OF PORTER STREET SOUTH 0 DEGREES 41' WEST 52 FEET TO THE NORTHEASTERLY CORNER OF THE LANDS FORMERLY OF THE ESTATE OF JOSEPH LANE, DECEASED, NOW BELONGING TO B.F.P. SMITH; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LAST MENTIONED LANDS WESTERLY 148 FEET, MORE OR LESS, TO THE EASTERLY BOUNDARY OF THE LANDS FORMERLY OF J.P. HODGES, LATER OF WILLIAM BROWN, AND NOW UNDER AGREEMENT OF SALE TO M.L. LEWELLEN; THENCE ALONG SAID LAST MENTIONED BOUNDARY NORTHERLY 124.00 FEET, MORE OR LESS, TO THE SOUTHERLY SIDE OF WALNUT STREET; THENCE ALONG THE SOUTHERLY SIDE OF WALNUT STREET NORTH 88 DEGREES 39' EAST 64.00 FEET, MORE OR LESS, TO THE NORTHWESTERLY CORNER OF THE LANDS AGREED TO BE CONVEYED BY NELSON B. JONES AND LYDIA A. JONES, HIS WIFE, TO ORPHA A. NASH, AND ROBERT O. NASH, BY AGREEMENT, DATED MAY 12, 1925 AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SANTA CRUZ COUNTY, IN VOLUME 44, PAGE 113, OFFICIAL RECORDS OF SANTA CRUZ COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID LAST MENTIONED LANDS SOUTH 0 DEGREES 41' WEST 72.00 FEET TO THE SOUTHWESTERLY CORNER THEREOF, AND THENCE NORTH 88 DEGREES 39' EAST 84.00 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED IN THE DEED TO J. REUBEN DAVIS, ET UX, RECORDED AUGUST 6, 1959, IN VOLUME 1263, PAGE 320, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

PARCEL TWO:

BEGINNING ON THE WESTERLY SIDE OF PORTER STREET 124.00 FEET SOUTHERLY FROM THE SOUTHWESTERLY CORNER OF PORTER AND WALNUT STREETS, WHICH POINT IS ALSO THE SOUTHEASTERLY CORNER OF LANDS NOW OR FORMERLY OF F. M. HOLDAWAY, ET UX.; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LANDS OF HOLDAWAY, WESTERLY 148.00 FEET, MORE OR LESS, TO THE EASTERLY BOUNDARY OF LANDS NOW OR FORMERLY OF WILLIAM BROWNE; THENCE ALONG THE SAID LAST MENTIONED BOUNDARY SOUTHERLY 55.00 FEET TO A POINT; THENCE EASTERLY 148.00 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY LINE OF PORTER STREET, FROM WHICH THE POINT OF BEGINNING BEARS NORTH 0 DEGREES 15' EAST 55.00 FEET; THENCE NORTH 0 DEGREES 15' EAST 55.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED IN THE DEED TO HELEN HAYNES VOLCH, RECORDED AUGUST 16, 1951 IN VOLUME 835, PAGE 139, OFFICIAL RECORDS OF SANTA CRUZ COUNTY.

APN: 030-201-37 PARCEL ONE
030-201-25 PARCEL TWO

EXHIBIT B

PAGE 1 OF 1

00703/0005//153473.WPD

escription: Santa Cruz,CA Document-Year.DocID 2006.14417 Page: 2 of 3

PARCEL ONE:
Being a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at the point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

PARCEL TWO:
A non-exclusive easement for ingress and egress, 4 feet in width, the Eastern line of which is the Eastern line of the lands conveyed to May Gravenhorst, by Deed recorded on July 28, 1980, in Book 3218, Page 574, Official Records of Santa Cruz County.

EXHIBIT C
PAGE 1 OF 1

HEN RECORDED MAIL TO
nthony and Kandie Silveria
223 Soquel Drive
anta Cruz, CA 95065

BOOK 3993 PAGE 69

032535

RECORDED AT THE REQUEST OF
FOUNDERS TITLE CO.
JUN 18 1986
RICHARD W. BEDAL, Recorder
SANTA CRUZ COUNTY, Official Records

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ROAD MAINTENANCE & CIRCULATION AGREEMENT

This Agreement is entered into this 20th day of May 1986, by and among the owners of that real property located in the County of Santa Cruz, State of California, as described in Exhibit "A" attached hereto and made a part hereof and pertains to that right of way described as Parcel Four in the aforementioned Exhibit.

Each of the owners of these parcels or any future division of these parcels shall have equal right to, and obligation for, the benefits to this road and shall have one vote per parcel in matters pertaining the same. The cost of improvements shall be limited to within each owners parcel boundaries.

The owners of these parcels or any subsequent division of these parcels agree that each owner shall be responsible for damage to the road caused by themselves, family, friends or any service people or vendors doing service or handling goods ordered by or for themselves. In the event any damage is done to the road, the owners responsible shall perform or initiate necessary work to return the damaged portion of road to its prior condition. Necessary work shall be completed as soon as practicable or within 45 days from first noted damage. The parties agree to maintain the road to minimum standards which shall consist of whatever work is needed to keep the road mud-free, dust-free, safe, and adequate for year-round two-way traffic, and the storm drainage facilities functioning effectively. All work shall be done by a contractor or other qualified person acceptable to the majority of the parties.

Improvements to the road shall be ordered, implemented and paid for upon mutual approval of the owners party to the Agreement and shall be paid for in equal portions by all owners. Excepting owner(s) of APN's 30-201-25, 34,36, & 37 shall be solely responsible for the initial similar improvement of each of their lot portions lying within their property lines meeting the existing improved borders of APN 30-201-11 & 37.

All sums assessed in accordance with the provisions of this Agreement shall constitute a lien on each respective parcel owned by those party thereto.

The Parties agree that the rights and responsibilities contained in the Agreement shall constitute covenants running with the land.

Should any provision of this Agreement be unlawful or unenforceable through statute or law, the parties agree that this shall not cause the total Agreement to terminate, and that they shall be bound by the remaining

(1)

EXHIBIT E

PAGE 1 OF 7

ROAD MAINTENANCE & CIRCULATION AGREEMENT (CON'T)

covenants and promises herein contained.

The parties intend by this Agreement to impose mutually beneficial covenants concerning the maintenance and repair of Parcel Four. The parties hereto further agree to obligate themselves, their heirs, personal representatives, successors and assigns to maintain and improve said road in accordance with the terms and conditions of this agreement.

Currently to meet the parking and circulation necessities for the existing 4630 West Walnut Building know as APN 30-201-11, vehicles or pedestrians may enter a recorded right of way described as follows: A right of way for ingress and egress, 12 feet in width, the Northern line of which is the Southern line of the lands conveyed to Michael D. Liles, et.al., by Deed recorded on July 22, 1982, in Book 3465, Page 670, Official Records of Santa Cruz County and of the lands conveyed to May Gravenhorst, et.al., recorded on July 17, 1978, in Book 2937, Page 88, Official Records of Santa Cruz County.

Depending on when the commercial development/improvements are approved for each separate parcels of APN's 30-201-25, 34, 36 and 37, vehicle, pedestrian, parking and circulation arrangements shall be planned and agreed in writing between each parcel mentioned above.

It is the intention of May Gravenhorst Stauffer or her assigns to further develop the existing vehicle and pedestrian right of way to enter off Porter Street to run through APN 30-201-34, 36 and 37 and then cut out of APN 30-201-34 to ultimately exit into West Walnut.
(See Exhibit "A" attached).

WITNESS OUR HANDS this 17th day of June 1986.

Anthony Silveira

Kandi J. Silveira

EXHIBIT E

PAGE 2 OF 7

(General)

STATE OF CALIFORNIA
COUNTY OF Santa Cruz } ss.

On June 17, 1996 before me, the undersigned, a Notary Public in and for said State, personally appeared Mary Grauenhorst Stauffer Peter J. Grauenhorst, Anthony Silveira and Kristie Silveira

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz
My Commission Expires Nov 28

OFC-2056

This Form Furnished By Founders Title Company
STAPLE HERE

EXHIBIT E

PAGE 3 OF 7

PARCEL ONE:

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

EXHIBIT E

PAGE 4 OF 7

PARCEL ONE:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 72.00 feet Southerly from the Southeasterly corner of Porter and Walnut Streets, at the Southeasterly corner of the lands agreed to be conveyed to Orpha A. Nash and Robert O. Nash, as hereinafter set out; thence along the Westerly side of Porter Street South 0° 41' West 52 feet to the Northeasterly corner of the lands formerly of the estate of Joseph Lane, deceased, now belonging to E. F. P. Smith; thence along the Northerly boundary of said last mentioned lands Westerly 148 feet, more or less, to the Easterly boundary of the lands formerly of J. P. Hodges, later of William Brown, and now under Agreement of Sale to H. L. Lewellen; thence along said last mentioned boundary Northerly 124.00 feet, more or less, to the Southerly side of Walnut Street; thence along the Southerly side of Walnut Street North 83° 39' East 64.00 feet, more or less, to the Northwesterly corner of the lands agreed to be conveyed by Nelson B. Jones, and Lydia A. Jones, his wife, to Orpha A. Nash, and Robert O. Nash, by Agreement, dated May 12, 1925 and recorded in the office of the County Recorder of said Santa Cruz County, in Volume 44, Page 113, Official Records of Santa Cruz County; thence along the Westerly boundary of said last mentioned lands South 0° 41' West 72.00 feet to the Southwesterly corner thereof, and thence North 88° 39' East 84.00 feet to the place of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to J. Reuben Davis, et ux, recorded August 6, 1959 in Volume 1263, Page 320, Official Records of Santa Cruz County.

PARCEL TWO:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 124.0 feet Southerly from the Southwesterly corner of Porter and Walnut Streets, which point is also the Southeasterly corner of lands now or formerly of F.H. Holdaway, et ux,; thence along the Southerly boundary of said lands of Holdaway, Westerly 148.0 feet, more or less, to the Easterly boundary of lands now or formerly of William Browne; thence along the said last mentioned boundary Southerly 55.0 feet to a point; thence Easterly 148.0 feet, more or less, to a point on the Westerly line of Porter Street, from which the point of beginning bears North 0° 15' East 55.0 feet; thence North 0° 15' East 55.0 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Haynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

