

ATTACHMENT A

Appeal Letter Submitted by Floyd Law Firm

APPLICATION FORM

Humboldt County Planning and Building Department

10730

Planning Division ♦ 3015 H Street ♦ Eureka, CA 95501-4484 ♦ ph (707) 445-7541 ♦ fax (707) 268-3792
Robert S. Wall ♦ Interim Director

CDP-14-033 AA
SP-14-049 AA

INSTRUCTIONS:

1. Applicant/Agent complete Sections I, II and III below.
2. It is recommended that the Applicant/Agent schedule an Application Assistance Meeting with the Assigned Planner. A minimal fee is required for this meeting. This is not mandatory; however, prearranged appointments with the Assigned Planner will answer questions regarding application submittal requirements and help avoid processing delays (the Planner on Duty or Receptionist can identify the Assigned Planner for you).
3. Applicant/Agent needs to submit all items marked on the reverse side of this form (which will be completed by Staff).

SECTION I

APPLICANT (Project will be processed under Business name, if applicable.)

Business Name: Dan & Kelly Noga
 Contact Person: Dan Noga
 Mailing Address: 2610 Hillcrest
 City, St, Zip: Eureka, CA 95503
 Telephone: 707-445-3567 Fax: _____
 Email: _____

AGENT (Communications from Department will be directed to agent)

Business Name: Floyd Law Firm
 Contact Person: Bradford C Floyd
 Mailing Address: 819 7th Street
 City, St, Zip: Eureka, CA 95501
 Telephone: 707-445-9754 Fax: 707-445-5915
 Email: bcfloyd@floydlawfirm.net



OWNER(S) OF RECORD (If different from applicant)

Owner's Name: _____
 Mailing Address: _____
 City, St, Zip: _____
 Telephone: _____ Fax: _____

Owner's Name: _____
 Mailing Address: _____
 City, St, Zip: _____
 Telephone: _____ Fax: _____

LOCATION OF PROJECT

Site Address: 455 ft. north from the intersection of Eich Road and South Broadway
 Community Area: Humboldt Hill area

Assessor's Parcel No(s): 305-101-054
 Parcel Size (acres or sq. ft.): _____

Is the proposed building or structure designed to be used for designing, producing, launching, maintaining, or storing nuclear weapons or the components of nuclear weapons? YES NO

SECTION II

PROJECT DESCRIPTION


Describe the proposed project (attach additional sheets as necessary):

Applicants Dan and Kelly Noga submit their appeal of Coastal Development Permit CDP-14-033 & SP-14-049 & Special Permit Application 9329. The basis for the appeal is described in **Attachment 1**.

SECTION III

OWNER'S AUTHORIZATION & ACKNOWLEDGEMENT

I hereby authorize the County of Humboldt to process this application for a development permit and further authorize the County of Humboldt and employees of the California Department of Fish and Wildlife to enter upon the property described above as reasonably necessary to evaluate the project. I also acknowledge that processing of applications that are **not** complete or do not contain truthful and accurate information will be delayed, and may result in denial or revocation of approvals.



Applicant's Signature

7-20-16

Date

Applicant's Signature

Date

If the applicant is not the owner of record: I authorize the applicant/agent to file this application for a development permit and to represent me in all matters concerning the application.

