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## FLOYD LAW FIRM

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Eureka, California 95501  
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Attorneys:

Bradford C Floyd  
Carlton D. Floyd

August 25, 2016



Humboldt County Board of Supervisors  
825 Fifth Street, Room  
Eureka, CA 95501

**Re: Dollar General - Eich Road, Humboldt Hill area;  
Coastal Development Permit, Special Permit  
Application Number 9329, Case Number CDP-14-033/ SP-14-049**

Dear Boardmembers:

I represent Dan and Kelly Noga, the owners of property adjacent to the proposed development of the Dollar General store, which is the subject of this agenda item. The Nogas are the owners of the Country Club Market located at 5667 S. Broadway and the vacant land which is situated between the Country Club Market and the site for the proposed Dollar General store. Copies of the Grant Deeds to Nogas' properties are attached as **Exhibits A and B**.

Mr. and Mrs. Noga oppose the application of Dollar General to construct its store at the proposed site for the following reasons:

1. There will be an increase in traffic on South Broadway and Humboldt Hill Road. The development of a Dollar General Store in this vicinity will create an increase in the volume of traffic in an already high traffic area due to the large number of residential properties in the area and the lack of access in and out of the area other than South Broadway and Humboldt Hill Road.
2. There is a school bus stop located right at the site of the proposed Dollar General store. If the development is approved, this should create a great concern to the community because of the increase in the volume of traffic that will be generated if the Dollar General store is approved which will have a direct impact on child safety.
3. The proposed building site is directly over a right-of-way for ingress and egress for the Nogas' properties. If the development of the Dollar General store is approved by the Commission, it will impede or prevent customer traffic to and from the Country Club Market, which is a legal right these customers have acquired. Furthermore, because the rights of ingress and egress for Country Club Market customers are not reciprocal (the proposed development site does not have ingress and egress rights over properties owned by the Nogas) Dollar General customers will trespass on the Nogas' property as they enter and exit the Dollar General's parking lot. This will create a negative impact and increased burden on the Nogas' adjacent properties.

Copies of a photograph of the site showing the right of way for ingress and egress to/from Nogas' property, the building design plan prepared by Green Design Landscape Architects for the Dollar General building, and the Workmap prepared by Kelly-O'Hern Associates showing the utility easements, a site map showing are attached hereto as **Exhibits C, D and E**, respectively.

4. The site where the building is to be constructed is directly over utility easements as depicted in the Workmap prepared by Kelly-O'Hern Associates (Exh. C). In fact, the attorneys for Dollar General raise the issue of the utility easements in a letter dated July 25, 2014, to Cookman-Meyer Partnership, the owners of the property of the proposed Dollar General store. In that letter, the attorneys objects to items of contained in the Preliminary Report issued by Placer Title Company as agent for Fidelity National Title Company of California ("Preliminary Report") as follows:
  - a. Item 4 of the Preliminary Report "lists an easement for right of way, pipeline and sewer drainage lines," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
  - b. Item 5 of the Preliminary Report "lists an easement for sewer lines," and they object to this item and request that it be removed from the Preliminary Report "or the item must be located on a current survey and be acceptable to Purchaser for Purchaser's intended use of the property."
  - c. Item 6 of the Preliminary Report "lists an easement for public road," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
  - d. Item 8 of the Preliminary Report "lists an easement for public highway," and they object to this item and request that it be removed from the Preliminary Report and must not adversely affect the Purchaser's intended use of the property.
  - e. Item 10 of the Preliminary Report "lists an easement," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."
  - f. Item 12 of the Preliminary Report "lists an easement for ingress and egress," and that they "object to this item. This item must be acceptable to Purchaser for Purchaser's intended use of the property."

A copy of this letter is attached hereto as **Exhibit F**.

5. The Nogas and Cookman-Meyer Partnership had an agreement that neither of them would cause any development on their properties that would interfere or be detrimental to any other's business. Contrary to that agreement, Cookman-Meyer Properties are working with Dollar General to develop a store on their property which would be in direct competition with the Nogas' Country Club Market.
6. The subject property has substantial wetlands and wetland-related species over the majority of the property.

7. The subject property is not properly zoned for the operation of a retail store such as Dollar General.
8. The public claims a right-of-way over the subject property based upon common-law dedication.
9. Finally, as you know, Dollar General is not a local business and a store of this kind and the location will have a direct impact on local business.

The Nogas have filed a lawsuit for quiet title and promissory estoppel against the property owners, Thomas L. Cookman, Daryl Meyer and the Cookman-Meyer Partnership, of the site where the Dollar General store is to be developed in the Humboldt County Superior Court, case no. DR140658. A copy of the most recent Complaint is attached hereto as **Exhibit G**. The association, Friends of South Broadway, has joined in this lawsuit claiming common-law dedication of the strip of roadway that traverses over the subject property that has been used continuously by the public since the 1950s.

Based upon the foregoing, Mr. and Mrs. Noga respectfully request the Board to reconsider the Planning Commission's approval of the proposed development of the Dollar General at the location adjacent to their property and deny the project in its entirety.

Respectfully submitted,



Bradford C Floyd

BCF/gme  
Enclosures

RECORDING REQUESTED BY

Humboldt Land Title Co.

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENT TO

Name Dan L. Noga  
Street Kelly A. Noga  
Address 2610 Hillcrest Drive  
City & State Eureka, Ca. 95503  
Zip

Order No 95112 SH

1998-5032-3  
Recorded - Official Records  
Humboldt County, California  
Carolyn Crnich, Recorder

Recorded by Humboldt Land Title Company  
Rec Fee 13.00  
Doc Trf Tax 143.00  
Survey Mon 10.00  
Clerk: KJ Total: 166.00  
Mar 2, 1998 at 10:00

SPACE ABOVE THIS.



Grant Deed

DOCUMENTARY TRANSFER TAX IS \$143.00 Parcel No. 305-111-7  
 computed on full value less value of liens or encumbrances remaining at time of sale, or  
 computed on full value of property conveyed. Dan Spiegel Humboldt Land Title Co.  
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX, FIRM NAME

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

WALTER EICH, as Trustee of the Walter Eich 1991 Revocable Trust, as to Parcels One, Three, Four and Five  
WALTER EICH, widower, as to Parcel Two  
hereby GRANT(S) to

DAN L. NOGA and KELLY A. NOGA, husband and wife as joint tenants

the following described real property in the unincorporated area  
County of Humboldt State of California:

SEE DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Dated February 4, 1998

Walter Eich  
Walter Eich

STATE OF CALIFORNIA  
COUNTY OF Humboldt S.S.  
On February 26, 1998 before me,  
Sandra L. White  
a Notary Public in and for said County and State, personally appeared

Walter Eich, as trustee  
Walter Eich or trustee

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

SANDRA L. WHITE  
Comm. #TC81295  
NOTARY PUBLIC  
HUMBOLDT COUNTY, CALIFORNIA  
My Commission Expires Dec. 20, 1999

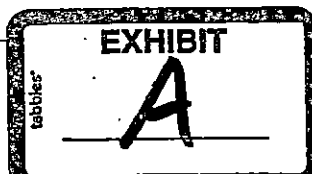
WITNESS my hand and official seal  
Signature Sandra L. White  
My Commission Expires \_\_\_\_\_

(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

City & State



DESCRIPTION

That real property situate in the County of Humboldt, State of California, described as follows:

Those portions of the Southeast quarter of Section 8, Township 4 North, Range 1 West of Humboldt Meridian, described as follows:

PARCEL ONE:

COMMENCING on the East line of the California State Highway right of way described at Parcel One in Deed from Sophia C. Newett, et al. to the State of California, recorded in Book 228, Page 196 of Deeds, at a point located South 30 degrees 21 1/2 minutes West 1181.6 feet from the quarter section corner on the East line of said Section 8;  
thence South 63 degrees 58 minutes East 93 feet;  
to the West line of the County Road leading to Humboldt Hill, as it existed prior to 1954;  
thence along said road South 8 degrees 2 minutes West 100 feet to an iron pipe set by A.B. Bones in connection with Survey made November 23, 1948;  
thence North 65 degrees 47 minutes West 135.1 feet;  
to the East line of said State Highway;  
thence Northerly along the East line of said highway 100 feet, more or less, to the point of beginning.