EXHIBIT E

PAGE 5 OF 7

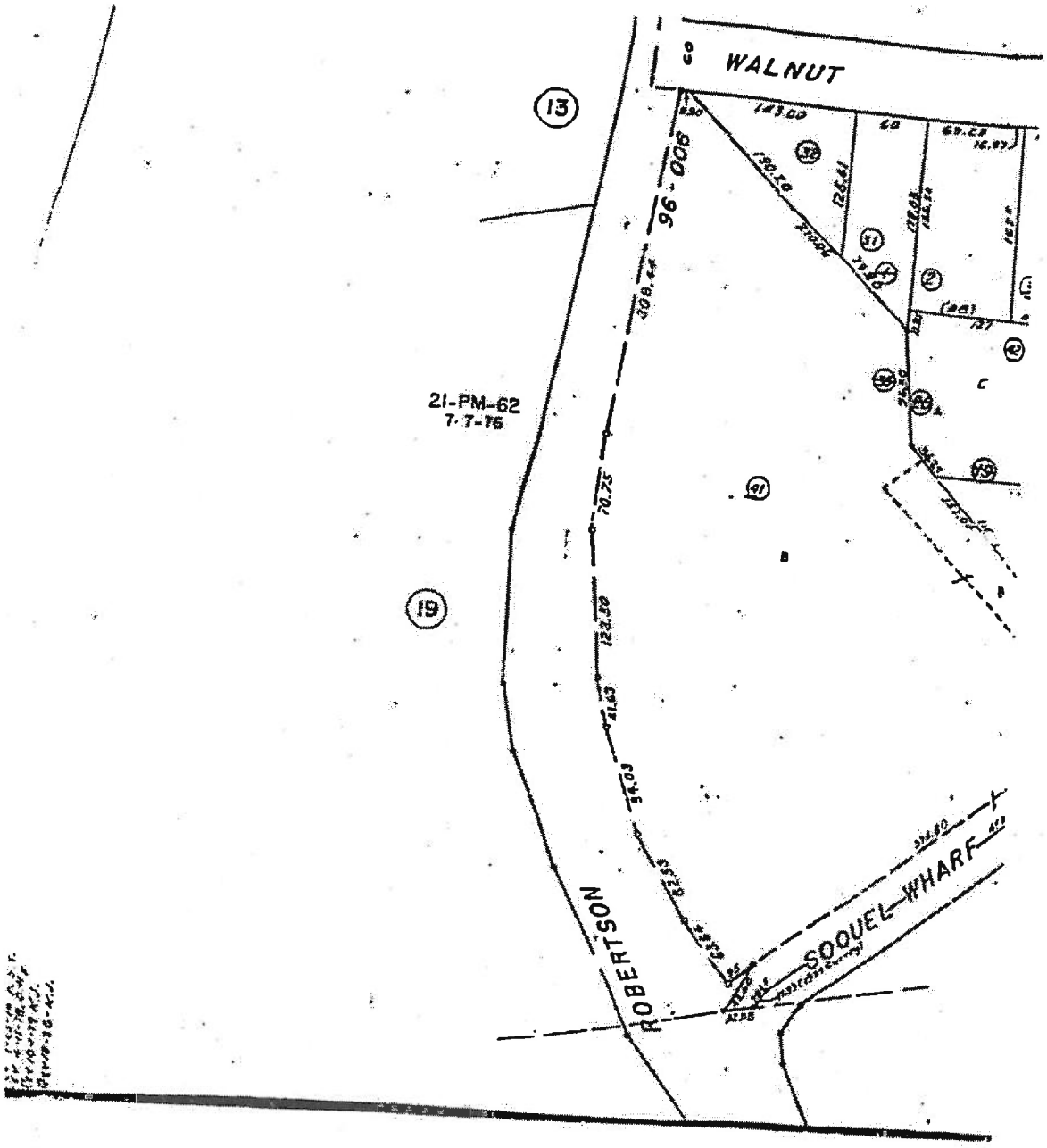
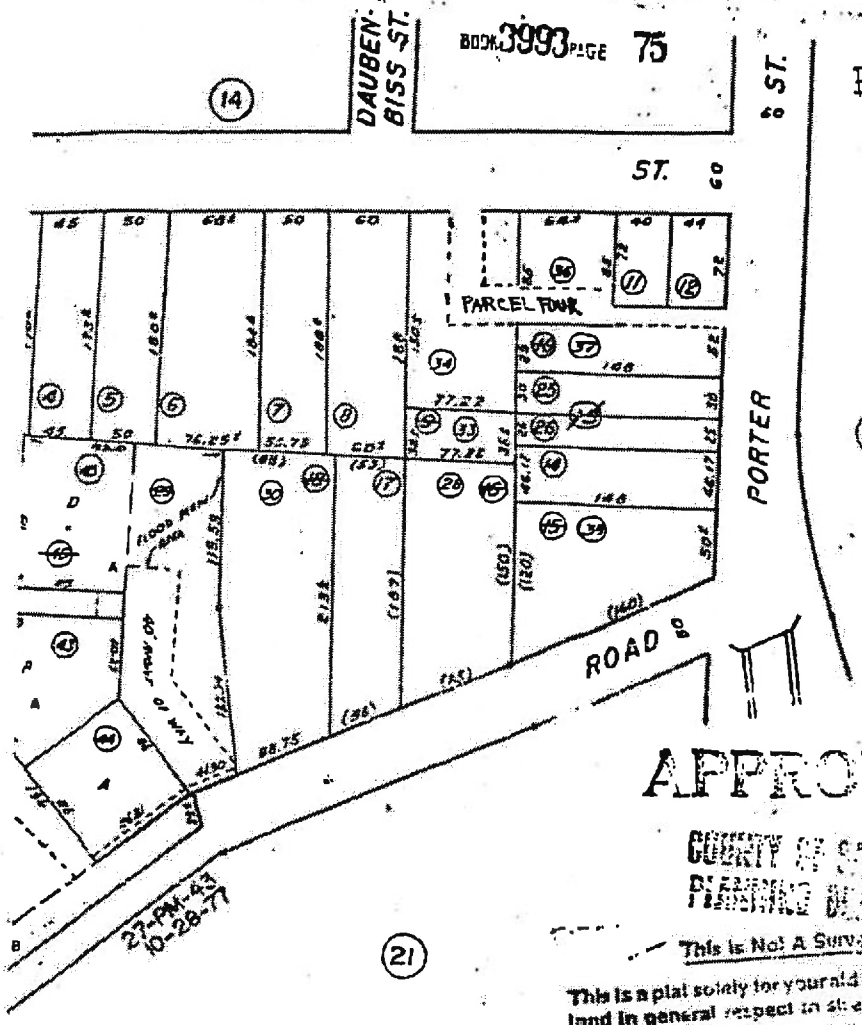


EXHIBIT E

PAGE 6 OF 7



APPROVED

COUNTY OF SANTA CRUZ
PLANNING DEPARTMENT

This is Not A Survey

5-27-87

This is a plat solely for your aid in locating the land in general respect to streets and other parcels. Ticor Title Insurance Company assumes no liability for any loss occuring by reason of reliance thereon.

Note - Assessor's Parcel Block & Lot Numbers Shown in Circles

Assessor's Map No. 30-20
County of Santa Cruz, Calif.
July 1950

EXHIBIT E

PAGE 7 OF 7

BOOK 3993 PAGE 76

EN RECORDED MAIL TO

thony and Kandie Silveria
123 Soquel Drive
nta Cruz, CA 95065

FOUNDERS TITLE CO.
JUN 18 1986
SANTA CRUZ COUNTY, Official Records

032536

USE AGREEMENT

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The undersigned parties hereby amend their Real Estate Purchase Contract and Receipt for Deposit dated June 21, 1985, relating to the purchase by Silveira ("Buyer") from Stauffer ("Seller") of that certain property located at and commonly known as 4630 West Walnut Avenue, Soquel, CA, bearing assessor's parcel no. 30-201-11.

Because of additional requirements to be imposed by the County of Santa Cruz, California, on the said property related to its partial current use as residential property, the parties hereto further agree as follows:

1. In the event the County of Santa Cruz imposed additional parking requirements and a recreational area requirement covering the residential use, it is agreed that Seller shall make available to Buyer on adjacent properties owned by Seller, with the location of such to be determined by Seller in conformance with the requirements of Santa Cruz County Authorities, the necessary four parking spaces, and a required 400 Sq. Ft. vacant parcel to be improved and landscaped at Sellers expense as required by Santa Cruz County.

2. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the additional four spaces at a total price of $8,000.00. In addition, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the 400 Sq. Ft. parcel for the sum of $6,000.00.

3. While Seller shall have the right to designate the general location on her adjacent properties of the said parcels as required by the County of Santa Cruz, the same will be located within an 80-foot radius from the nearest property line of 4630 West Walnut Street, and shall be reserved for the 4630 West Walnut Street building.

4. The purchase price shall be added as the total amount to the existing loan modified to 10% interest per annum carried by Seller with the monthly payment of said note to be adjusted to provide for amortization over a 20-year period. The adjusted monthly payments shall start after completion of required conditions and improvements as per the already approved plans by the Santa Cruz County Building and Zoning Department.

(1)

EXHIBIT F

PAGE 1 OF 5

WITNESS OUR HANDS this 17th day of June, 1986.

Anthony Silveira
(Buyer)

May Gravenhorst Stauffer
(Seller)

Kandie Silveira
(Buyer)

Peter J. Gravenhorst
(Seller)

(General)

STATE OF CALIFORNIA
COUNTY OF Santa Cruz } ss.

On June 17, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony Silveira, Kandie Silveira, May Gravenhorst Stauffer and Peter J. Gravenhorst

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person s whose name s subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

Signature

William H. Mitchell
Name (Typed or Printed)

OFFICIAL SEAL
WILLIAM H. MITCHELL
NOTARY PUBLIC-CALIFORNIA
Principal Office in Santa Cruz County
My Commission Expires Nov. 12, 1988

This Form Furnished By Founders Title Company

STAPLE HERE

OFC-2056

(3)

EXHIBIT F

PAGE 3 OF 5

PARCEL ONE:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 72.00 feet Southerly from the Southeasterly corner of Porter and Walnut Streets at the Southeasterly corner of the lands agreed to be conveyed to Orpha A. Nash and Robert O. Nash, as hereinafter set out; thence along the Westerly side of Porter Street South 0° 41' West 52 feet to the Northeasterly corner of the Lands formerly of the estate of Joseph Lane, deceased, now belonging to E. F. P. Smith; thence along the Northerly boundary of said last mentioned Lands Westerly 148 feet, more or less, to the Easterly boundary of the lands formerly of J. P. Hodges, later of William Brown, and now under Agreement of Sale to M. L. Lewellen; thence along said last mentioned boundary Northerly 124.00 feet, more or less, to the Southerly side of Walnut Street; thence along the Southerly side of Walnut Street North 83° 39' East 64.00 feet, more or less, to the Northwesterly corner of the lands agreed to be conveyed by Nelson B. Jones, and Lydia A. Jones, his wife, to Orpha A. Nash, and Robert O. Nash, by Agreement, dated May 12, 1925 and recorded in the office of the County Recorder of said Santa Cruz County, in Volume 44, Page 113, Official Records of Santa Cruz County; thence along the Westerly boundary of said last mentioned lands South 0° 41' West 72.00 feet to the Southwesterly corner thereof, and thence North 88° 39' East 84.00 feet to the place of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to J. Rauben Davis, et ux, recorded August 6, 1959 in Volume 1263, Page 320, Official Records of Santa Cruz County.

PARCEL TWO:

SITUATE in the County of Santa Cruz, State of California, bounded and more particularly described as follows, to wit:

BEGINNING on the Westerly side of Porter Street 124.0 feet Southerly from the Southwesterly corner of Porter and Walnut Streets, which point is also the Southeasterly corner of lands now or formerly of F.M. Holdaway, et ux,; thence along the Southerly boundary of said lands of Holdaway, Westerly 148.0 feet, more or less, to the Easterly boundary of lands now or formerly of William Browne; thence along the said last mentioned boundary Southerly 55.0 feet to a point; thence Easterly 148.0 feet, more or less, to a point on the Westerly line of Porter Street, from which the point of beginning bears North 0° 15' East 55.0 feet; thence North 0° 15' East 55.0 feet to the point of beginning.

EXCEPTING THEREFROM all that portion thereof conveyed in the deed to Helen Haynes Volck, recorded August 16, 1951 in Volume 835, Page 139, Official Records of Santa Cruz County.

APN 030-201-36

EXHIBIT F
PAGE 4 OF 5

PARCEL ONE: book 3993 page 73

BEING a part of the Rodeo Rancho and situate in the Town of Soquel, bounded and described as follows:

BEGINNING at a point on the southerly line of Walnut Street, distant thereon South 88° 39' West 44 feet from the intersection thereof with the Westerly line of Porter Street; thence from said point of beginning South 88° 39' West 40 feet to a station; thence leaving said street South 0° 41' West parallel with the Westerly line of said Porter Street 72 feet to a station; thence North 88° 39' East parallel with the said line of Walnut Street 40 feet; thence North 0° 41' East parallel with the Westerly line of Porter Street 72 feet to the point of beginning.

EXHIBIT F
PAGE 5 OF 5

Staff Report & Development Permit
Level 4 – Administrative Review

Application Number: **141238**
Applicant: **Daryl Fazekas**
Site Address: **No situs (vacant parcels)**

APN: **030-201-74 & 75**
Owner: **Daryl Fazekas**

Proposal & Location

Proposal to construct a new 3,000 square foot commercial retail building with 845 square feet of storage on the second floor. Requires a Commercial Development Permit for construction of a new commercial building and additional site improvements on an existing vacant parcel.

The property is located on the west side of Porter Street in Aptos approximately 115 feet south of the intersection with West Walnut Street.

Project setting

The project is located in the southwest quadrant of the Heart of Soquel Town Plan across Porter Street from Soquel Elementary school. This portion of the town of Soquel consists of a mixture of old and new commercial buildings and old residential structures many of which contain commercial uses. Parking and pedestrian circulation is limited in this portion of Soquel and located almost entirely within the flood plain of Soquel Creek

Analysis

The subject properties are currently vacant and together are approximately 11,300 square feet in size. The parcels are zoned C-2, G-H (Community Commercial, Geologic Hazard) which is consistent with the General Plan Designation of CC (Community Commercial) which allows for commercial retail use.

As indicated in the town plan, shared parking located behind new buildings is encouraged. The project will incorporate a parking configuration which favors potential for future shared parking arrangements. The proposed structure will be located at the front of the parcel and utilizes an existing driveway.

The use of natural color and a combination of finish materials is complimentary to the existing building designs found in the vicinity. The height and scale of the proposed development is consistent with character of the Heart of Soquel Town Plan. Community needs for street and pedestrian circulation improvements will be addressed with the installation of additional bike racks and the widening of the sidewalk in front of the proposed structure.

EXHIBIT D

Parking

The proposed retail building will consist of 3,000 square feet of commercial space and 845 square feet of storage on the second floor. SCCC 13.10.552 requires parking for retail stores at a rate of 1 parking space per 300 square feet of gross floor area. Gross floor area does not include storage areas. Based on the proposed square footage of 3,000 square feet, 10 parking spaces are required. As proposed, the project complies with the minimum parking requirements by providing nine regular parking spaces (8.5' x 18') and one accessible parking space.

As proposed and conditioned the project complies with applicable codes and policies including the County General Plan and Heart of Soquel Town Plan.

Findings are on file in the County Planning Department.

Staff Recommendation

The Planning Department has taken administrative action on your application as follows:

__X__ Approved (if not appealed).

_____ Denied (based on the attached findings).

NOTE: This decision is final unless appealed.

See below for information regarding appeals. You may exercise your permit after signing below and meeting any conditions which are required to be met prior to exercising the permit. If you file an appeal of this decision, permit issuance will be stayed and the permit cannot be exercised until the appeal is decided.

Please note: This permit will expire unless exercised prior to the expiration date. (See the Conditions of Approval below for the expiration date of this permit.)