Owner of Record Signature

Date

Owner of Record Signature

Date

THIS SIDE TO BE COMPLETED BY STAFF

***** THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS APPLICATION *****

| Item | Received | Item | Received |
|--|--------------------------|--|--------------------------|
| <input type="checkbox"/> Filing Fee of \$ _____ | <input type="checkbox"/> | <input type="checkbox"/> Agricultural Feasibility Study | <input type="checkbox"/> |
| <input type="checkbox"/> Archaeological Review Fee \$75.00 payable to: Northwest Information Center (NWIC) | <input type="checkbox"/> | <input type="checkbox"/> Architectural Elevations | <input type="checkbox"/> |
| <input type="checkbox"/> Fee Schedule (see attached, please return completed fee schedule with application) | <input type="checkbox"/> | <input type="checkbox"/> Design Review Committee Approval | <input type="checkbox"/> |
| <input type="checkbox"/> Plot Plan 12 copies (folded if > 8½" x 14") | <input type="checkbox"/> | <input type="checkbox"/> Environmental Assessment | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map 12 folded copies (Minor Subd) | <input type="checkbox"/> | <input type="checkbox"/> Exception Request Justification | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map 18 folded copies (Major Subd) [Note: Additional plot plans/maps may be required] | <input type="checkbox"/> | <input type="checkbox"/> Joint Timber Management Plan | <input type="checkbox"/> |
| <input type="checkbox"/> Tentative Map/Plot Plan Checklist (complete and return with application) | <input type="checkbox"/> | <input type="checkbox"/> Lot Size Modification Request Justification | <input type="checkbox"/> |
| <input type="checkbox"/> Division of Environmental Health Questionnaire | <input type="checkbox"/> | <input type="checkbox"/> Parking Plan | <input type="checkbox"/> |
| <input type="checkbox"/> On-site sewage testing (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> Plan of Operation | <input type="checkbox"/> |
| <input type="checkbox"/> On-site water information (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> Preliminary Hydraulic and Drainage Plan | <input type="checkbox"/> |
| <input type="checkbox"/> Solar design information | <input type="checkbox"/> | <input type="checkbox"/> R1 / R2 Report (Geologic/Soils Report, 3 copies with original signatures) | <input type="checkbox"/> |
| <input type="checkbox"/> Chain of Title | <input type="checkbox"/> | <input type="checkbox"/> Reclamation Plan, including engineered cost estimate for completing reclamation | <input type="checkbox"/> |
| <input type="checkbox"/> Grant Deed <input type="checkbox"/> Current <input type="checkbox"/> Creation | <input type="checkbox"/> | <input type="checkbox"/> Second Dwelling Unit Fact Sheet | <input type="checkbox"/> |
| <input type="checkbox"/> Lot Book Guarantee (prepared within the last six months prior to application) | <input type="checkbox"/> | <input type="checkbox"/> Variance Request Justification | <input type="checkbox"/> |
| <input type="checkbox"/> Preliminary Title Report (two copies, prepared within the last six months prior to application) | <input type="checkbox"/> | <input type="checkbox"/> Vested Right Documentation/Evidence | <input type="checkbox"/> |
| | | <input type="checkbox"/> Other _____ | <input type="checkbox"/> |
| | | <input type="checkbox"/> Other _____ | <input type="checkbox"/> |
| | | <input type="checkbox"/> Other _____ | <input type="checkbox"/> |
| | | <input type="checkbox"/> Other _____ | <input type="checkbox"/> |

FOR STAFF USE

| | | |
|--|--|--|
| <input type="checkbox"/> Ag. Preserve Contract | <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Reclamation Plan |
| <input type="checkbox"/> Certificate of Compliance | <input type="checkbox"/> General Plan Petition | <input type="checkbox"/> Surface Mining Permit |
| <input type="checkbox"/> Coastal Development Permit <input type="checkbox"/> Administrative | <input type="checkbox"/> Information Request | <input type="checkbox"/> Surface Mining Vested Right Determination |
| <input type="checkbox"/> Planning Commission | <input type="checkbox"/> Modification to _____ | <input type="checkbox"/> Timber Harvest Plan Information Request |
| <input type="checkbox"/> Design Review <input type="checkbox"/> Inland | <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Use Permit H.C.C. § _____ |
| <input type="checkbox"/> Coastal | <input type="checkbox"/> Preliminary Project Review | <input type="checkbox"/> Variance H.C.C. § _____ |
| <input type="checkbox"/> Determination of Legal Status | <input type="checkbox"/> Special Permit <input type="checkbox"/> Administrative <input type="checkbox"/> Planning Commission H.C.C. § _____ | <input type="checkbox"/> Zone Reclassification |
| <input type="checkbox"/> Determination of Substantial Conformance | <input type="checkbox"/> Subdivision <input type="checkbox"/> Parcel Map <input type="checkbox"/> Final Map | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Extension of _____ | <input type="checkbox"/> Exception to the Subdivision Requirements | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Fire Safe Exception Request | | |

Application Received By: _____ Date: _____ Receipt Number: _____

General Plan Designation: _____

Plan Document: _____

Land Use Density: _____

Zone Designation: _____

Coastal Jurisdiction Appeal Status: Appealable Not Appealable

Preliminary CEQA Status:

Environmental Review Required

Categorically Exempt From Environmental Review: Class _____ Section _____

Statutory Exemption: Class _____ Section _____

Not a Project

Other _____

NOTICE TO BOARD OF SUPERVISORS OF APPEAL
FROM ACTION OF THE HUMBOLDT COUNTY PLANNING COMMISSION

Notice is hereby given of an appeal by Dan and Kelly Noga to the Board of Supervisors from the action of the Humboldt County Planning Commission on July 7, 2016, related to the real property located on the east side of South Broadway, approximately 455 feet north from the intersection of Eich Road and South Broadway, Humboldt Hill area, Assessor Parcel Number (APN) 305-101-054.


The Planning Commission approved Application Number 9329, for Coastal Development Permit CDP-14-033 and Special Permit SP-14-049. 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.

Attachment 1 to this Notice of Appeal are copies of letters dated June 24, 2016 (Exh. A) and July 7, 2016 (Exh. B), from Bradford C Floyd to the Humboldt County Planning Commission that describe the Nogas' opposition to the proposed construction.

Dated: July 20, 2016

Respectfully submitted,

FLOYD LAW FIRM

By  _____
Bradford C Floyd, Attorneys for Appellants



ATTACHMENT 1

FLOYD LAW FIRM

819 Seventh Street
Eureka, California 95501
Telephone:(707) 445-9754
Facsimile:(707) 445-5915
E-mail: bcflovd@floydlawfirm.net

Attorneys:

Bradford C Floyd
Carlton D. Floyd

June 24, 2016

Humboldt County Planning Commission
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 Commissioners:

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 Commission to oppose the proposed development of the Dollar General at the location adjacent to their property.

Respectfully submitted,



Bradford C Floyd

BCF/gme
Enclosures

RECORDING REQUESTED BY

Humboldt Land Title Co.

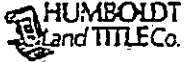
AND WHEN RECORDED MAIL THIS DEED AND UNLESS OTHERWISE SHOWN BELOW MAIL TAX STATEMENT TO

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

Order No 95112-SW

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
[X] computed on full value less value of liens or encumbrances remaining at time of sale, or
[] computed on full value of property conveyed. Dan Spelberg 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

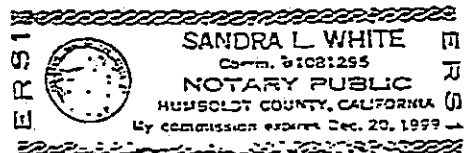
STATE OF CALIFORNIA Humboldt ss
COUNTY OF

On February 26, 1998 before me,
Sandra L. White
a Notary Public in and for said County and State, personally appeared

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.

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

Walter Eich, as trustee
Walter Eich on Trust



(This area for official notarial seal)

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

GOI

EXHIBIT A
September 6, 2016
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 ...

1998-5032-3

3

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.

1998-5032-3

3

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

DN

305
APN ~~307~~-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

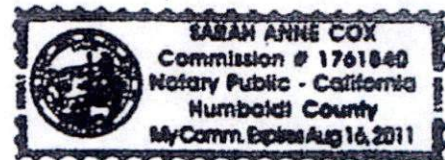
[Signature]
 Humboldt Hill Property Partnership
 By: Dan Noga
 Title: Authorized Partner

STATE OF CALIFORNIA)SS
COUNTY OF HUMBOLDT)

On February 19th, 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 *Sarah Anne Cox*