PARCEL TWO:

COMMENCING at a point located North 15 degrees 50 minutes West 51.4 feet from the most Southerly corner of the land conveyed to Avery E. Graham and wife, recorded in Book 284, Page 158 of Deeds, hereinbefore referred to;  
thence North 75 degrees 50 minutes East 4 feet;  
thence North 15 degrees 50 minutes West 8 feet;  
thence South 75 degrees 50 minutes West 8 feet;  
thence South 15 degrees 50 minutes East 8 feet;  
thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

PARCEL THREE:

A right of way for ingress and egress from the County Road to the State Highway referred to in Parcel One, to be jointly used by Avery E. Graham and Ethel Miller Graham and by Walter W. Eich, their heirs, successors and assigns, over the following described parcel:

COMMENCING at the Southeast corner of said Parcel One on the West line of said County Road;  
thence along said West line South 8 degrees 02 minutes West 25 feet;  
thence North 65 degrees 47 minutes West 145 feet, more or less, to the East line of said State Highway;  
thence Northeasterly along the East line of said State Highway 25 feet, more or less, to the Southwest corner of the land hereinbefore described in Parcel One;  
thence South 65 degrees 47 minutes East 135.1 feet to the point of beginning.

continued ...

## PARCEL FOUR:

An easement 3 feet in width for pipe line, for the conveyance of water, the center line of which is described as follows:

COMMENCING at a point on the Southwesterly line of said Parcel Three distant North 65 degrees 47 minutes West 7 feet from the Southeasterly corner thereof;

thence Southerly along a line that is distant West 7 feet (measured at right angles) and parallel to the East line of the land described in Deed to Avery E. Graham and wife hereinbefore referred to, to a point that bears North 75 degrees 50 minutes East from the center point of the well site hereinbefore described as Parcel Two;

thence South 75 degrees 50 minutes West to the Northeasterly line of said Parcel Two.

## PARCEL FIVE:

An easement for the installation of a sewer drainage line of pipe, together with the right to repair, replace and maintain the same in such manner as shall not disturb or interrupt the right of ingress and egress over Parcel Three hereinbefore referred to, over, under and across the following described land:

BEGINNING at the Southwest corner of Parcel One hereinbefore described and running Southerly along the Easterly line of the present State Highway 101, 200 feet;

thence Southeasterly at right angles to said State Highway line a distance of 15 feet;

thence Northeasterly and parallel with the East line of said State Highway 140 feet;

thence Northeasterly in a direct line to a point on the South line of said Parcel One that bears South 65 degrees 47 minutes West 70 feet from the point of beginning;

thence North 65 degrees 47 minutes West 70 feet to the point of beginning.

## PARCEL SIX:

That portion of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Section 8, Township 4 North, Range 1 West, Humboldt Base and Meridian, described as follows:

EASEMENT for sewer purposes over a strip of land 5 feet wide, the center line of which is described as follows:

BEGINNING at a point on the Westerly line of the County Road which is South 8 degrees 2 minutes West 137 feet from the Southeast corner of land heretofore conveyed to Walter Eich by Deed recorded January 28, 1949, under Recorder's Serial No. 648, in the Office of the County Recorder of said County;

thence South 70 degrees West 165 feet.

2011-1163-2

Recorded — Official Records  
Humboldt County, California  
Carolyn Crnich, Recorder

Recorded by FORBES

Rec Fee	16.00
Doc Trf Tax	60.50
Survey Mon	10.00
Clerk: MM	Total: 86.50
Jan 14, 2011 at 15:29	

When Recorded Mail To:

Dan and Kelly Noga  
2610 Hillcrest Drive  
Eureka, CA 95503

*R*

<sup>305</sup>  
APN-~~301~~-101-055

DTT \$60.50

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

Humboldt Hill Property Partnership, a California General Partnership

hereby grants to

Daniel L. Noga and Kelly A. Noga, husband and wife as joint tenants

All that real property situated in the County of Humboldt, State of California, described as follows:

-See Legal Description attached hereto-

Dated: Feb 19 09

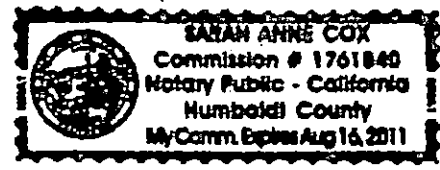
*[Signature]*  
 Humboldt Hill Property Partnership  
 By: Dan Noga  
 Title: Authorized Partner

STATE OF CALIFORNIA )SS  
COUNTY OF HUMBOLDT )

On February 19<sup>th</sup>, 2009 before me, Sarah Anne Cox, a notary public, personally appeared Dan Noga, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature *[Signature]*



Legal Description

All that real property situated in the County of Humboldt, State of California, described as follows:



①

Parcel 3 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

305-101-055

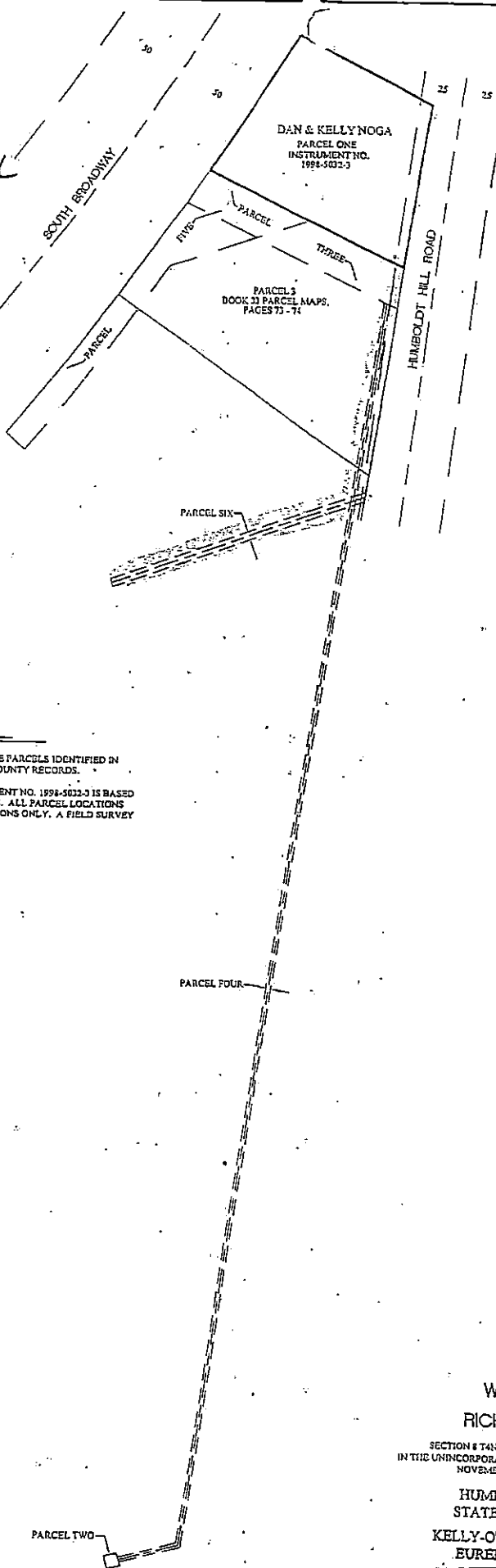




EXHIBIT  
C



NOGA  
DOLLAR GENERAL  
EASEMENT



NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1998-5032-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1998-5032-3 IS BASED ON BOOK 33 PARCEL MAPS, PAGES 73 AND 74. ALL PARCEL LOCATIONS SHOWN HEREON ARE BASED ON CALCULATIONS ONLY. A FIELD SURVEY HAS NOT BEEN CONDUCTED FOR THIS MAP.