If you have any questions about this project, please contact Nathan MacBeth at: (831) 454-3118 or nathan.macbeth@santacruzcounty.us

Report Prepared By: _____

Nathan MacBeth
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz CA 95060

Report Reviewed By: _____

Wanda Williams
Assistant Planning Director
Santa Cruz County Planning Department

By signing this permit below, the owner(s) agree(s) to accept the terms and conditions of permit number **141238** (APN 030-201-74 and to accept responsibility for payment of the County's cost for inspection and all other action related to noncompliance with the permit conditions. This permit is null and void in the absence of the property owner(s) signature(s) below. All owners of the subject property (APN 030-201-74 & 75) must sign this form.

Signature of Owner	Print Name	Date
Signature of Owner	Print Name	Date
Signature of Owner	Print Name	Date
Signature of Owner	Print Name	Date

(This page is intended for your personal records, please retain this signed page and return the signed Signature Page, included later in this document, to acknowledge acceptance of this permit.)

Appeals

In accordance with Section 18.10.300 et seq of the Santa Cruz County Code, the applicant or any aggrieved party may appeal an action or decision taken on a Level IV project such as this one. Appeals of administrative decisions are made to the Planning Director. All appeals shall be made in writing and shall state the nature of the application, your interest in the matter and the basis on which the decision is to be considered to be in error. Appeals must be made no later than fourteen (14) calendar days following the date of publication of the action from which the appeal is being taken or the date on which the notices are mailed, whichever is later and must be accompanied by the appropriate filing fee.

Conditions of Approval

Exhibit A. Project plans, 7 sheets, prepared by Daryl Fazekas Architect, revised 9/20/15.

I. This permit authorizes the construction of a 3,000 commercial building with 845 square feet of storage at the second floor. This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Prior to exercising any rights granted by this permit including, without limitation, any construction or site disturbance, the applicant/ owner shall:

A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.

B. Obtain a Building Permit from the Santa Cruz County Building Official.

C. Obtain a Grading Permit from the Santa Cruz County Building Official.

D. Any outstanding balance due to the Planning Department must be paid prior to making a Building, Grading, or Demolition Permit application. Applications for Building, Grading, or Demolition Permits will not be accepted or processed while there is an outstanding balance due.

E. Obtain an Encroachment Permit from the Department of Public Works for all off-site work performed in the County road right-of-way.

F. Submit proof that these conditions have been recorded in the official records of the County of Santa Cruz (Office of the County Recorder) within 30 days from the effective date of this permit.

II. Prior to issuance of a Building Permit the applicant/owner shall:

A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:

1. A copy of the text of these conditions of approval incorporated into the full size sheets of the architectural plan set.

2. Details showing compliance with Building Plan Check Accessibility requirements.

3. One elevation shall indicate materials and colors as they were approved by

this discretionary application. If specific materials and colors have not been approved with this discretionary application, in addition to showing the materials and colors on the elevation, the applicant shall supply a color and material sheet in 8 1/2" x 11" format for Planning Department review and approval.

4. Grading, drainage and erosion control plans.

5. Details showing compliance with fire department requirements.

B. Provide a final Landscape Plan which is consistent with the site plan (Sheet A1).

C. Provide a Sign Plan which clearly shows the location and size of all signage. Signage shall consist of no more than two signs (one business sign and one pedestrian-oriented sign).

1. Total square footage of signage shall not exceed 33 square feet.

2. Sign lighting shall be indirectly illuminated.

3. Signs located on a wall of on a roof fascia shall be designed as an integral part of the building design. Building signs shall be located on or below the upper line of the roof fascia.

4. Freestanding sign which is detached from the building shall be of a design consistent with the architectural character of the building and shall be designed as an integral part of the landscape area. Freestanding signs shall not exceed 7 feet in height. Signs and supports shall be setback a minimum of five feet from the edge of the right of way or roadway.

D. Meet all requirements of and pay Zone 5 drainage fees to the County Department of Public Works, Stormwater Management. Drainage fees will be assessed on the net increase in impervious area.

E. Obtain an Environmental Health Clearance for this project from the County Department of Environmental Health Services.

F. Meet all requirements and pay any applicable plan check fee of the Central Fire Protection District.

G. Submit 3 copies of a soils report prepared and stamped by a licensed geotechnical engineer.

H. Submit a completed "Flood Proofing Certificate".

I. Pay the current fees for Child Care mitigation for the new commercial building. Currently, this fee is $0.23 per square foot. ($884.35)

J. Provide a revised trip generation analysis for the proposed use. The number of trips will be used in determining TIA fees.

K. Pay the current fees for Roadside and Transportation improvements. Please contact the County Department of Public Works for a current list of these fees.

L. Provide required off-street parking for 10 cars. Parking spaces must be 8.5 feet wide by 18 feet long and must be located entirely outside vehicular rights-of way. Parking must be clearly designated on the plot plan.

M. Record an Affidavit to retain APNs 030-201-74 and 030-201-75 as one parcel or provide evidence that the subject parcels have been combined.

N. Submit a written statement signed by an authorized representative of the school district in which the project is located confirming payment in full of all applicable developer fees and other requirements lawfully imposed by the school district.

III. All construction shall be performed according to the approved plans for the building permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

A. All site improvements shown on the final approved Building Permit plans shall be installed.

B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official.

C. The project must comply with all recommendations of the approved soils reports.

D. Pursuant to Sections 16.40.040 and 16.42.080 of the County Code, if at any time during site preparation, excavation, or other ground disturbance associated with this development, any artifact or other evidence of an historic archaeological resource or a Native American cultural site is discovered, the responsible persons shall immediately cease and desist from all further site excavation and notify the Sheriff-Coroner if the discovery contains human remains, or the Planning Director if the discovery contains no human remains. The procedures established in Sections 16.40.040 and 16.42.080, shall be observed.

IV. Operational Conditions

A. The final plans shall not block or impede use of existing easements. Placement of improvements within such easements is done so at his/her own risk and could result in adjudication in civil court.

B. In the event that future County inspections of the subject property disclose noncompliance with any Conditions of this approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, including any follow-up inspections and/or necessary enforcement

actions, up to and including permit revocation.

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, it officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.

B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:

1. COUNTY bears its own attorney's fees and costs; and

2. COUNTY defends the action in good faith.

C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.

D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

In accordance with Chapter 18.10 of the County Code, minor variations to this permit which do not affect the overall concept, intensity, or density may be approved by the Planning Director at the request of the applicant or staff.

Please note: This permit expires three years from the effective date listed below unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: 12-28-15

Effective Date: 1-11-16

Expiration date: 1-11-19

Development Permit Findings

1. That the proposed location of the project and the conditions under which it would be operated or maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not result in inefficient or wasteful use of energy, and will not be materially injurious to properties or improvements in the vicinity.

This finding can be made, in that the project is located in an area designated for commercial uses and is not encumbered by physical constraints to development. Construction will comply with prevailing building technology, the California Building Code, and the County Building ordinance to insure the optimum in safety and the conservation of energy and resources. The proposed commercial building will not deprive adjacent properties or the neighborhood of light, air, or open space, in that the structure meets all current setbacks that ensure access to these amenities. The project has been conditioned to ensure compliance with FEMA requirements with respect to development within a mapped flood plain.

2. That the proposed location of the project and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the zone district in which the site is located.

This finding can be made, in that the proposed location of the commercial building and the conditions under which it would be operated or maintained will be consistent with all pertinent County ordinances and the purpose of the C-2-GH (Community Commercial, Geologic Hazards Combining District) zone district as the primary use of the property will be one commercial building that meets all current site standards for the zone district. The project will comply with FEMA requirements for development within the flood plain.

The number of parking spaces being provided (10 spaces) will be sufficient to serve the proposed 3,000 square feet of commercial retail space at a rate of one parking space per 300 square feet. The total 845 square feet of storage is not included in the calculations for parking.

3. That the proposed use is consistent with all elements of the County General Plan and with any specific plan which has been adopted for the area.

This finding can be made, in that the proposed commercial use is consistent with the use and density requirements specified for the C-C (Community Commercial) land use designation in the County General Plan.

The proposed development is consistent with General Plan Policy 8.5.2 in that the project is compatible with the surrounding commercial development with respect to building design and landscaping. The proposed structure is consistent with the design recommendations for new development within the Soquel Village Plan. The proposed landscaping includes the planting of additional trees and planting areas along Porter Street resulting in a much needed improvement to this portion of the Soquel Village. The project has been designed to achieve minimal demand for water use for irrigation and electrical service through the use of a rainwater catchment system.

The proposed commercial building will be properly proportioned to the parcel size and the character of the neighborhood as specified in General Plan Policy 8.6.1 (Maintaining a Relationship Between Structure and Parcel Sizes), in that the proposed commercial building will comply with the site standards for the C-2-GH zone district (including setbacks, height, and number of stories) and will result in a structure consistent with a design that could be approved on any similarly sized lot in the vicinity.

The project is consistent with the goals and objectives of the Soquel Village Plan with respect to new construction and pedestrian circulation.

4. That the proposed use will not overload utilities and will not generate more than the acceptable level of traffic on the streets in the vicinity.

This finding can be made, in that the proposed commercial building is to be constructed on an existing undeveloped lot. The level of traffic generated by the proposed project is anticipated to be 144 trips per day. A trip generation analysis was prepared by Marquez Transportation Engineering and reviewed by County Department of Public Works Road Engineering. It was determined that the increase in trips would be offset by the payment of TIA (Transportation Improvement Area) fees to help fund future road and intersection improvements.

The parcel is currently served by Soquel Creek Water District. Based on the intensity of surrounding development, utilities in the vicinity are readily available and the design of the proposed development is not expected to overload utilities.

5. That the proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be compatible with the physical design aspects, land use intensities, and dwelling unit densities of the neighborhood.

This finding can be made, in that the proposed structure is located within the Soquel Village Plan Area. The area is developed with mixture of old and new commercial buildings and old residential development. The proposed development is consistent with the range of architectural styles in the vicinity. The Soquel Village Plan encourages shared parking configurations. Though a shared parking arrangement has not yet been made, the configuration and location of the proposed parking lot would easily accommodate a shared parking plan.

The project meets the Soquel Village pedestrian goals by providing bicycle parking and widening the sidewalk in front of the proposed building. These improvements will enhance the pedestrian experience along Porter Street, combined with the building location at the front of the parcel by providing an area of pedestrian interest at a location that is currently under utilized between the south west end of Soquel and village core.

6. The proposed development project is consistent with the Design Standards and Guidelines (sections 13.11.070 through 13.11.076), and any other applicable requirements of this chapter.

This finding can be made, in that the proposed commercial building will be of an appropriate scale and type of design that will enhance the aesthetic qualities of the surrounding properties and will not reduce or visually impact available open space in the surrounding area. The use of

natural colors will be complimentary to the site and a comprehensive landscape plan will enhance the site as seen from Porter Street. The use of articulation on the building façade, variation in roof pitch, and combination of finish materials (stucco and wood siding) will create a building of interest and compatible with the surrounding commercial development.

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

The Santa Cruz County Planning Department has reviewed the project described below and has determined that it is exempt from the provisions of CEQA as specified in Sections 15061 - 15332 of CEQA for the reason(s) which have been specified in this document.

Application Number: 141238
Assessor Parcel Number: 030-201-74 & 75
Project Location: No Situs

Project Description: Construct a new 4,000 square foot commercial building

Person or Agency Proposing Project: Daryl Fazekas

Contact Phone Number: (408) 395-9400

A. ____ The proposed activity is not a project under CEQA Guidelines Section 15378.
B. ____ The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060 (c).
C. ____ **Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
D. ____ **Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

E. __X__ **Categorical Exemption**

Specify type: Class 3 - New Construction or Conversion of Small Structures (Section 15303)

F. Reasons why the project is exempt:

Construction of a new commercial building in an area designated for commercial uses

In addition, none of the conditions described in Section 15300.2 apply to this project.