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

2011-1163-2

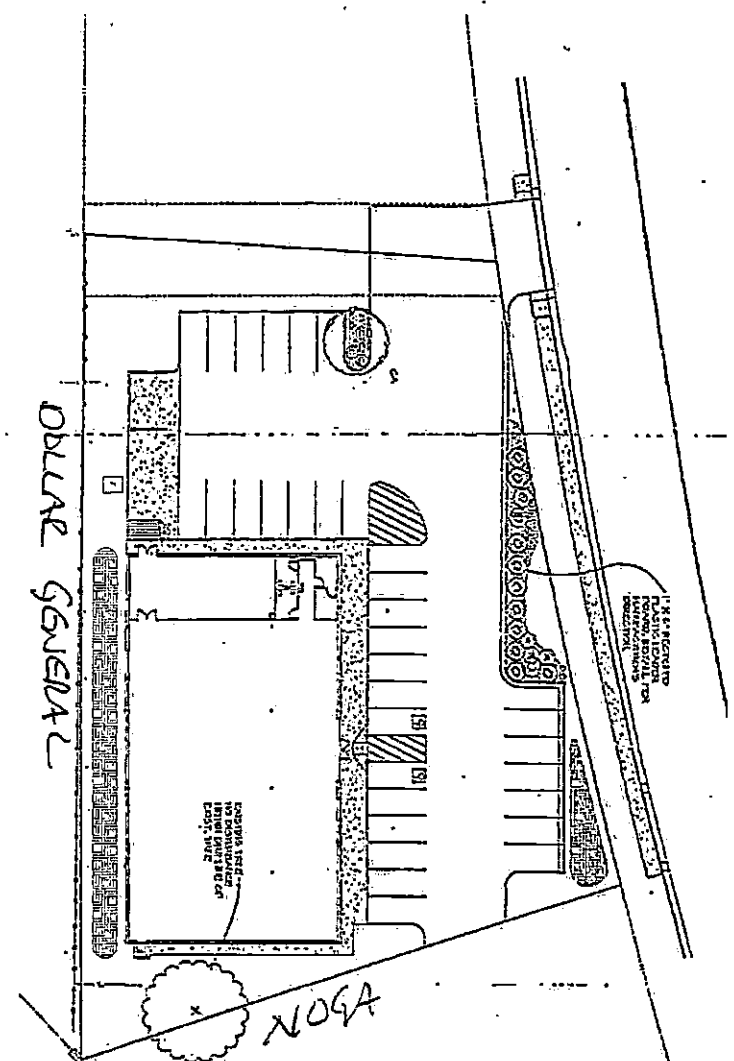


EXHIBIT

tabbies



Page 22



LANDSCAPE NOTES:

1. THE CONTRACTOR SHALL CONSIDER ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SAN FRANCISCO, PUBLIC WORKS, ELECTRICAL, AND MECHANICAL CODES.
2. ALL GRASS SHALL BE MAINTAINED AT ALL TIMES TO REMAIN AT A MINIMUM OF 4 INCHES IN HEIGHT.
3. THE LANDSCAPE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.
4. ALL PLANTING MATERIALS SHALL BE SPECIFIED BY THE ARCHITECT AND SHALL BE AVAILABLE AT THE TIME OF PLANTING.
5. THE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.

LANDSCAPE PLAN



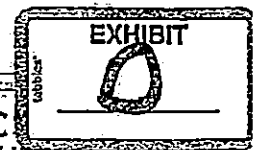
LANDSCAPE LEGEND

| SYMBOL | DESCRIPTION | QUANTITY | UNIT |
|----------|--------------------|----------|-------|
| (Symbol) | PLANTING MATERIALS | 10 | PLANT |
| (Symbol) | PLANTING MATERIALS | 20 | PLANT |
| (Symbol) | PLANTING MATERIALS | 30 | PLANT |
| (Symbol) | PLANTING MATERIALS | 40 | PLANT |
| (Symbol) | PLANTING MATERIALS | 50 | PLANT |
| (Symbol) | PLANTING MATERIALS | 60 | PLANT |
| (Symbol) | PLANTING MATERIALS | 70 | PLANT |
| (Symbol) | PLANTING MATERIALS | 80 | PLANT |
| (Symbol) | PLANTING MATERIALS | 90 | PLANT |
| (Symbol) | PLANTING MATERIALS | 100 | PLANT |