WORKMAP  
FOR  
RICHARD SMITH  
IN  
SECTION 8 T4N, R1W, HUMBOLDT MERIDIAN  
IN THE UNINCORPORATED AREA OF HUMBOLDT COUNTY  
NOVEMBER 2014 SCALE 1" = 40'  
HUMBOLDT COUNTY  
STATE OF CALIFORNIA  
KELLY-O'HERN ASSOCIATES  
EUREKA, CALIFORNIA





JAMES S. CAMPBELL  
BOARD CERTIFIED IN REAL ESTATE

**BEGGS & LANE** RLLP  
ATTORNEYS and COUNSELLORS at LAW  
SINCE 1883

POST OFFICE BOX 12950  
PENSACOLA, FLORIDA 32591-2950  
TELEPHONE (850) 432-2451  
FAX (850) 469-3331

EMAIL ADDRESS  
JSC@BEGGS-LANE.COM

E. DMIE BEGGS  
1508 - 2001

BERT H. LANE  
1917 - 1981

July 25, 2014

VIA ELECTRONIC MAIL: [tomc@mendessupply.com](mailto:tomc@mendessupply.com)

Cookman-Meyer Partnership  
Attn: Thomas J. Cookman  
1920 Freshwater Road  
Eureka, CA 95503

RE: Purchaser's Title/Survey Objection Notice; Real Estate Purchase Contract dated February 26, 2014 between Cookman-Meyer Partnership ("Seller"), and Cross Development, LLC, a Texas limited liability company ("Purchaser"), as amended (the "Agreement"), for the purchase of property located on Humboldt Hill Road, in Eureka, California

Dear Mr. Cookman:

This letter constitutes Purchaser's Title/Survey Objection Notice pursuant to Paragraph 9 of the above-referenced Agreement.

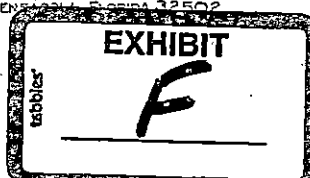
In regards to Preliminary Report under Title No. 14-503868-PG issued by Placer Title Company, as agent for Fidelity National Title Company of California ("Preliminary Report"), we have the following title objections:

1. The effective date of February 21, 2014 must be brought current immediately prior to closing. Purchaser reserves the right to object to any new or additional title matters that may be shown by the update.
2. All requirements of the Preliminary Report must be satisfied at or prior to closing.
3. The property must be conveyed to CD DG Humboldt, LLC, a Texas limited liability company and the deed recorded in the public records.
4. The legal description shown on Exhibit A to the Preliminary Report must be identical to the legal description shown in the vesting deed and on the survey.
5. Items 1, 2, and 3 of the Preliminary Report list outstanding property taxes which must be paid prior to closing.

8117 PRESTON ROAD, SUITE 300  
DALLAS, TEXAS 75225

501 COMMENDENCIA STREET  
PENSACOLA, FLORIDA 32502

215 S. MONROE STREET, SUITE 710  
TALLAHASSEE, FLORIDA 32301



6. Item 4 of the Preliminary Report lists an easement for right of way, pipeline and sewer drainage lines.

We object to this item. This item must be acceptable to the Purchaser for Purchaser's intended use of the property.

7. Item 5 of the Preliminary Report lists an easement for sewer lines.

We object to this item. Please remove from the Preliminary Report or the item must be located on a current survey and be acceptable to the Purchaser for Purchaser's intended use of the property.

8. Item 6 of the Preliminary Report lists an easement for public road.

We object to this item. This item must be acceptable to the Purchaser for Purchaser's intended use of the property.

9. Item 7 of the Preliminary Report lists a waiver of any claims for damages by reason of the highway adjoining property.

We object to this item. Please remove it from the Preliminary Report. This item must not adversely affect the Purchaser's intended use of the property.

10. Item 8 of the Preliminary Report lists an easement for public highway.

We object to this item. This item must be acceptable to the Purchaser and not adversely affect the Purchaser's intended use of the property.

11. Item 9 of the Preliminary Report lists any rights, interests or claims by reason of recorded surveys.

We object to this item. Please remove from the Preliminary Report or the item must be located on a current survey.

12. Item 10 of the Preliminary Report lists an easement for ingress and egress.

We object to this item. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

13. Item 11 of the Preliminary Report lists a notice of development plan.

We object to this item. Please provide copies of the development plan referred to therein for review and verification. Purchaser reserves the right to further review of any additional documents related to Item 11.

14. Item 12 of the Preliminary Report lists an easement for ingress and egress.

We object to this item. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

15. Item 13 of the Preliminary Report lists an easement and maintenance agreement.

We object to this item. We will require an estoppel in connection with this item, as approved by lender's counsel, stating, at a minimum, that there are no defaults under the agreement and that all maintenance fees are paid. This item must be acceptable to the Purchaser for the Purchaser's intended use of the property.

16. Items 14 and 15 of the Preliminary Report are requirements which must be satisfied at or prior to closing.

When revising the Preliminary Report, please do not change the item numbers. Renumbering creates potential confusion when the survey is revised. Please mark any omitted exceptions as "intentionally deleted". Please identify any endorsements which may operate to minimize the impact of the above-described exceptions on the intended development of the property.

The following endorsements, as applicable, will be required upon issuance of the final policy:

1. T-17 (Planned Unit Development),
2. T-19.1 (Restrictions, Encroachments, Minerals),
3. T19.2 (Minerals and Surface Damage),
4. T19.3 (Minerals and Surface Damage),
5. T-23 (Access),
6. T-25 (Contiguity),
7. T-25.1 (Contiguity),
8. T-24 (Non-Imputation), and
9. T-26 Additional Insured.

Survey Objections:

An ALTA/ACSM Land Title Survey prepared by Butler Engineering Group, dated June 18, 2014, under Job No. 14.152, a copy of which is attached.

The legal description shown on the survey must be identical to the legal description on Exhibit A to the Preliminary Report.

The survey shows possible encroachments of the following items:

1. Telephone vault,
2. Concrete and asphalt paving, and
3. A wood and plaster fence.

The Surveyor's Certificate will need to be added with CD DG Humboldt, LLC, Amegy Bank, N.A., Placer Title Company, and Fidelity National Title Company of California.

The Surveyor must also include the remainder of the attached Schedule A as a separate page, in accordance with the terms as shown on the attached Schedule A.

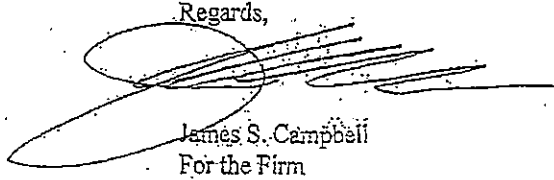
The survey must reference the current Preliminary Report. We may also require certain substantive changes to the survey itself.

Purchaser reserves the right to make additional objections upon review and/or receipt of an updated survey of the property.