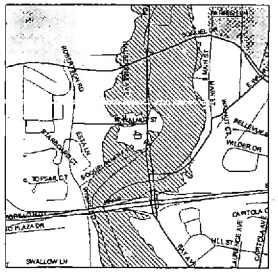
_____ Date: 12-28-15
Nathan MacBeth, Project Planner

EXHIBIT E

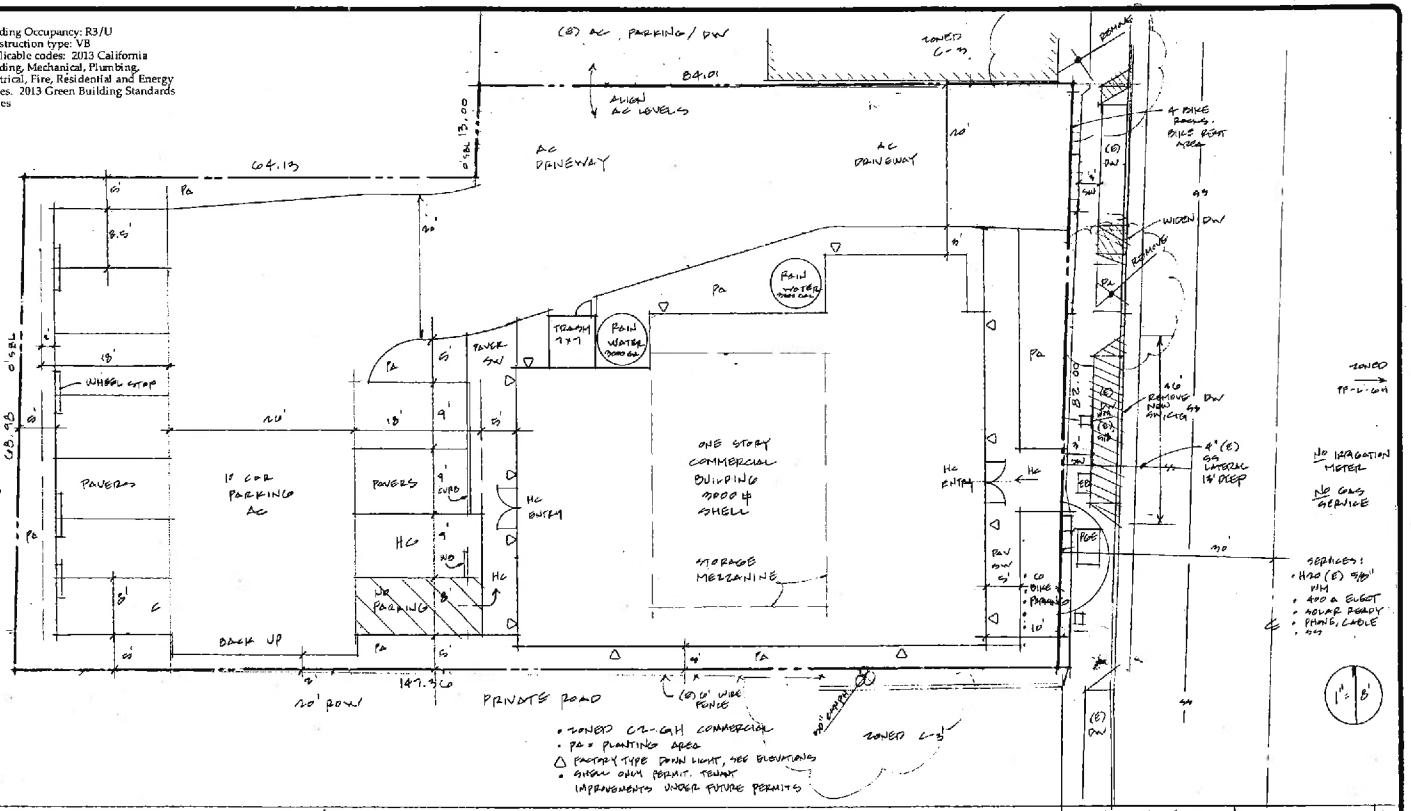
JCP-LGS Property Disclosure Reports | MAP COVER PAGE
Natural Hazard Disclosure Report

Property Address: 2601 PORTER,
SOQUEL, SANTA CRUZ County, CA

APN: SEE ADDENDUM
Report Date: 09/17/2014
Report Number: 1600667



Building Occupancy: R3/U
Construction type: VB
Applicable codes: 2013 California
Building, Mechanical, Plumbing,
Electrical, Fire, Residential and Energy
Codes. 2013 Green Building Standards
Codes



SITE PLAN 1

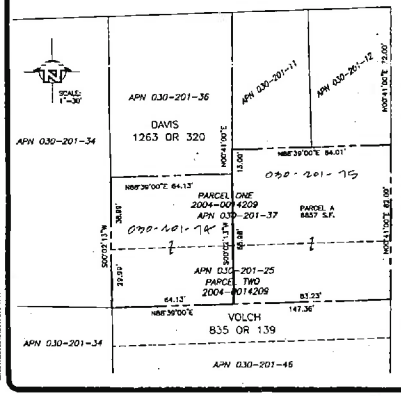
NOTES
1. COMPLY WITH RECOMMENDATIONS OF CAWD AND CWMP BMP.
2. OBTAIN AN ENCROACHMENT PERMIT FOR LANDSCAPE IN PUBLIC ROW
3. COMBINE LOTS INTO ONE PARCEL PRIOR TO PERMITS, WITH AN AFFIDAVIT TO BRING THEM AS ONE PARCEL.

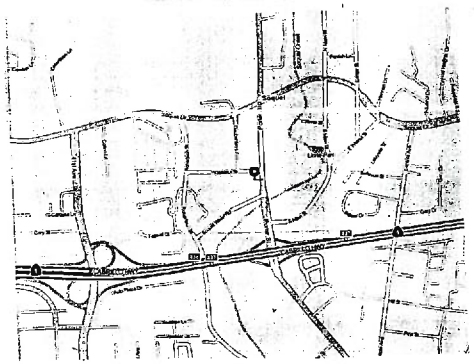
LOT AREA 11,200 sf
LOT COVERAGE 3000 ft (27%)
SEWER: SANTA CRUZ COUNTY
WATER: SOQUEL CREEK
LANDSCAPE: 2292 ft AS SHOWN
PAVERS IMPERVIOUS: 8988 ft TOTAL
AC EXISTING IMPERVIOUS: (4113)
PAVERS NET NEW IMP: 5875 (.52)

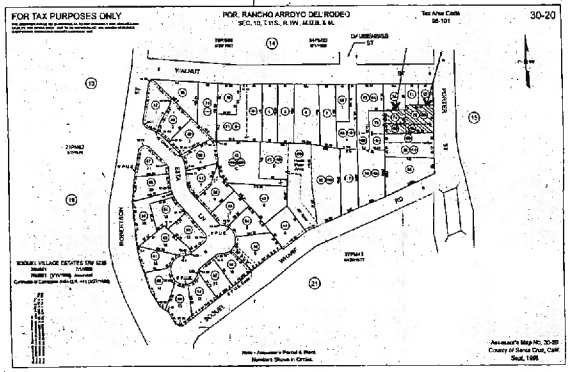
COMMERCIAL C2-GH SHELL, REQUEST SHELL OKAY FOR FUTURE TENANTS. 6 EMPLOYEES
6AM - 10 PM DAILY
NO WAZMAT.
NO RESTAURANT, LAUNDROMAT OR HIGH WATER USE.
RETAIL, OFFICE, DOCTORS USES.

AREAS	COMMERCIAL SHELL	STORAGE SHELL	TOTAL SHELL
1ST	3000		3000
MEZZ		875	

Walnut Street







REVISIONS	BY
10.20.15	

Daryl Fazekas
Architecture, Structural, Energy
15621 Loma Vista Ave.
Los Gatos, CA 95032
DarylFazekas@gmail.com
408 395 9400

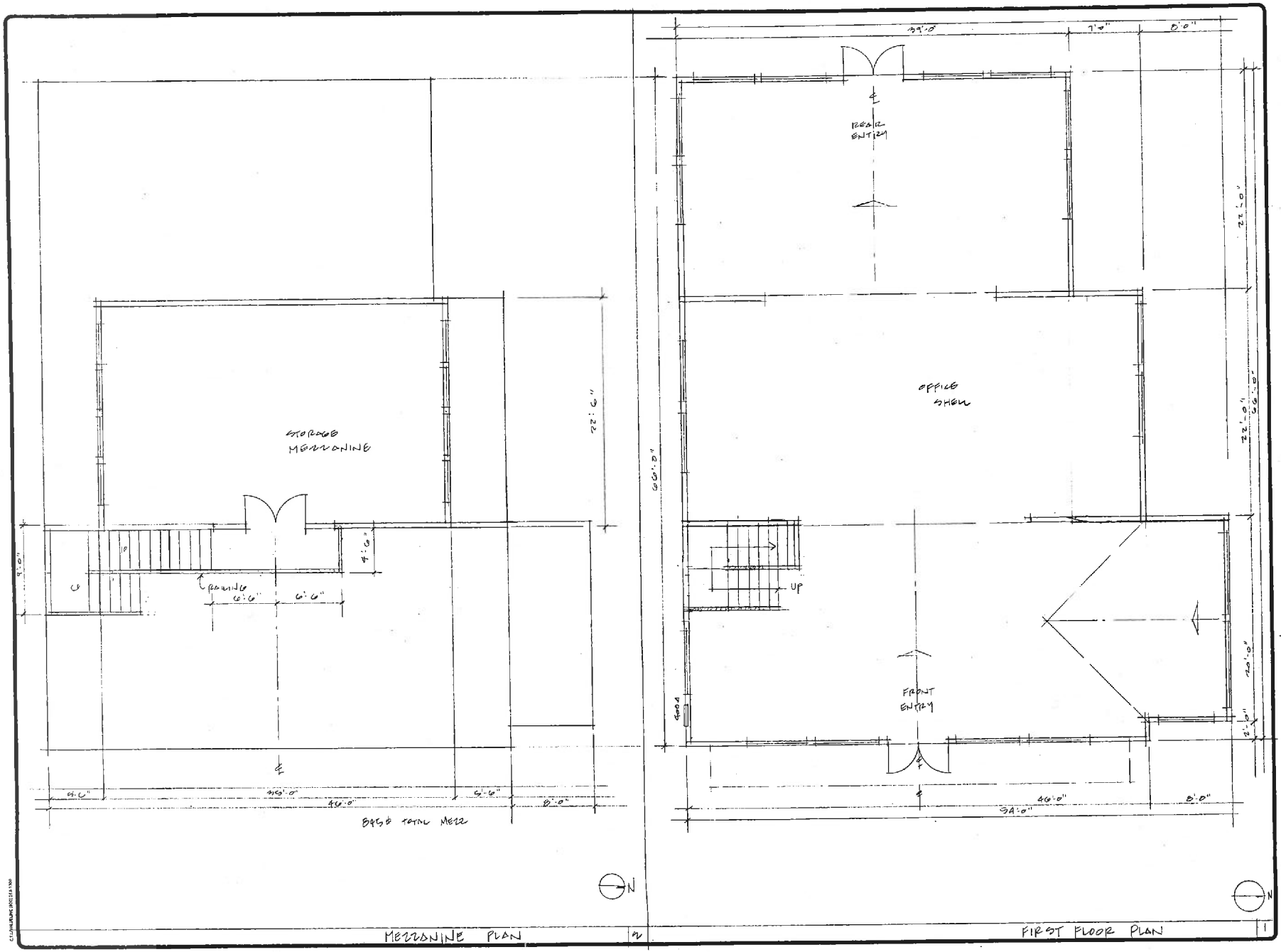
FAZEKAS

Building
2601 Porter St
Soquel

SITE PLAN

DRAWN	
CHECKED	
DATE	9.20.15
SCALE	1/8" = 1'-0"
JOB NO.	1601 PORTER 2
SHEET	A1
OF	SHEETS

102



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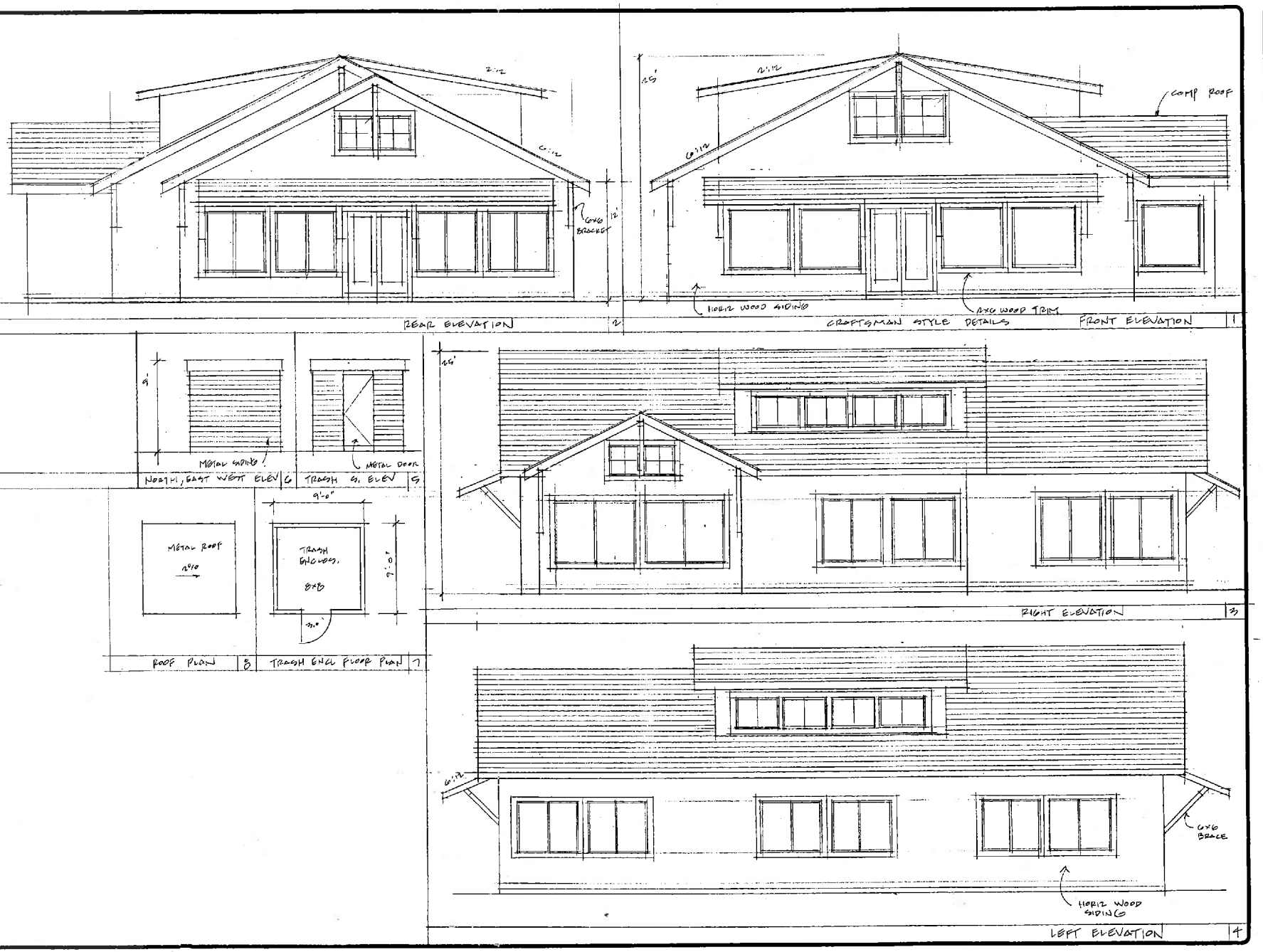
193