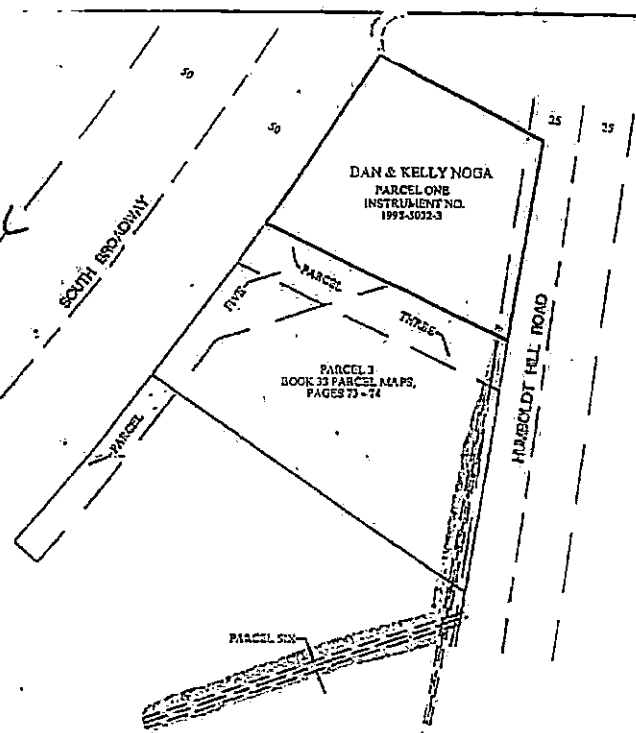
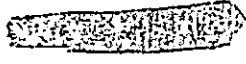
LANDSCAPE REQUIREMENTS

1. ALL PLANTING MATERIALS SHALL BE SPECIFIED BY THE ARCHITECT AND SHALL BE AVAILABLE AT THE TIME OF PLANTING.
2. THE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.
3. THE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.
4. THE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.
5. THE CONTRACTOR SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT AND SHALL MAINTAIN THE EXISTING GRASS AND SOIL IN THE PARKING LOT.

GreenDesign Landscaping
Architects, Inc.
Baldwin M. Hartz, ASLA
1445 Broadway, Suite 100
Berkeley, CA 94704
Phone: (415) 863-1111
Fax: (415) 863-1112



NOGA
 DOLLAR GENERAL
 CASEMONT



NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1997-5032-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1997-5032-3 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 704, 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 1983

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PENSACOLA, FLORIDA 32591-2950
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E. DIME BEGGS
1906 - 2001

SEAN H. LANE
1917 - 1981

July 25, 2014

VIA ELECTRONIC MAIL: 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.

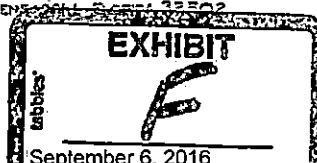
In regards to Preliminary Report under Title No. 14-503868-PG issued by Placer Title Company, as agent for Fidelity National Title Company of California ("Preliminary Report"), we have the following title objections:

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.

5117 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. T-19.2 (Minerals and Surface Damage),
4. T-19.3 (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.

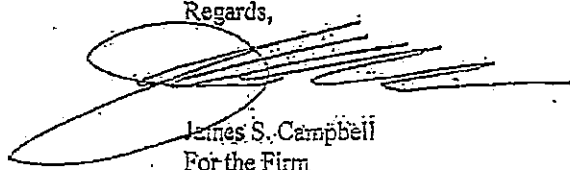
The survey must reference the current Preliminary Report. We may also require certain substantive changes to the survey itself.

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/aln

cc: Jason Read (via email: jason.read@cbre.com)
Lisa Arant (via email: larant@placetitle.com)
Kevin Butler (via email: kevin@butler-group.org)
Dan Doyer (via email: dan@crossdevelopment.net)
Brenda Ellis (via email: Brenda@crossdevelopment.net)
Steve Rumsey (via email: sturnsev@crossdevelopment.net)
Brad LaCour (via email: blacour@trident-partners.com)

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PENSACOLA, FLORIDA 32502

2155 MONROE STREET, SUITE 710
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OCT 01 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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Carlton D. Floyd (State Bar #275958)
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E-mail: bcfloyd@floydlawfirm.net

5 Attorneys for Plaintiffs

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7

8

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

9

10 DAN L. NOGA,
KELLY A. NOGA, and
11 FRIENDS OF SOUTH BROADWAY, a
California Unincorporated Nonprofit
12 Association,

13 Plaintiffs,

14 v.

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

22 Defendants.

23

24 Plaintiffs allege:

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SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION
DR140658



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GENERAL ALLEGATIONS

1. Plaintiffs, DAN L. NOGA and KELLY A. NOGA ("Noga"), are, and at all times mentioned in this complaint, were, residents of Humboldt County, California.

2. Plaintiff, FRIENDS OF SOUTH BROADWAY ("Friends") is a California unincorporated nonprofit association.

3. Defendant, THOMAS J. COOKMAN ("Cookman"), is, and at all times mentioned in this complaint, was a resident of Humboldt County, California.