I would appreciate it if you would contact me to discuss the items set forth in this Title/Survey Objection Notice so that we can work together to mutually agree on the proper solutions to the same and move towards a smooth and timely closing.

I look forward to hearing from you.

Regards,



James S. Campbell  
For the Firm

JSC/alm

cc: Jason Read (via email: [jason.read@cbre.com](mailto:jason.read@cbre.com))  
Lisa Arant (via email: [larant@placertitle.com](mailto:larant@placertitle.com))  
Kevin Butler (via email: [kevin@butler-group.org](mailto:kevin@butler-group.org))  
Dan Dover (via email: [dan@crossdevelopment.net](mailto:dan@crossdevelopment.net))  
Brenda Ellis (via email: [Brenda@crossdevelopment.net](mailto:Brenda@crossdevelopment.net))  
Steve Rumsey (via email: [srumsev@crossdevelopment.net](mailto:srumsev@crossdevelopment.net))  
Brad Lacour (via email: [blacour@trident-partners.com](mailto:blacour@trident-partners.com))

FILED NS

DEC 04 2014

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF HUMBOLDT

1 Bradford C Floyd (State Bar #136459)  
Carlton D. Floyd (State Bar #275958)  
2 Law Office of Bradford C Floyd  
819 Seventh Street  
3 Eureka, California 95501  
Telephone: (707) 445-9754  
4 Facsimile: (707) 445-5915  
E-mail: [bcfloyd@floydlawfirm.net](mailto:bcfloyd@floydlawfirm.net)

5 Attorneys for Plaintiffs  
6  
7

8  
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

10 DAN L. NOGA AND KELLY A. NOGA,

11 Plaintiffs,

12 v.

13 THOMAS J. COOKMAN, DARYL MEYER,  
COOKMAN-MEYER PARTNERSHIP, a  
14 California General Partnership, and ALL  
PERSONS UNKNOWN, CLAIMING ANY  
15 LEGAL OR EQUITABLE RIGHT, TITLE,  
ESTATE, LIEN, OR INTEREST IN THE  
16 PROPERTY DESCRIBED IN THE  
COMPLAINT ADVERSE TO PLAINTIFF'S  
17 TITLE, OR ANY CLOUD ON PLAINTIFF'S  
TITLE THERETO, AND DOES 1  
18 THROUGH 10, INCLUSIVE,

19 Defendants.

Case No. DR 140658

COMPLAINT TO QUIET TITLE  
(Code Civ.Proc., §§ 760.020 to 761.020);  
AND FOR PROMISSORY ESTOPPEL

20 Plaintiffs allege:

21 FIRST CAUSE OF ACTION

22 (Quiet Title)

- 23 1. Plaintiffs, DAN L. NOGA and KELLY A. NOGA ("Noga"), are, and at all times
- 24 mentioned in this complaint, were, residents of Humboldt County, California.
- 25 2. Defendant, THOMAS J. COOKMAN ("Cookman"), is, and at all times
- 26 mentioned in this complaint, was a resident of Humboldt County, California.
- 27 3. Defendant, DARYL MEYER ("Meyer"), is, and at all times mentioned in this
- 28





1 complaint, was a resident of Humboldt County, California.

2 4. Defendant, COOKMAN-MEYER PARTNERSHIP (the "Partnership"), is, and at  
3 all times mentioned in this complaint, was a California general partnership.

4 5. Plaintiffs are ignorant of the true names and capacities of defendants. All Persons  
5 Unknown Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property  
6 Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud on Plaintiff's Title  
7 Thereto, and Does 1 through 10, inclusive, and therefore sue these defendants by such fictitious  
8 names. Plaintiffs are informed and believe and on that basis allege that each of the DOE  
9 defendants claims, or may claim, some interest in the real property described in paragraph 11 of  
10 this complaint. Plaintiffs will amend this complaint to allege the true names of such defendants  
11 when their true names and capacities are ascertained.

12 6. Plaintiff is informed and believes and on that basis alleges, that at all times  
13 mentioned in this complaint, defendants were the agents and employees of their co-defendants,  
14 and in doing the things alleged in this complaint were acting within the course and scope of that  
15 agency and employment.

16 7. Plaintiffs are the owners in fee and is in possession and control of unimproved real  
17 property located on S. Broadway, Eureka, Humboldt County, California (APN 305-101-054), which  
18 is adjacent to the Noga property ("Vacant Property"), and more specifically described on Exhibit  
19 A attached hereto and made a part hereof by this reference.

20 8. Plaintiffs obtained fee simple title to the Vacant Property by a Grant Deed from  
21 Humboldt Hill Property Partnership, a California General Partnership, dated March 6, 2009, and  
22 recorded January 14, 2011, as Document No. 2011-1161-2, in the Official Records of Humboldt  
23 County, California.

24 9. Plaintiffs are the owners in fee and is in possession and control of real property and  
25 improvements located at 5667 S. Broadway, Eureka, Humboldt County, California (APN 305-111-  
26 007) ("Noga property"), also known as the Country Club Market, and more specifically described  
27 on Exhibit B attached hereto and made a part hereof by this reference.

28 ///

1           10       Plaintiffs obtained fee simple title to the real property by a Grant Deed from Walter  
2 Eich and the Walter Eich 1991 Revocable Trust, dated February 4, 1998, and recorded March 2,  
3 1998, as Document No. 1998-5032-3, in the Official Records of Humboldt County, California.

4           11.       On information and belief, defendants Cookman, Meyer and Partnership are the  
5 owners in fee and are in possession and control of unimproved real property located at 5707 S.  
6 Broadway, Eureka, Humboldt County, California (APN 305-101-054) ("Partnership Property"), and  
7 more specifically described on Exhibit C attached hereto and made a part hereof by this reference.

8           12.       Plaintiffs, as owners of the Noga Property, own deeded utility easements ("Utility  
9 Easements") that traverse over the Vacant Property and over and across the Partnership Property,  
10 both on the east and west sides of said property. Said Utility Easements are more fully described and  
11 depicted in Exhibit D which is attached hereto and incorporated herein by reference.

12           13.       In addition to the Utility Easements plaintiffs have acquired by adverse possession a  
13 prescriptive easement over the Partnership Property. Said easement traverses over the Vacant Parcel  
14 and Partnership Property, and parallels the public roadway commonly known as South Broadway  
15 and is depicted in Exhibit E which is attached hereto and incorporated herein by reference. This  
16 easement affords plaintiffs and their customers of the Country Club Market (Noga Property) ingress  
17 and egress to and from the Noga Property. This easement is referred to in this complaint as the  
18 "Roadway Easement."

19           14.       As owner of the Utility Easements and Roadway Easement plaintiffs are entitled to  
20 the rights and privileges over, through, and under the Partnership Property as alleged in paragraph  
21 12 and 13 of this complaint.

22           15.       Plaintiffs believe, and thereon allege, that defendants are contemplating the sale of  
23 the Partnership Property to Dollar General in anticipation of the construction of a Dollar General  
24 Store on the site of the Partnership Property. Based upon the preliminary sketches of the project, the  
25 parking lot and building for the Dollar General Store will be constructed directly over the location  
26 of the Utility Easements and the Roadway Easement; thereby unreasonably interfering with  
27 plaintiffs' use and rights as owners of said easements. Copies of the site plan for the Dollar General  
28 Store and the photograph depicting the location of the Dollar General Store site where it overlaps

1 the Easement are attached hereto as Exhibits F and G, respectively, and made parts hereof by this  
2 reference.