FAZEKAS

Building
2601 Porter St
Soquel

FLOOR PLANS

DRAWN	
CHECKED	
DATE	9.20.15
SCALE	1/4"=1'-0"
JOB NO.	2001 Rev-Set 2
SHEET	A2
OF SHEETS	



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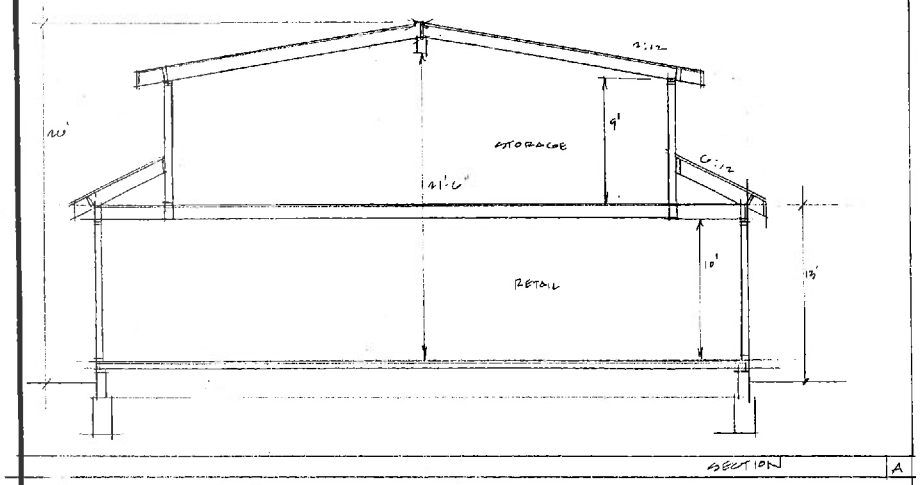
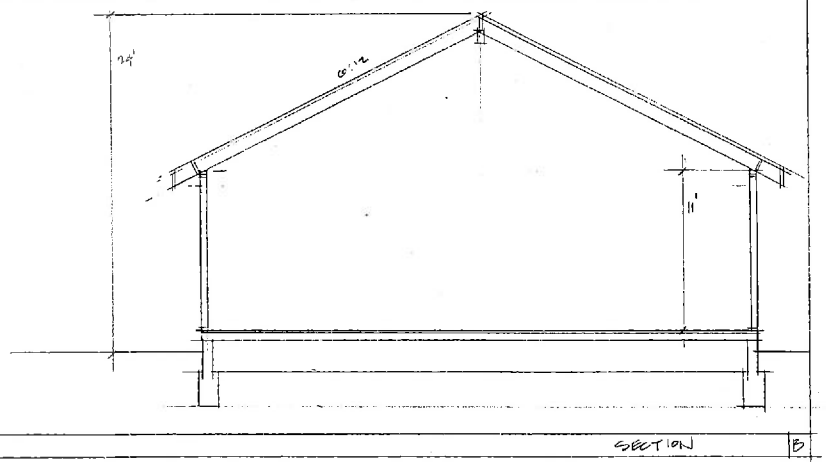
FAZEKAS

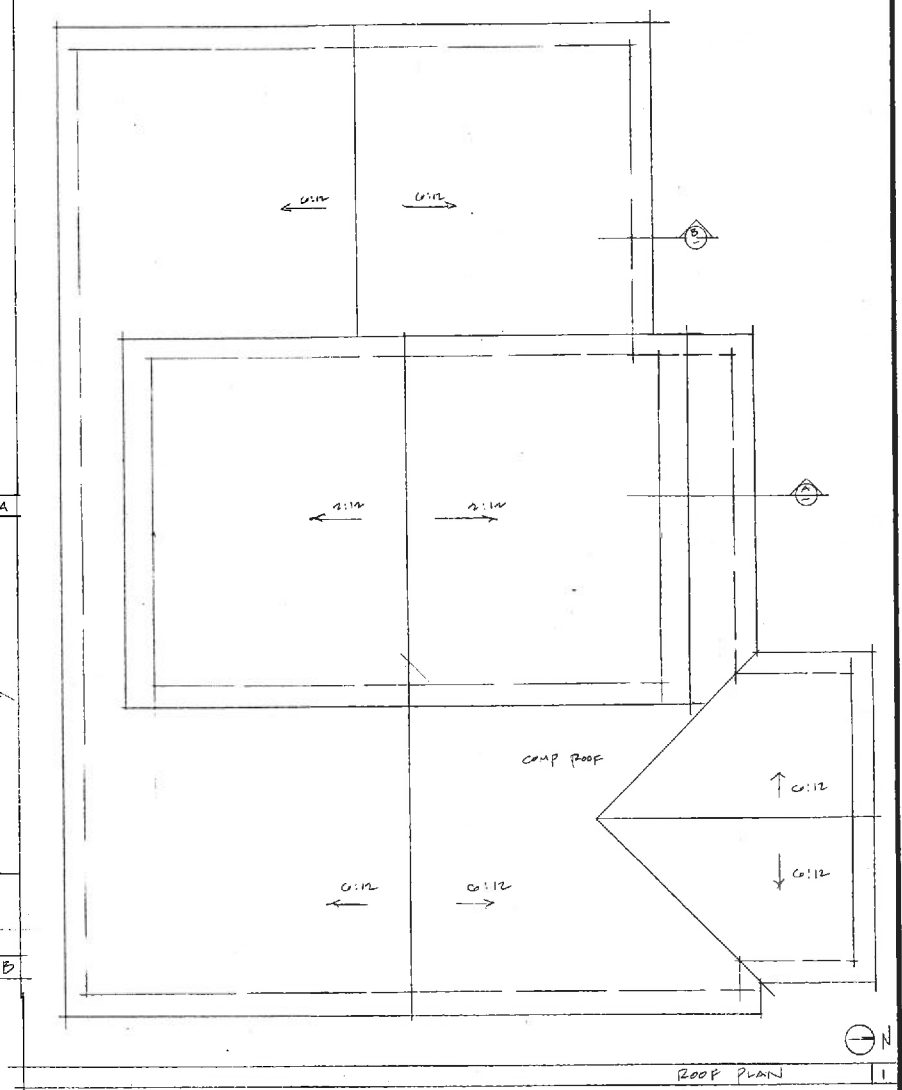
Building
2601 Porter St
Soquel

ELEVATIONS

DRAWN	
CHECKED	
DATE	9.20.15
SCALE	1/4"=1'-0"
JOB NO.	2601 PORTER-2
SHEET	A3
OF SHEETS	







REVISIONS	BY

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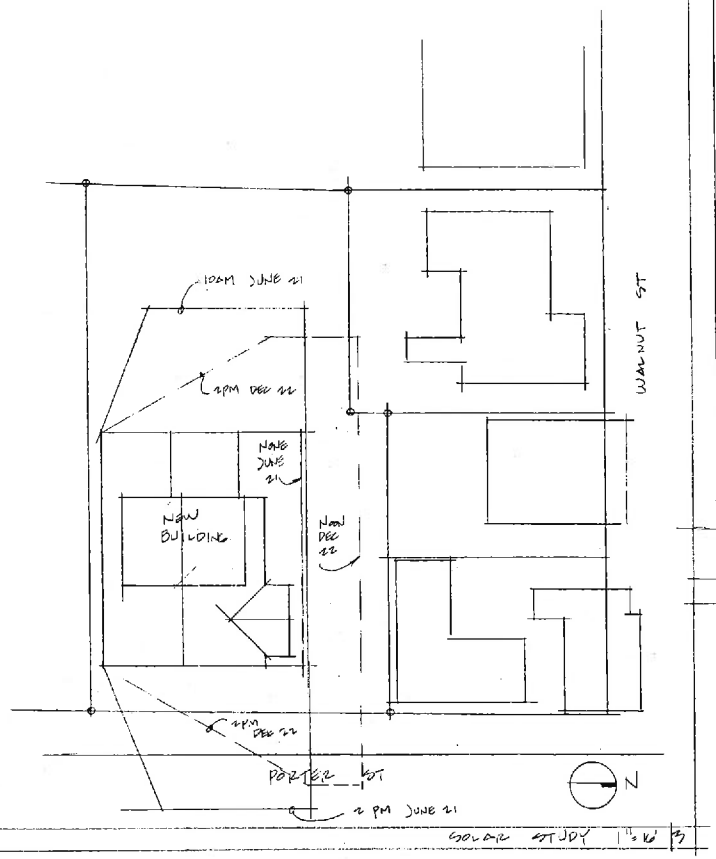
FAZEKAS

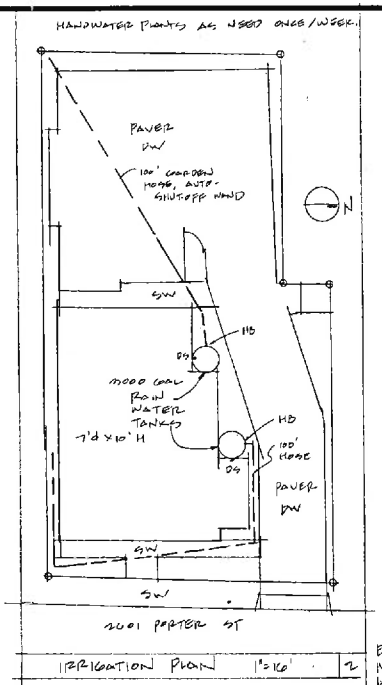
Building
2601 Porter St
Soquel

ROOF PLAN SECTIONS

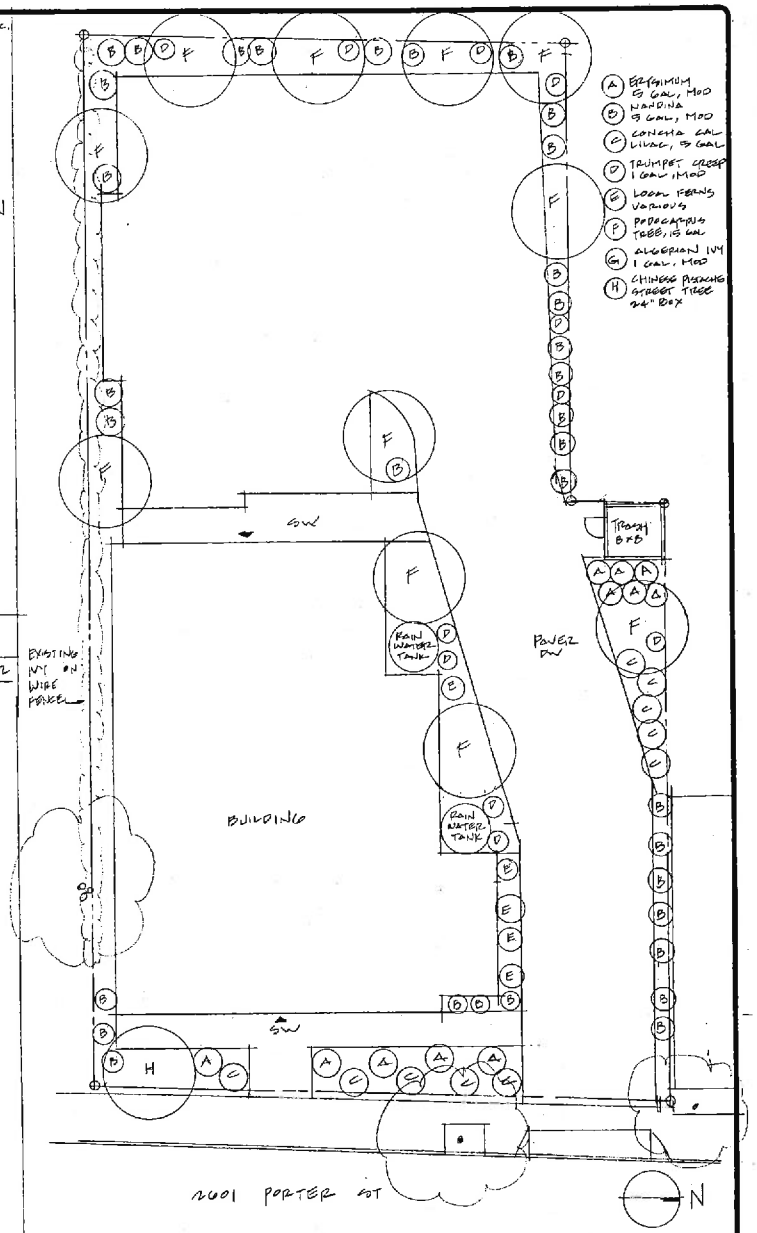
DRAWN	
CHECKED	
DATE	9.20.15
SCALE	1/4"
JOB NO.	1501 PORTER-2
SHEET	A4
OF SHEETS	



SOLAR STUDY 1"=16'



IRRIGATION PLAN 1"=16'



LANDSCAPE PLAN 1"=8'

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FAZEKAS

Building
2601 Porter St
Soquel

LANDSCAPE PLAN
IRRIGATION
SOLAR STUDY

DRAWN	
CHECKED	
DATE	9.22.15
SCALE	1/8" = 1/16"
JOB NO.	2601 PORTER 2
SHEET	A5
OF	SHEETS

(3.) Development Criteria and Design Requirements. All development within the 100-year floodplain shall meet the following criteria. Any addition, repair, reconstruction, rehabilitation, alteration, or improvement of structures for which building permits were issued prior to April 15, 1986, when subject to the definition of "cumulative improvement," does not meet the definition of "substantial improvement" (pursuant to SCCC 16.10.040(18) and (65)), is exempt from this section.

(b) Anchoring of foundations and the structures attached to them by a method adequate to prevent flotation, collapse and lateral movement of the structures due to the forces that may occur during the base flood, including hydrostatic and hydrodynamic loads and the effects of buoyancy.

(c) Shall be constructed with materials and utility equipment resistant to flood damage and using construction methods and practices that minimize flood damage;

(d) Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding;

(g) Nonresidential structures shall be floodproofed if elevation above the 100-year flood level in accordance with subsection (F)(3)(f) of this section is not feasible. Floodproofed structures shall:

(i) Be floodproofed so that below an elevation one foot higher than the 100-year flood level, the structure is watertight with walls substantially impermeable to the passage of water based on structural designs, specifications and plans developed or reviewed by a registered professional engineer or architect;

IMPORTANT INFORMATION: Based on floodway data table information located within the "Flood Insurace Study" (FIS) the "Base Flood Elevation" (BFE) is 39.6. The new structure will need to be either elevated or floodproofed to 1 foot above this BFE.

(ii) Be capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(iii) Be certified by a registered professional engineer or architect that floodproofing standards and requirements have been complied with; the certification shall be submitted to the Planning Director and shall indicate the elevation to which floodproofing was achieved prior to a final building inspection. The Planning Director shall maintain records of compliance with floodproofing requirements;

If elevation of the structure is choosen then the following information is required:

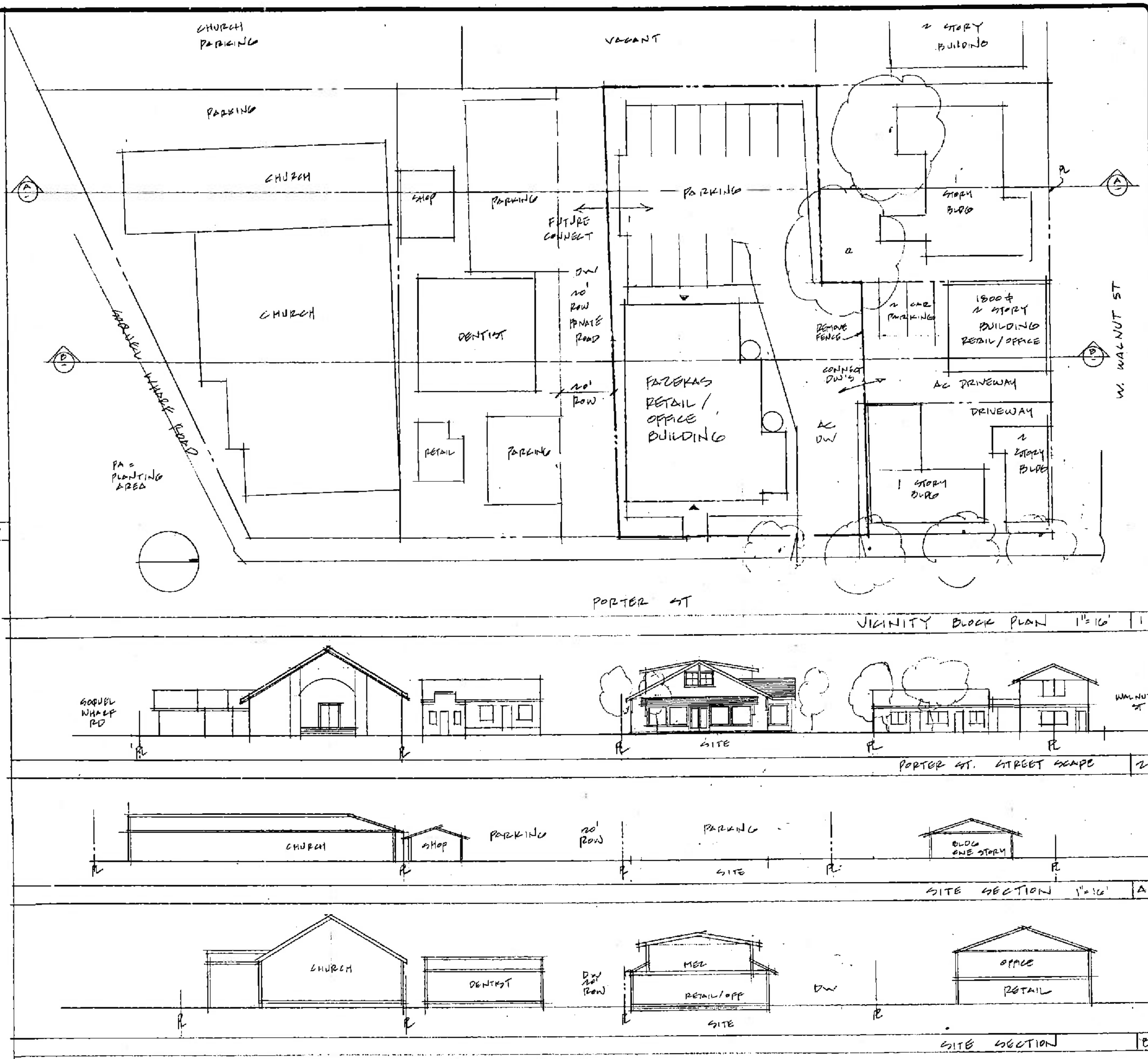
(i) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or shall provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters. Nonresidential structures that are floodproofed in compliance with subsection (F)(3)(g) of this section are an exception to this requirement.

Additional County Code sections that pertain to this project:

(6) Water Supplies and Sanitary Sewage Systems. All new and replacement water supplies and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.

(7) Placement of Fill. Allow the placement of fill within the 100-year floodplain in the minimum amount necessary, not to exceed 50 cubic yards. Fill shall only be allowed if it can be demonstrated that the fill will not have cumulative adverse impacts.

ENVIRONMENTAL PLANNING NOTES | 3



REVISIONS	BY
2.23.15	
4.1.15	
5.6.15	
9.7.15	
12.10.15	

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Fazekas
Building
2601 Porter St, Soquel

SITE ANALYSIS PLANS

DRAWN
CHECKED
DATE 9.20.15
SCALE 1"=16'
JOB NO. PORTER ST 2
SHEET A6
OF SHEETS

2601 PORTER

Santa Cruz County Sanitation District

701 OCEAN STREET, SUITE 410 SANTA CRUZ, CA 95060-4073
JOHN J. PRESLEIGH, DISTRICT ENGINEER

October 7, 2014

DARYL FAZEKAS
15621 LEMA VISTA AVE
LOS GATOS CA 95032

SUBJECT: SEWER AVAILABILITY AND DISTRICT'S CONDITIONS OF SERVICE FOR THE FOLLOWING PROPOSED DEVELOPMENT:

APN: 030-201-74 & -75 APPLICATION NO.: NONE NOTED
PARCEL ADDRESS: 2601 PORTER STREET
PROJECT DESCRIPTION: NEW RETAIL OFFICE BUILDING

COMMENTS FOR PARCEL -75:

Sewer service is available for the subject development upon completion of the following conditions. This notice is effective for one year from the issuance date to allow the applicant the time to receive tentative map, development or other discretionary permit approval. If after this time frame this project has not received approval from the Planning Department, a new sewer service availability letter must be obtained by the applicant. Once a tentative map is approved this letter shall apply until the tentative map approval expires.

Proposed location of on-site sewer lateral(s), clean-out(s), and connection(s) to existing public sewer must be shown on the plot plan of the building permit application.

Department of Public Works and District approval shall be obtained for an engineered sewer improvement plan, showing on-site and off-site sewers needed to provide service to each lot or unit proposed, before sewer connection permits can be issued. The improvement plan shall conform to the County's "Design Criteria" and shall also show any roads and easements. Existing and proposed easements shall be shown on any required Final Map. If a Final Map is not required, proof of recordation of existing or proposed easement is required.

The plan shall show all existing and proposed plumbing fixtures on floor plans of building application. Completely describe all plumbing fixtures according to table 7-3 of the uniform plumbing code.

Other: The District has no record of the location of any lateral serving this parcel.

Other: No downstream capacity problem or other issue is known at this time. However, downstream sewer requirements will again be studied at time of Planning Permit review, at which time the District reserves the right to add or modify downstream sewer requirements.

COMMENTS FOR PARCEL -74:

Sewer service is not currently available for this parcel unless either it is combined with Parcel -75 or an easement is secured through parcel -75.

Yours truly,

JOHN J. PRESLEIGH
District Engineer

By: [signature]

Rachel Lather
Senior Civil Engineer

DEED RESTRICTION

TO PROHIBIT USE OF DOMESTIC WATER FOR SITE IRRIGATION

WHEREAS, DARYL FAZEKAS, (hereinafter reffered to as the Owner) is the recorded owner of the real property described in Exhibit A, attached hereto and incorporated by reference (The Property).

WHEREAS, the Property is located at 2601 Porter St. Soquel, Santa Cruz County. APN 030-201-74 and APN 030-201-75.

WHEREAS, the Soquel Creek Water District has conditionally approved a development plan subject to the use of rainwater catchment tanks to be used as the sole source of landscape irrigation on the Property. No domestic potable water shall be used for irrigation that is taken from the domestictic water meter serving the buildings on the site.

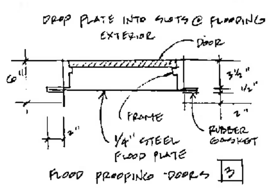
WHEREAS, but for this deed restriction, the Project could not be approved by Santa Cruz County as designed by the Owner.

NOW, THEREFORE, in order to obtain a permit to build the Project on the Property, the undersigned Owner, for himself and for his heirs, assigns and successors-in-interest, hereby irrevocably covenant with the Soquel Creek Water District to use only rainwater or greywater for irrigation of onsite landscaping. No domestic potable water from the building's water meter shall be used for exterior watering of plants.

1. DURATION. This Deed Restriction shall remain in full force and effect and shall bind the Owner and all assigns or successors-in-interest for the life of the Project. The Owner may work with the Soquel Creek Water District in the future to modify this agreement at the sole discretion of the Soquel Creek Water District.

2. RIGHT OF ENTRY. The Soquel Creek Water District may enter onto the property at times reasonably acceptable to the Owner to acertain whether the use restrictions set forth above are being observed.

3. REMEDIES. The Soquel Creek Water District may pursue any and all legal remedies to enforce the terms and conditions of this Deed Restriction.



Shear Wall Schedule

NAIL FIELD 12" o.c. 8d OK

Shear Wall Type	1	2	3	3 3
3/8" CDX Plywood 8d@ edge	6" oc	4" oc	3" oc	3" oc both sides
Sill Plate Nailing	16d @ 6"	16d @ 4"	16d @ 3"	(2) 16d @ 3"
5/8" Anchor Bolts @	4' oc	32" oc	24" oc	16" oc
Top Plate A35 clip @	16" oc	12" oc	10" oc	6" oc

SOQUEL CREEK WATER DISTRICT

October 9, 2014

Mr. Daryl Fazekas
15621 Loma Vista Ave.
Los Gatos, CA 95032

SUBJECT: Existing Water Service Project Approval Letter for Commercial Development Project at 2601 Porter Street, Soquel; APNs 030-201-74 & 030-201-75

Dear Mr. Fazekas:

Thank you for submitting plans and providing the requested information for your proposed 4,500 square foot Net-Zero retail building at 2601 Porter Street to be occupied by a single commercial entity/tenant. This letter serves as the Soquel Creek Water District's (District) approval for the proposed development and is intended to allow you to proceed through the County of Santa Cruz's building permit process. As the subject parcel has an existing and active domestic water service that can serve the proposed development and the District's Water Demand Offset (WDO) program does not apply (see additional information below), your project is not required to obtain a Conditional or Unconditional Will Serve letter.

As previously conveyed in my email dated 10/1/14, staff determined that WDOs do not apply to the proposed project as past water use associated with this service (0.26 acre-feet per year) exceeds the projected water use associated with the new development (0.173 acre-feet).

Additionally, a dedicated landscape meter is not required at this site as irrigation water will solely be provided by on-site rainwater harvesting tanks, no exterior hose bibs are being installed, and you have provided a copy of an official recording (No. 2014-0033935 dated 10/09/14) against the property deed prohibiting the future use of domestic water supplied by the District for landscape irrigation purposes.