3 16. Based upon the anticipated sale of the Partnership Property to Dollar General and the  
4 construction of the Dollar General Store and parking lot over the Utility Easements and Roadway  
5 Easement, plaintiffs are informed and believe and on that basis allege that defendants claim an  
6 interest which is adverse to plaintiffs' title to the Easement. These claims are without any right and  
7 defendants have no right, title, estate, lien, or interest superseding plaintiffs' title to the Easement.

8 17. Since at least 1998, and continuously since that time, plaintiffs have had actual,  
9 notorious, continuous and uninterrupted use and have openly possessed the Roadway Easement  
10 under claim of right and/or color of law in that plaintiffs and their customers of the Country Club  
11 Market have continuously used the Roadway Easement from the Vacant Property and over the  
12 Partnership Property to access South Broadway.

13 18. Plaintiffs' use and possession of the Roadway Easement has been, and continues to  
14 be, hostile and adverse to defendants' claim to the real property.

15 WHEREFORE, plaintiffs pray for judgment against defendants as set forth below

16 SECOND CAUSE OF ACTION

17 (Promissory Estoppel)

18 19. Plaintiffs allege and incorporate herein by reference all allegations contained in  
19 paragraphs 1 through 18 with the same force and effect as though fully set forth herein.

20 20. In or about January 2011, defendants made promises and representations to plaintiffs  
21 on which defendants knew or should have known that plaintiffs would be reasonably induced to rely.

22 21. Plaintiffs and defendants agreed at the time they purchased their respective properties  
23 (along with another property owner, Keith and Rena Forbes who own the property adjacent to the  
24 Partnership Property commonly referred to as Assessor Parcel no. 305-101-040 and located at 2042  
25 Eich Road) that when the property was subdivided, neither of the property owners would develop  
26 their respective property with a business that would be detrimental to the other's business.

27 21. Plaintiffs relied reasonably and foreseeably, to plaintiffs' detriment, on defendants'  
28 representation.

1           22.     Because of the proposed development of the Dollar General store on defendants'  
2 property, which is in direct competition with plaintiffs' business, Country Club Market, defendants  
3 have not performed any of defendants' promises or representations. As a direct and proximate result  
4 of defendants' failure to perform according to the promises and representations which defendants  
5 made, plaintiff sustained damages in the amount to be determined at trial, as well as other damages  
6 according to proof.

7           WHEREFORE, plaintiffs pray for judgment as follows:

8           As to the First Cause of Action to Quiet Title:

- 9           1.     For judgment quieting title as to plaintiff s' right to use the Easement for ingress and  
10 egress;
- 11           2.     Plaintiffs' costs of suit incurred herein; and
- 12           3.     Such other and further relief as may be just and proper.

13           As to the Second Cause of Action for Promissory Estoppel:

- 14           4.     For an amount to be determined at trial, with interest on this sum at 10 percent per  
15 year from December 4, 2014, as allowed by law;
- 16           5.     Plaintiffs' costs of suit incurred herein; and
- 17           6.     Such other and further relief as may be just and proper.

18 Dated: December 4, 2014

Law Office of Bradford C Floyd

19  
20 By 

Bradford C Floyd, Attorneys for Plaintiffs

EXHIBIT C

LEGAL DESCRIPTION

All that real property situated in the County of Humboldt, State of California, described as follows:

PARCEL ONE

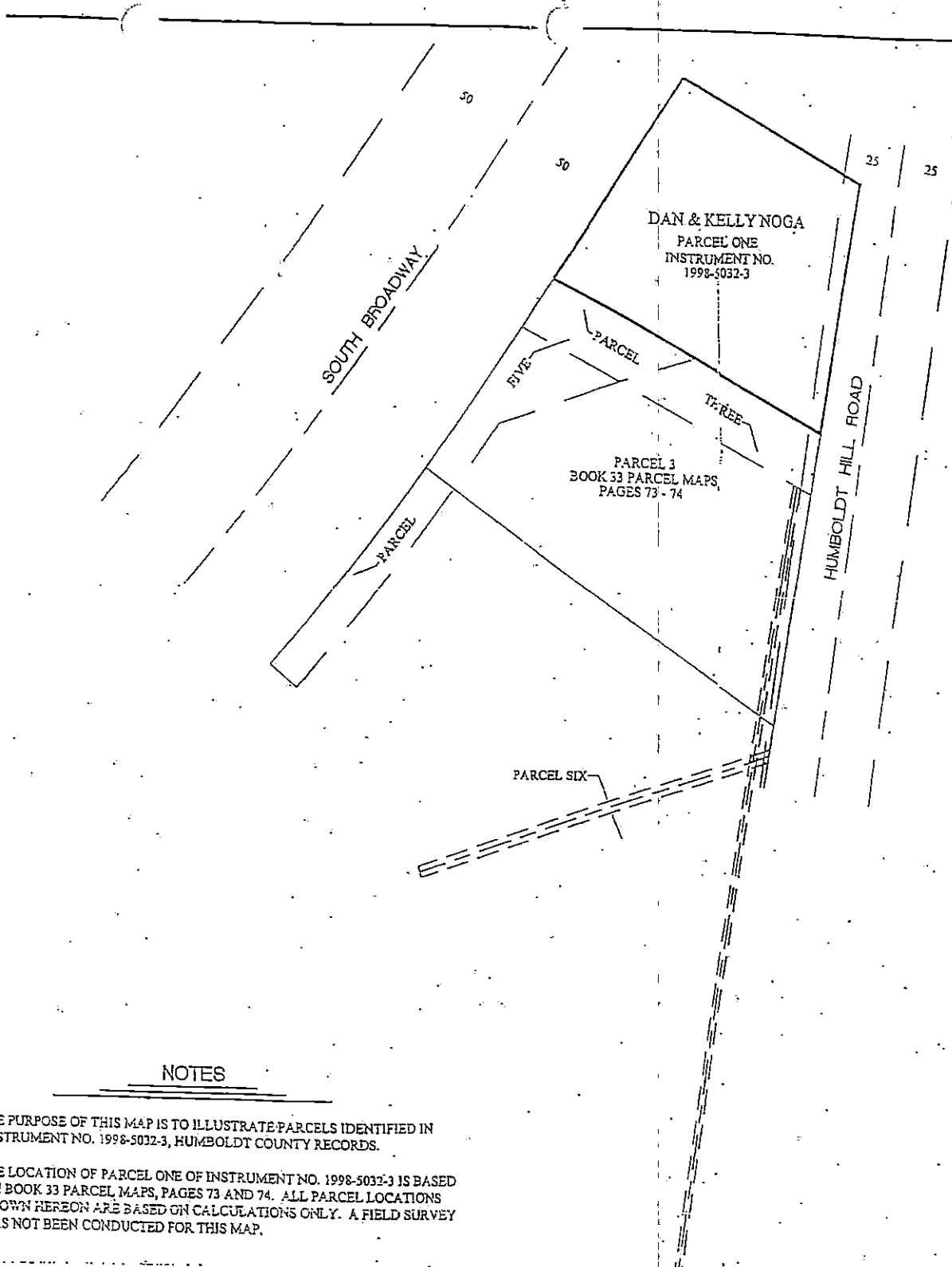
Parcel 2 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

Reserving therefrom, for the benefit of Parcel 1 of said Parcel Map No. 3439, a non-exclusive easement for ingress and egress over and across that portion of Parcel One above lying within Parcel "A" as shown on said Parcel Map.

PARCEL TWO

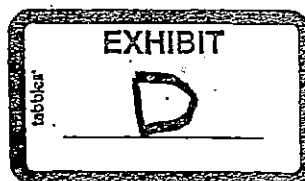
A non-exclusive easement for ingress and egress over and across that portion of Parcel 1 of said Parcel Map No. 3439 lying within Parcel "A" as shown thereon.