When you receive a building permit, please provide the District with a copy as well as a completed Fire Protection Requirements Form and payment for a fire protection service/meter.

If have any questions or need additional information, please contact me at (831) 475-8501 x156. Thank you for your assistance.

Sincerely,
SOQUEL CREEK WATER DISTRICT

[signature]

Shelley Flock
Staff Analyst

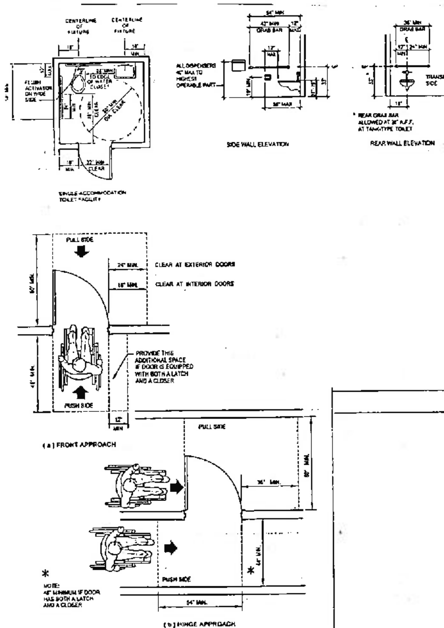
cc: Taj Dufour, SqCWD Engineering Manager

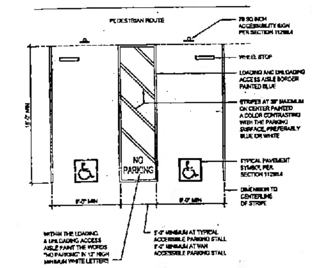
Mail to: P O Box 1550 • Capitola, CA 95010
5180 Soquel Drive • TEL 831-475-8500 • FAX 831-475-4291 • WEBSITE www.soquelcreekwater.org

FIRE DEPT NOTES

1. THESE PLANS ARE IN COMPLIANCE WITH CALIFORNIA BUILDING AND FIRE CODES, 2013, AS AMENDED BY THE CENTRAL FIRE PROTECTION DISTRICT.
2. CONSTRUCTION CLASS VB, OCCUPANCY GROUP B.
3. BUILDING TO BE 100% FIRE SPRINKERED PER PER 2013 CALIF FIRE CODE AND FIRE DISTRICT AMENDMENTS.
4. THE FIRE FLOW AT THIS LOCATION IS 4600 GPM. MIN FLOW IS 2000 GPM. THERE IS AN EXISTING FIRE HYDRANT ACROSS THE STREET.
5. ANY NEW FIRE HYDRANTS SHALL BE INSTALLED PRIOR TO AND DURING TIME OF CONSTRUCTION.
6. UNDERGROUND FIRE PROTECTION SYSTEM WORKING DRAWINGS MUST BE PREPARED BY THE DESIGNER / INSTALLER, AND SHALL COMPLY WITH THE UNDERGROUND FIRE PROTECTION SYSTEM INSTALLATION POLICY HANDOUT.
7. THE BUILDING SHALL BE PROTECTED BY AN APPROVED AUTOMATIC SPRINKLER SYSTEM COMPLYING WITH THE NFPA 13 CURRENTLY ADOPTED BY CBC, CHAPTER 35.
8. THIS IS A SHELL ONLY PROJECT. WHEN THE TENANT IMPROVEMENT PLANS ARE SUBMITTED UNDER SEPARATE PERMIT, THE ENTIRE SYSTEM MUST BE RECALCULATED.
9. THE DESIGNER / INSTALLER SHALL SUBMIT 3 SETS OF DRAWINGS AND ONE SET OF CALCULATIONS TO CENTRAL FIRE FOR APPROVAL. FOLLLOW THEIR GUIDE SHEET. NO ADDITIONAL FIRE EXTINGUISHING SYSTEMS ARE PROPOSED.
10. THE JOB COPIES OF THE BUILDING AND FIRE SYSTEMS PLANS AND PERMITS MUST BE ON SITE DURING INSPECTIONS.

2





HC 3

Conditions of Approval/Compliance Comments:

4) Provide analysis demonstrating the retention systems will fully drain within 48 hours.
5) Inlets should be relocated outside of landscape areas or redesigned in order to prevent soil and other debris entering and clogging the retention systems.
6) Final analysis needs to demonstrate adequate capacity of undersidewalk drains to accommodate safe overflow from the site. The drains shall comply with Figure ST-4b and shall be Schedule 80 plastic pipe, not cast iron.
7) Per Part 3, Section C.1.e of the County Design Criteria (CDC) this project is considered a large redevelopment project. As such, the project is required to provide mitigations for pollutant and hydrologic impacts due to development. These mitigations shall include Low Impact Development (LID) measures that emphasize minimization of impacts as a first priority consistent with the general plan for minimizing impervious area impacts. The project analysis must demonstrate compliance with sections C.2 and C.3.a. b and c of the CDC. Please provide a Stormwater Management Report which addresses the stormwater impacts and mitigations and demonstrates compliance with the CDC may be delayed until prior to map recordation at the applicants own risk.
8) The pervious paver detail should be updated to call for no compaction below the paver and retention facility; or a minimal amount that will allow for the 3.5 inch/hour infiltration rate used in the retention analysis. This should be approved and specified by the geotechnical engineer. The detail should also eliminate/update the references (notes 4 and 9) to an underdrain detail as none is provided.
9) Provide final stormwater management plans that are adequately detailed for construction and that demonstrate compliance with the CDC. Design should include provisions for safe overflow, flow control sizing, capacity analysis, treatment, pollution prevention, drain time and vector control assessment. Plans should clearly describe how runoff from all project areas (roof, hardscapes, landscapes, rear yards, etc.) will be routed and should include details such as: surface and invert elevations, slopes, surface details, flow control structures, clean-out facilities at pipe connections/grade/direction changes, materials, installation requirements, compaction/decompaction requirements, etc.
10) Please confirm with the water department that the water service lines locations relative to the stormwater management is acceptable and in conformance with state and local standards.

(3.) Development Criteria and Design Requirements. All development within the 100-year floodplain shall meet the following criteria. Any addition, repair, reconstruction, rehabilitation, alteration, or improvement of structures for which building permits were issued prior to April 15, 1986, when subject to the definition of "cumulative improvement," does not meet the definition of "substantial improvement" (pursuant to SCCC 16.10.040(18) and (65)), is exempt from this section.
(b) Anchoring of foundations and the structures attached to them by a method adequate to prevent flotation, collapse and lateral movement of the structures due to the forces that may occur during the base flood, including hydrostatic and hydrodynamic loads and the effects of buoyancy.
(c) Shall be constructed with materials and utility equipment resistant to flood damage and using construction methods and practices that minimize flood damage;
(d) Shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding;
(g) Nonresidential structures shall be floodproofed if elevation above the 100-year flood level in accordance with subsection (F)(3)(f) of this section is not feasible. Floodproofed structures shall:
(i) Be floodproofed so that below an elevation one foot higher than the 100-year flood level, the structure is watertight with walls substantially impermeable to the passage of water based on structural designs, specifications and plans developed or reviewed by a registered professional engineer or architect;
IMPORTANT INFORMATION: Based on floodway data table information located within the "Flood Insurance Study" (FIS) the "Base Flood Elevation" (BFE) is 39.6. The new structure will need to be either elevated or floodproofed to 1 foot above this BFE.
(ii) Be capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
(iii) Be certified by a registered professional engineer or architect that floodproofing standards and requirements have been complied with; the certification shall be submitted to the Planning Director and shall indicate the elevation to which floodproofing was achieved prior to a final building inspection. The Planning Director shall maintain records of compliance with floodproofing requirements;

SEE 5/A4

REVISIONS	BY

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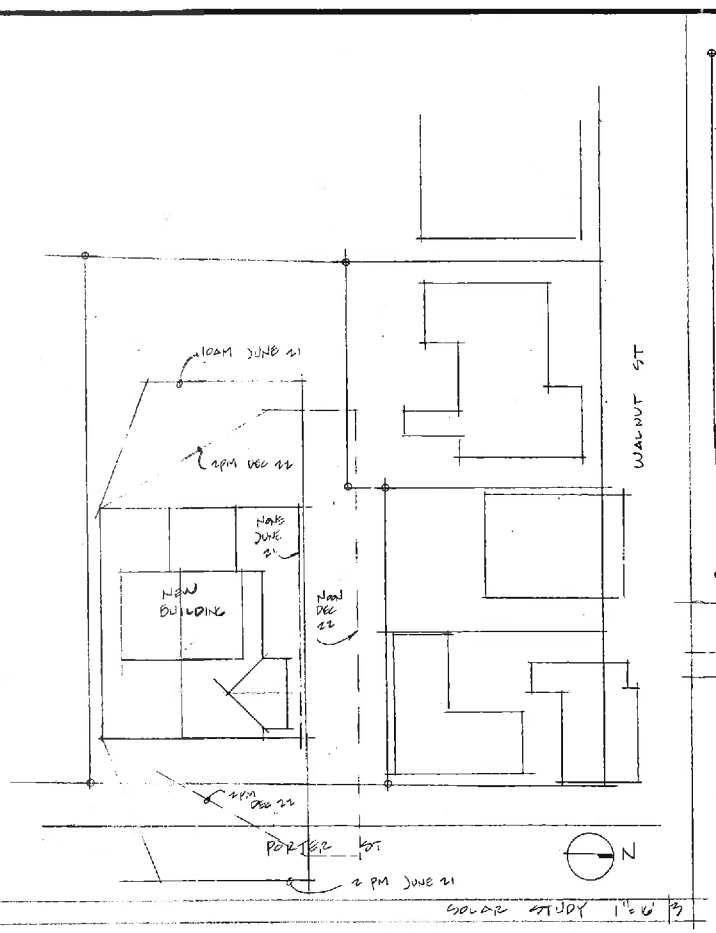
Los Gatos, CA 95032
DarylFazekas@gmail.com
408 395 9400

FAZEKAS

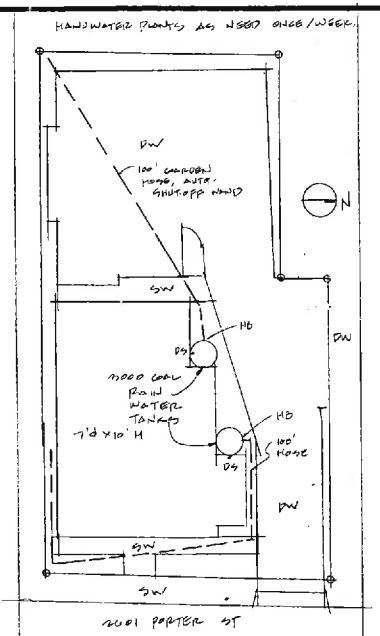
Building
2601 Porter St
Soquel

NOTES

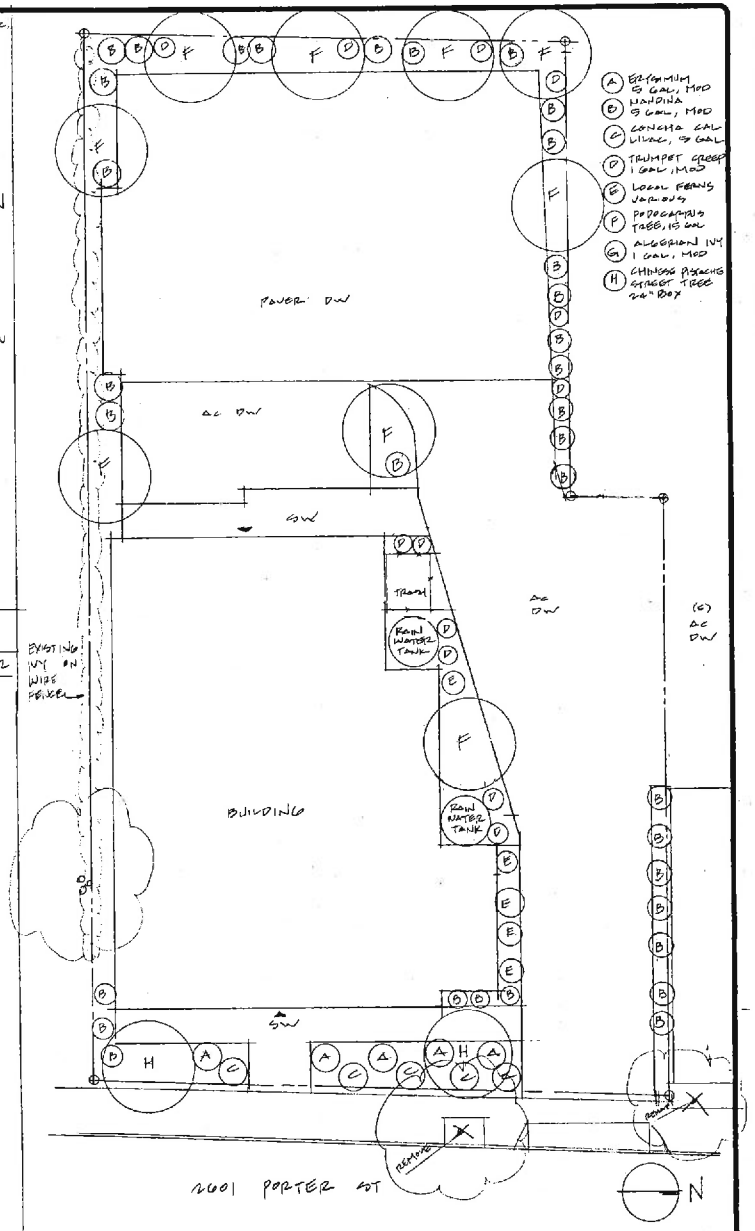
DRAWN	
CHECKED	
DATE	9.20.15
SCALE	
JOB NO.	2601 PORTER 2
SHEET	A7
OF	SHEETS



SOLAR STUDY 1"=6'



IRRIGATION PLAN 1"=16' 2



LANDSCAPE PLAN 1"=8' 1

REVISIONS	BY
12.16.15	

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DarylFazekas@gmail.com
408 395 9400

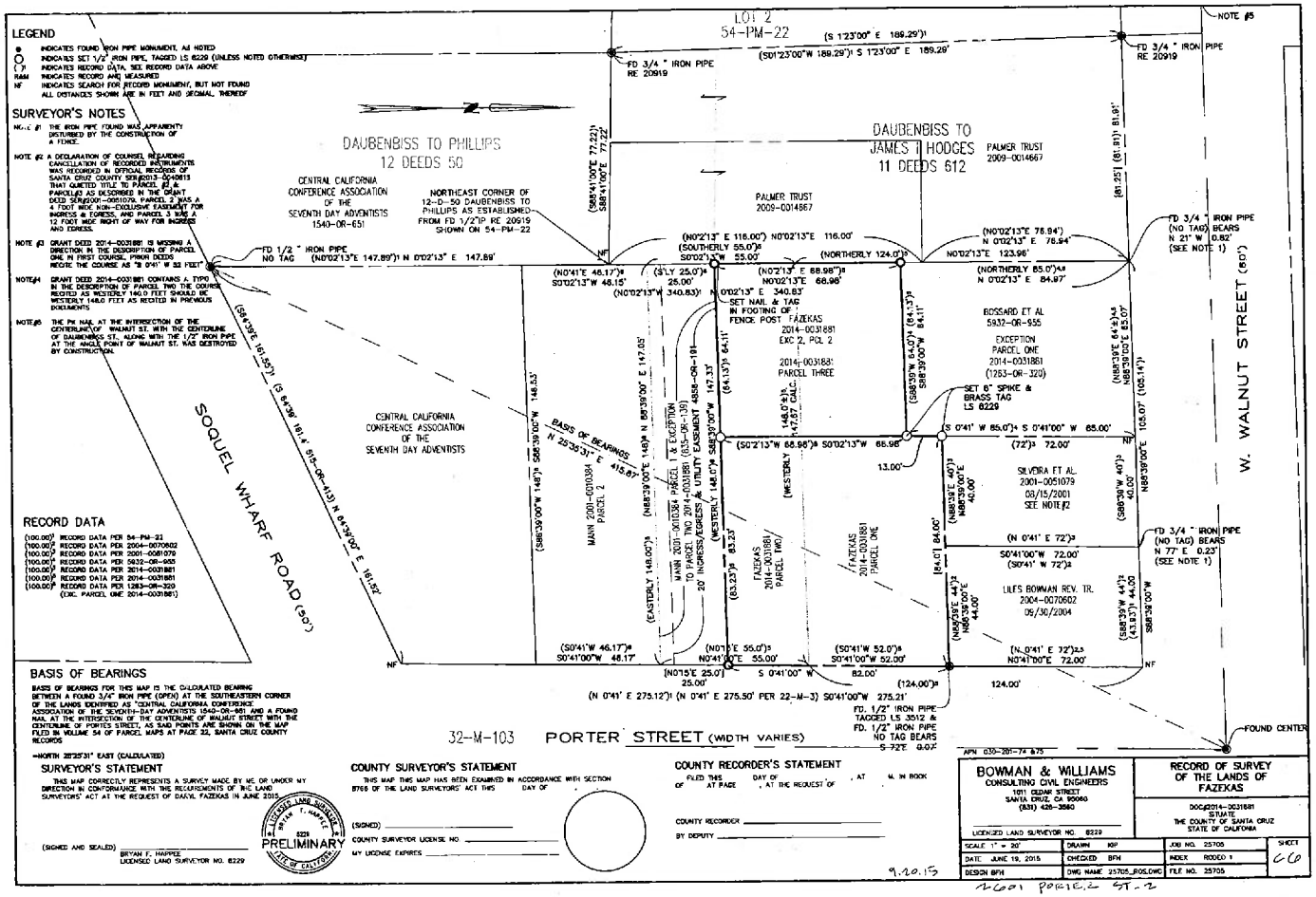
FAZEKAS

Building
2601 Porter St
Soquel

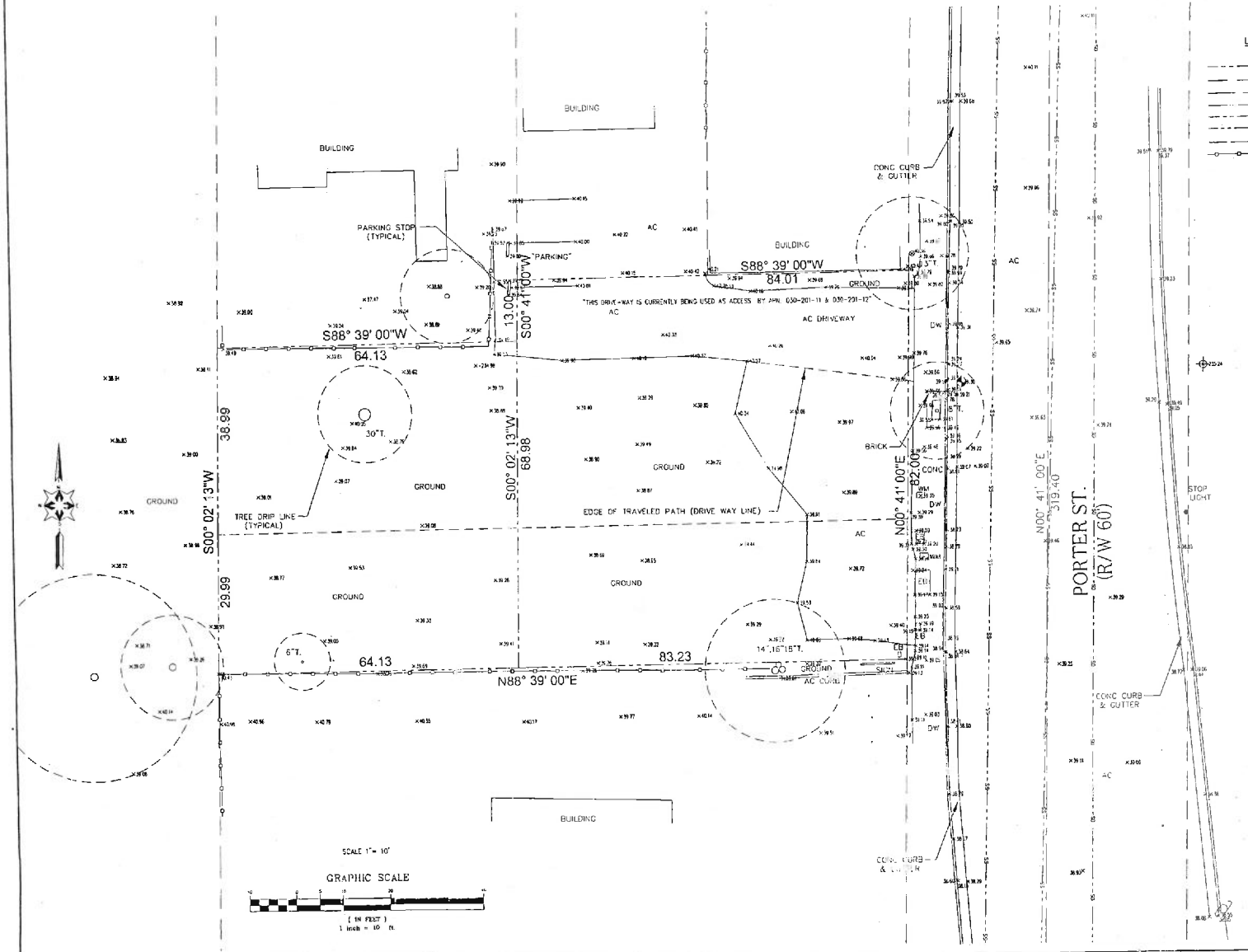
LANDSCAPE PLAN
IRRIGATION
SOLAR STUDY

DRAWN	
CHECKED	
DATE	9.20.15
SCALE	1/8" 1/16"
JOB NO.	2001 PORTER 2
SHEET	A9
OF	SHEETS

VOL ____ OF MAPS, PAGE ____



170



LEGEND:

- PROPERTY LINE
- EXISTING LOTS
- CENTERLINE
- EASEMENT LINE
- SANITARY SEWER LINE
- STORM DRAIN LINE
- OVERHEAD POWER LINE
- WOOD FENCE
- WATER VALVE
- JOINT POLE
- FIRE HYDRANT
- SURVEY MONUMENT FOUND
- STREET LIGHT

ABBREVIATIONS:

AC	ASPHALT
CB	CATCH BASIN
DW	DRIVEWAY
EB	ELECTRIC BOX
FH	FIRE HYDRANT
GM	GAS METER
GV	GAS VALVE
SDMH	STORM DRAINAGE MANHOLE
SSMH	SANITARY SEWER MANHOLE
SSCO	"NOT FOUND"
VG	VALLEY GUTTER
WM	WATER METER

DISCLAIMER:
SMP ENGINEERS OR ITS OFFICERS OR AGENTS SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF ELECTRONIC COPIES OF THIS PLAN.

NOTE:
THIS MAP REPRESENTS TOPOGRAPHY OF THE SURFACE FEATURES ONLY. UNLESS SPECIFIED ON THIS MAP, LOCATIONS OF THE UNDERGROUND UTILITIES ARE NEITHER INTENDED NOR IMPLIED. FOR THE LOCATIONS OF UNDERGROUND UTILITIES CALL "USA" (1-800-642-2444). SURFACE FEATURES ARE LOCATED BY MEANS OF A STATION AND OFFSET FROM THE CONTROL LINE.

BASIS OF BEARINGS:
FOUND SURVEY MONUMENTS ON THE RIGHT OF WAY OF W. PORTER STREET. RECORD INFORMATION WAS USED PER LOT LINE ADJUSTMENT DOC. 2009-0014680.

PROJECT BENCHMARK:
NGS BENCHMARK BM # GU-2286 BRASS DISC FOUND (NAVD 83 DATUM)

SITE BENCHMARK:
SURVEY CONTROL SET MAG NAIL ELEVATION=29.30'

NOTES:

1. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.
2. THE GROSS AREA OF LAND OF RECORD IS 11,280 SQ. FT. ±.
3. THE SURVEY WAS BASED ON A GRANT DEED DOC.# 01180-44381 DATED MAY 15, 2013 RECORDED IN COUNTY OF SANTA CRUZ.
4. ALL EXISTING BUILDINGS ARE WOOD.
5. FOR PRECISE SPECIES OF TREES A CERTIFIED ARBORIST SHALL BE CONSULTED.
6. THE PROPERTY LINES SHOWN HEREON ARE COMPILED FROM RECORD DATA. A RECORD OF SURVEY IS CURRENTLY SUBMITTED TO THE COUNTY OF SANTA CRUZ. ALL BOUNDARY RELATED ITEMS SHOULD RELY ON THE RECORD OF SURVEY FOR CLARIFICATION AND FINAL RESOLUTION, WHICH IS CURRENTLY BEING CONDUCTED.

I HEARBY STATE THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA, THAT THIS MAP CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION IN JANUARY 2015, AND THAT THIS TOPOGRAPHIC SURVEY IS BASED ON RECORD DATA PER LOT LINE ADJUSTMENT DOC. 2009-0014680. A TITLE REPORT WAS NOT REVIEWED. EASEMENTS OF RECORD MAY EXIST THAT ARE NOT SHOWN ON THIS MAP.

IF UNDERGROUND UTILITIES, ZONE, SETBACK, AND STREET WIDENING DATA ARE SHOWN HEREON, IT IS FOR INFORMATION ONLY, HAVING BEEN OBTAINED FROM AVAILABLE SOURCES NOT CONNECTED WITH ME. THEREFORE, NO GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF SAID INFORMATION. ALL UTILITIES MUST BE FIELD VERIFIED

RYAN A MIX LS # 8743 2/23/15

LICENSED LAND SURVEYOR RYAN A. MIX No.8743 STATE OF CALIFORNIA

2601 PORTER ST
SOQUEL, CA 95073
APN: 030-201-74 & 030-201-75

SMP ENGINEERS
1534 Carob Lane Los Altos, CA 94024
Tel. (650) 941-8055 Fax (650) 941-8755

Scale: 1" = 10'
Project by: JN
Checked by: SJR
Date: 12/19/2014
Project No: 214127

TOPOGRAPHIC SURVEY MAP

Sheet No: T-1

REVISIONS	DESIGN BY	DESIGN DATE	CITY APPR.	APPR. DATE

CITY OF SOQUEL

9.10.15

C7