APN: 305-101-054



NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1998-5032-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1998-5032-3 IS BASED ON BOOK 33 PARCEL MAPS, PAGES 73 AND 74. ALL PARCEL LOCATIONS SHOWN HEREON ARE BASED ON CALCULATIONS ONLY. A FIELD SURVEY HAS NOT BEEN CONDUCTED FOR THIS MAP.





SITE  
OF  
DOLLAR  
GENERAL  
STORE.

PLAINTIFFS'  
PROPERTY

EXHIBIT  
E







EXHIBIT  
G

I have read the foregoing COMPLAINT TO QUIET TITLE

and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on December 4, 2014, at Eureka, California.

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

Dan L. Noga TYPE OR PRINT NAME

SIGNATURE

PROOF OF SERVICE 1013a (3) CCP Revised 2004

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of

State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list; by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at

California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on at California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on at California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

TYPE OR PRINT NAME

SIGNATURE

(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

EXHIBIT A

LEGAL DESCRIPTION

All that real property situated in the County of Humboldt, State of California, described as follows:

Parcel 3 as shown on Parcel Map No. 3439 filed in the office of the County Recorder of said Humboldt County in Book 33 of Parcel Maps, pages 73 and 74.

APN: 305-101-055

EXHIBIT B

LEGAL DESCRIPTION

That real property situated in the County of Humboldt, State of California, described as follows:

Those portions of the Southeast quarter of Section 8, Township 4 North, Range 1 West of Humboldt Meridian, described as follows:

PARCEL ONE:

COMMENCING on the East line of the California State Highway right of way described at Parcel One in Deed from Sophia C. Newett, et al, to the State of California, recorded in Book 228, Page 196 of Deeds, at a point located South 30 degrees 21 ½ minutes West 1181.6 feet from the quarter section corner on the East line of said Section 8;

thence South 63 degrees 58 minutes East 93 feet;

to the West line of the County Road leading to Humboldt Hill, as it existed prior to 1954;

thence along said road South 8 degrees 2 minutes West 100 feet to an iron pipe set by A. B. Bones in connection with Survey made November 23, 1948;

to the East line of said State Highway;

thence Northerly along the East line of said highway 100 feet, more or less, to the point of beginning.

PARCEL TWO:

COMMENCING at a point located North 15 degrees 50 minutes West 51.4 feet from the most Southerly corner of the land conveyed to Avery E. Graham and wife, recorded in Book 284, Page 158 of Deeds, hereinbefore referred to:

thence North 75 degrees 50 minutes East 4 feet;

thence North 15 degrees 50 minutes West 8 feet;

thence South 75 degrees 50 minutes West 8 feet;

thence South 15 degrees 50 minutes East 8 feet;

thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

PARCEL THREE:

A right of way for ingress and egress from the County Road to the State Highway referred to in Parcel One, to be jointly used by Avery E. Graham and Ethel Miller Graham and by Walter W. Eich, their heirs, successors and assigns, over the following described parcel:

COMMENCING on the Southeast corner of said Parcel One on the West line of said County Road;

thence along said West line South 8 degrees 02 minutes West 25 feet;

thence North 65 degrees 47 minutes West 145 feet, more or less, to the East line of said State Highway;

thence Northeasterly along the East line of said State Highway 25 feet, more or less, to the Southwest corner of the land hereinbefore described in Parcel One;

thence South 65 degrees 47 minutes East 135.1 feet to the point of beginning.

#### PARCEL FOUR:

An easement 3 feet in width for pipe line, for the conveyance of water, the center line of which is described as follows:

COMMENCING at a point on the Southwesterly line of said Parcel Three distant North 65 degrees 47 minutes West 7 feet from the Southeasterly corner thereof;

thence Southerly along a line that is distant West 7 feet (measured at right angles) and parallel to the East line of the land described in Deed to Avery E. Graham and wife hereinbefore referred to, to a point that bears North 75 degrees 50 minutes East from the center point of the well site hereinbefore described as Parcel Two;

thence South 75 degrees 50 minutes West to the Northeasterly line of said Parcel Two.

#### PARCEL FIVE:

An easement for the installation of a sewer drainage line of pipe, together with the right to repair, replace and maintain the same in such manner as shall not disturb or interrupt the right of ingress and egress over Parcel Three hereinbefore referred to, over, under and across the following described land:

BEGINNING at the Southwest corner of Parcel One hereinbefore described and running Southerly along the Easterly line of the present State Highway 101, 200 feet;

thence Southeasterly at right angles to said State Highway line a distance of 15 feet;

thence Northeasterly and parallel with the East line of said State Highway 140 feet;

thence Northeasterly in a direct line to a point on the South line of said Parcel One that bears South 65 degrees 47 minutes West 70 feet from the point of beginning;

thence North 65 degrees 47 minutes West 70 feet to the point of beginning.

#### PARCEL SIX:

That portion of the Southeast Quarter of Section 8, Township 4 North, Range 1 West, Section 8, Township 4 North, Range 1 West, Humboldt Base and Meridian, described as follows:

EASEMENT for sewer purposes over a strip of land 5 feet wide, the center line of which is described as follows:

BEGINNING at a point on the Westerly line of the County Road which is South 8 degrees 2 minutes West 137 feet from the Southeast corner of land heretofore conveyed to Walter Eich by Deed recorded January 28, 1949, under Recorder's Serial No. 648, in the Office of the County Recorder of said County;  
thence South 70 degrees West 165 feet.

APN: 305-111-007

RECEIVED  
BOARD OF SUPERVISOR

AUG 29 2016

AM PM  
7 8 9 10 11 12 1 2 3 4 5 6

## HUMBOLDT BAY MOBILE ESTATES

2150 Surfside Drive

Eureka, CA 95503

Phone 707-443-8836 Fax 707-443-8808

August 29, 2016

### RE: Dollar General Proposal/ Humboldt Hill

Dear Board of Supervisors,

My name is Carla Lane , I am the Property Manager of Humboldt Bay Mobile Estates. We have 126 residential mobile homes here in our park. We are located directly across the street and to the north a bit from the proposed Dollar General site.

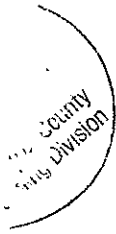
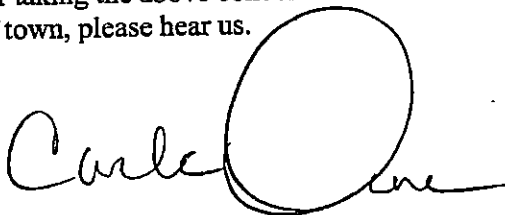
I am very much opposed to the construction of a Dollar General on Humboldt Hill for the following reasons;

- The traffic that will be brought to this end of town, would be a hazard to the many pedestrians and children that frequent this area. The intersection is already very dangerous, due to its confusing configuration and current high volume of traffic. There are many children that walk and ride bikes to and from school. There are also 2 bus stops, right at the proposed location. There are not enough parking spaces available; it is a set up for an accident.
- The transient traffic will increase; following the marsh eviction, I have had to run many "campers" off of our private property. It is a known fact that Dollar General attracts vagrants.
- It is absurd to build on **UNDEVELOPED MASHH LAND**, we have so little left here. There are plenty of empty buildings for rent in town that would accommodate this store. The County Club Market provides all this little community needs. It is a terrible example to set as far as what the city of Eureka values; wiping out land for a Dollar General, wiping out the Mom and Pop business at the front of town, this will be the first thing you see, after the Tip Top Club. Terrible.
- It will lower the neighboring property values. People live on this end of town because of what is *Not* here.

Thank you for taking the above concerns into consideration. Please do not allow Dollar General on our end of town, please hear us.

Thank you,

Carla Lane  
Property Manager



# HUMBOLDT BAY MOBILE ESTATES

2150 Surfside Drive

Eureka, CA 95503

Phone 707-443-8836 Fax 707-443-8808

August 29, 2016

## RE: Dollar General Proposal/ Humboldt Hill

Dear Board of Supervisors,

My name is Justin Lane, I am the Maintenance Manager of Humboldt Bay Mobile Estates. We have 126 residential mobile homes here in our park. We are located directly across the street and to the north a bit from the proposed Dollar General site.

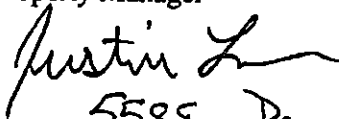
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- It will lower the neighboring property values. People live on this end of town because of what is *Not* here.

Thank you for taking the above concerns into consideration. Please do not allow Dollar General on our end of town, please hear us.

Thank you,

Justin Lane  
Property Manager

  
5588 Paradise Lane  
Eureka CA 95503



Dear Board of Supervisors,

8/28/2016

My name is James Weil, I am a resident of Humboldt Bay Mobile Estates. I reside at

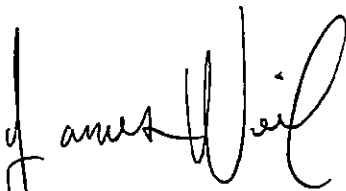
I am very much opposed to the construction of a Dollar General on Humboldt Hill for the following reasons;

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- It will lower the neighboring property values. People live on this end of town because of what is *Not* here.

Thank you for taking the above concerns into consideration. Please do not allow Dollar General on our end of town, please hear us.

Thank you,

James Weil  
5555 Ocean Vista Dr.  
Eureka Ca 95503



August 27, 2016

The Honorable Board of Supervisors  
County of Humboldt

Re: Proposed building of a Dollar General Store on South Broadway

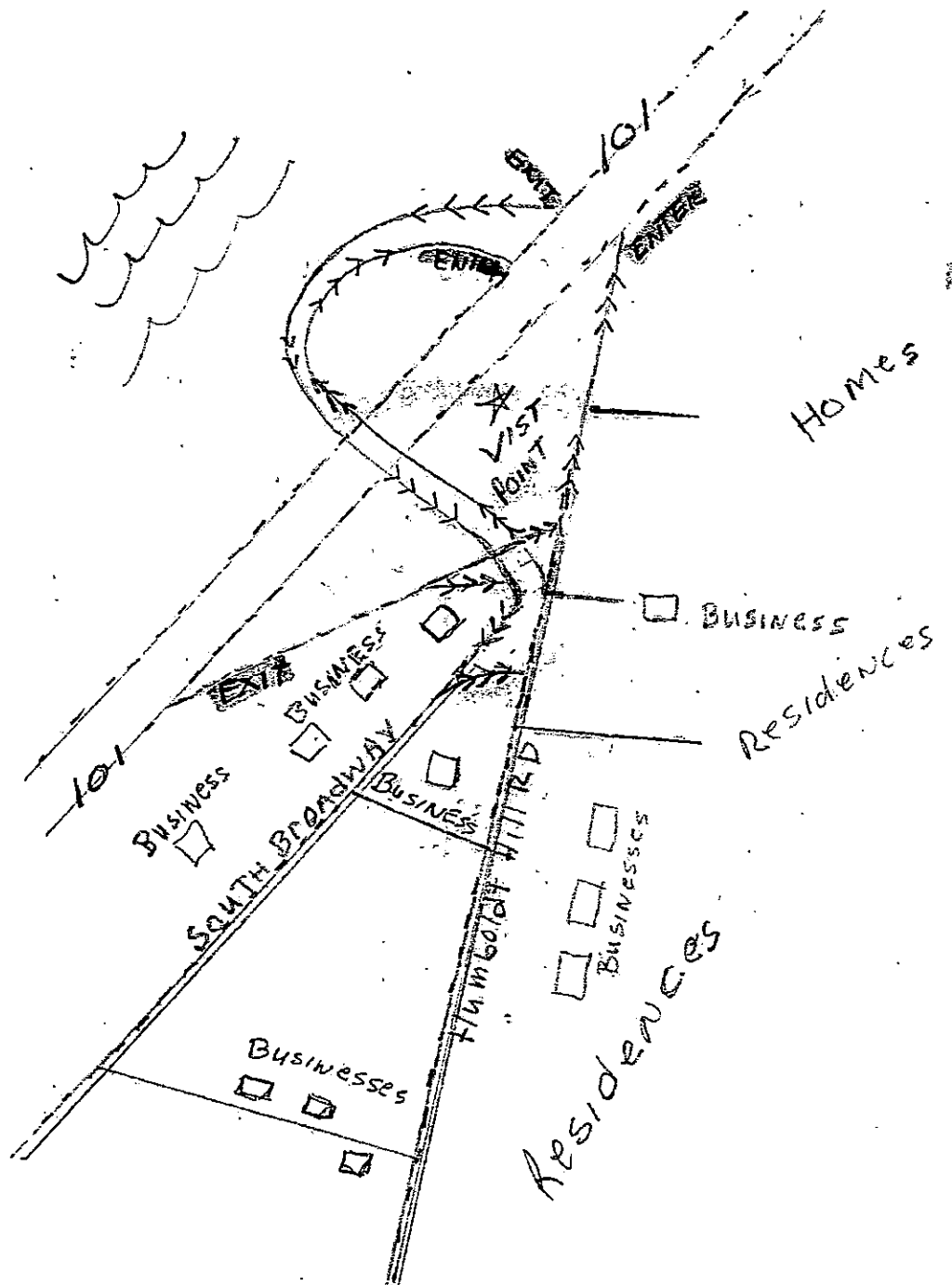
Dear Supervisors,

I am writing to express my concerns about the building of a retail business (Dollar General) on South Broadway, east of scenic Highway 101. I have a couple of concerns: I am not a fan of building on and reducing any wetlands, and not across from Humboldt Bay. My second concern is adding additional traffic that would converge at Spruce Point. There are two freeway exits, two freeway entry ramps, two busy surface streets, South Broadway and Humboldt Hill Road. To their east and west are residential properties and existing businesses, and last but not least, is the only historical vista point of Humboldt Bay in Eureka. All this takes place, as my attached **humble map** shows, in a very small area. Even now, there are certain times of the day when the traffic exiting 101, or cars coming down Humboldt Hill Road to enter the 101, are traveling at a high rates of speed, and it makes it extremely dangerous for cross traffic or foot traffic. This is also an issue for travelers and the RV's who want to visit the vista point. Please consider this information when you make your decision.

In closing let me add, we already have two Dollar Stores in Eureka, and a third opened in the Bayshore Mall, but went out of business.

Sincerely,

  
Patricia Samson



As you can see, a VERY busy, sometimes confusing, and dangerous interchanging on Humboldt Hill. NO MORE TRAFFIC NEEDED.

Aug 26, 2016

Board of Supervisors:

To whom it may concern. We the undersigned wish to convey our concern to you about the proposal to build a Dollar General on the other side of the Country Club Market.

We reside in the first Mobil home in Humboldt Bay Mobile Estates. We have an ongoing problem of noise and cars speeding down Humboldt Hill. We do not have a Patrol Officer on a permanent basis, it is only on an occasional basis that one is out here.

There does not seem to be anyone monitoring the noise level on many of the vehicles that do not have mufflers. They pull out from our road and the adjoining apartment complex on South Broadway with no regard for people that may be trying to sleep.

~~Traffic will increase with the new business and the problems will magnify.~~

We certainly hope you will not allow the building of Dollar General or any other business to occur until this situation is rectified.

Sincerely,

Gypsy J. Lamberger

*Gypsy J. Lamberger*

Howard C. Lamberger

*Howard C. Lamberger*

442-6912

Richard Frazell  
5595 Ocean Vista Ln.  
Eureka Ca 95503

To: Board of Supervisors,

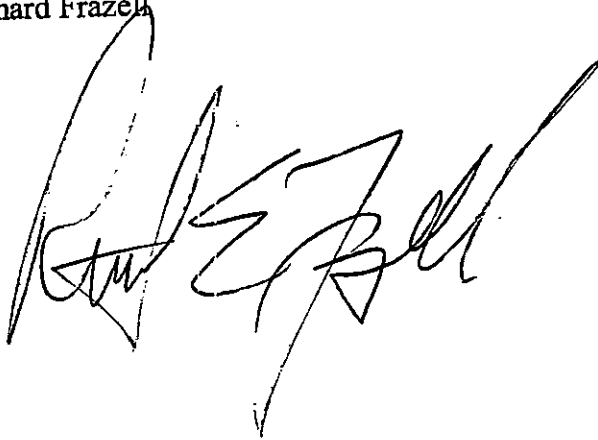
My name is Richard Frazell, I am a owner/resident of Humboldt Bay Estates. Retired, disabled I chose Eureka to move and enjoy my days in safety. I came here and stayed in a hotel while I researched and visited al the areas, parks, driving though each to find a home. Now I must help protect that. I am apposed to the Dollar General project!

I applaud the cities effort on the Marsh and homelessness. A process we must continue. We have already seen transients entering, knocking on doors. This project will only increase exposure to more. There is no reason to bring this traffic here. We are so close to town. This is not needed in the plan for Eureka. There are good open spaces/buildings in town. In town opportunities should be used first to bolster health first. This will only cheapen our neighborhood. We must maintain property values for the health of the communities. It will damage the business of the Country Club Market that has been serving the hill for years. This will impact present and future employees.

Now let's consider the stated wetland consideration. We here in Humboldt co. Pride ourselves in keepers of the land. What will we be doing in this? What can I say??

Again I appose this request!!!!

Urgently,  
Richard Frazell

A handwritten signature in black ink, appearing to read 'Richard Frazell', written in a cursive style.

**MITCHELL, BRISSO, DELANEY & VRIEZE, LLP**

CLIFFORD B. MITCHELL (1927 - 2010)

PAUL A. BRISSO

NANCY K. DELANEY

JOHN M. VRIEZE

WILLIAM F. MITCHELL

RUSSELL S. GANS

NICHOLAS R. KLOEPPPEL

\*\*\*\*\*

RYAN T. PLOTZ, Associate

AMY A. HUNT, Associate

ATTORNEYS AT LAW  
814 SEVENTH STREET  
EUREKA, CALIFORNIA 95501-1114  
www.mitchelllawfirm.com

TELEPHONE (707) 443-5643  
FACSIMILE (707) 444-9586  
E-MAIL general@mitchelllawfirm.com

P.O. DRAWER 1008  
EUREKA, CA 95502

\*\*\*\*\*

EMERY F. MITCHELL (1896 - 1991)  
WALTER J. CARTER (1949 - 1993)  
R.C. DEDEKAM (1929 - 2011)



RECEIVED  
BOARD OF SUPERVISORS

AUG 29 2016

August 29, 2016

AM  
7 8 9 10 11 12 1 2 3 4 5 6 PM

Humboldt County Board of Supervisors  
825 Fifth Street, Room 111  
Eureka, CA 95501

Re: Dollar General – Eich Road, Humboldt Hill area;  
Coastal Development Permit, Special Permit  
Application Number 9329, Case Number CDP-14-033/ SP-14-049

Dear Supervisors:

This letter provides a summary response to the bases cited in support of the Appeal filed by attorney Bradford Floyd on behalf of Dan and Kelly Noga. The asserted bases for appeal are recited in two letters from Mr. Floyd to the Humboldt County Planning Commission, one dated June 24, 2016, and the other July 7, 2016. The letters recite the “evolving” basis for the appellants’ objections to the Coastal Development Permit and are replete with alleged grounds that are not a legitimate basis for an appeal of a Coastal Development Permit.

Specifically, as recited in the June 24, 2016, letter from Mr. Floyd, the principal bases for the Noga’s appeal of the Coastal Development Permit for construction of a Dollar General at this urban infill parcel relate to an alleged “easement” over and across the affected parcel and, additionally, an alleged “oral covenant” pursuant to which the owners of the affected parcel “promised” Mr. Noga that no “competing business” would be sited. As Mr. Floyd adds, a civil action has been commenced pursuing these claims. These claims are denied by the property owners, are wholly without legal merit and, as Humboldt County Counsel specifically advised the Planning Commission, do not

constitute a valid basis for any appeal or obstruction to the Coastal Development Permit and instead would need to be resolved as a civil matter.<sup>1</sup>

Moreover, as Commissioner Levy noted during the July 7, 2016, Planning Commission Meeting, any such claim by Mr. Noga at this juncture is absurd in light of the fact that the subject parcel was created pursuant to a subdivision Parcel Map and attendant Development Plan in which Mr. Noga served as applicant. As Mr. Levy pointed out during the July 7, 2016, Planning Commission hearing, Mr. Noga's belated "easement claim" across the center of the parcel slated for Dollar General Development runs directly contrary to the ingress and egress routes created as part of the Development Plan. Appended hereto as **Exhibit A** is a copy of the approved Development Plan which shows the respective ingress and egress locations created for the three parcels highlighted in yellow. The alleged easement Mr. Noga now claims would directly encroach and interfere with the approved ingress and egress routes adopted in connection with the subdivision and imposed as a result of the Development Plan.

Despite Mr. Noga's prior claims, now, apparently, a cited basis for the instant appeal is alleged inadequacies in the Wetland Delineation Study prepared by Ms. Virginia Dains on behalf of the applicant and the proposed mitigation measures to protect that wetland indefinitely in the future if and when the property is obtained by the applicant and escrow closes such that the development may proceed. Planning Staff has carefully considered the issue and proposed sensible restoration, setback and mitigation measures to protect that wetland once restored as part of the development.

Additionally, the proposed reductions in the number of parking spaces from 32 to 24 directly occurred as a result of accommodating the wetland mitigation measures involved. Likewise, the assertions regarding the demographic population base to be served by this particular Dollar General Store is grossly exaggerated. Based on the applicant's retail studies, 24 parking spaces is more than adequate to serve this facility.

As is self-evident from this appeal, it is motivated by an effort to avoid competition with a competitor rather than sound land use planning concerns. The parcel slated for development is an urban infill parcel in close proximity to an urbanized area and is compatible with the Humboldt County General Plan, the zoning configuration for the parcel and long term community needs in this area. The appeal should be rejected

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<sup>1</sup> See the Executive Summary on Page 3 of the Staff Report for the July 7, 2016, Meeting. ["The prescriptive parking and ingress/egress claim was not within the purview of the Planning Commission and would need to be resolved as a civil matter."]

and the Planning Commission's approval of the Project, with mitigation measures in place, affirmed.

Very truly yours,

MITCHELL, BRISSO, DELANEY & VRIEZE, LLP

A handwritten signature in black ink, appearing to read "Russell S. Gans", written over a horizontal line.

Russell S. Gans

RSG/jg  
Enclosures