4. Defendant, DARROLL MEYER ("Meyer"), is, and at all times mentioned in this complaint, was a resident of Humboldt County, California.

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

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

7. Plaintiffs are informed and believe and on that basis allege, that at all times mentioned in this complaint, defendants were the agents and employees of their co-defendants, and in doing the things alleged in this complaint were acting within the course and scope of that agency and employment.

8. Plaintiffs, NOGA, are the owners in fee and are in possession and control of that certain real property and improvements located at 5667 S. Broadway, Eureka, Humboldt

1 County, California APN 305-111-007 also known as the Country Club Market, and more
2 specifically described on Exhibit A attached hereto and made a part hereof by this reference
3 ("Market Parcel") which they obtained by a Grant Deed from Walter Eich and the Walter
4 Eich 1991 Revocable Trust, dated February 4, 1998, and recorded March 2, 1998, as
5 Document No. 1998-5032-3, in the Official Records of Humboldt County, California.

6 9. Plaintiffs, NOGA, are also the fee owners and are in possession and control of
7 that certain unimproved real property located on S. Broadway, Eureka, Humboldt County,
8 California APN 305-101-054 and more specifically described on Exhibit B attached hereto
9 and made a part hereof by this reference ("Noga Unimproved Parcel") which they obtained
10 by a Grant Deed from Humboldt Hill Property Partnership, a California General Partnership,
11 dated March 6, 2009, and recorded January 14, 2011, as Document No. 2011-1161-2, in the
12 Official Records of Humboldt County, California.

13 10. The southerly boundary of the Market Parcel and the northerly boundary of the
14 Noga Unimproved Parcel are contiguous boundary lines.

15 11. On information and belief, defendants Cookman, Meyer and Partnership are
16 the owners in fee and are in possession and control of unimproved real property located at
17 5707 S. Broadway, Eureka, Humboldt County, California (APN 305-101-054)
18 ("Cookman/Meyer Property"), which they have owned since March 6, 2009, and more
19 specifically described on Exhibit C attached hereto and made a part hereof by this reference.

20 12. The southerly boundary of the Noga Unimproved Parcel and the northerly
21 boundary of the Cookman/Meyer Property are contiguous boundary lines.

22 **FIRST CAUSE OF ACTION**
23 **(Prescriptive Easement-Plaintiffs NOGA)**

24 13. Plaintiffs NOGA allege and incorporate herein by reference all allegations
25 contained in paragraphs 1 through 12 with the same force and effect as though fully set forth
26 herein.

27 //

28 **SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
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DR140658

- 3 -

1 14. Over both the Noga Unimproved Parcel and the Cookman/Meyer Property is
2 a paved road that was formerly part of Highway 101. Said roadway intersects with South
3 Broadway where it enters the Cookman/Meyer Property, then traverses over the
4 Cookman/Meyer Property and the Noga Unimproved Parcel where it then again intersects
5 with South Broadway is depicted in Exhibit D which is attached hereto and incorporated
6 herein by reference. This roadway affords plaintiffs NOGA and their Country Club Market
7 customers, especially customers driving semi-trucks, a means of ingress, egress and
8 temporary parking while shopping at the Country Club Market located on the Market Parcel.
9 This roadway is referred to in this complaint as the "Roadway Easement."

10 15. Since at least March 6, 2009, and continuously since that time, plaintiffs
11 NOGA have had actual, notorious, continuous and uninterrupted use and have openly
12 possessed the Roadway Easement under claim of right and/or color of law in that NOGA and
13 their customers of the Country Club Market have continuously used the Roadway Easement
14 over the Cookman/Meyer Property for ingress, egress and parking.

15 16. Plaintiffs NOGA and their customers use and possession of the Roadway
16 Easement has been, and continues to be, hostile and adverse to defendants' claim to the real
17 property.

18 17. As prescriptive owners of the Roadway Easement, plaintiffs NOGA and their
19 customers are entitled to the rights and privileges on and over the Cookman/Meyer Property
20 as alleged in this complaint.

21 18. On information and belief, plaintiffs NOGA believe, and thereon allege, that
22 defendants are contemplating the sale of the Partnership Property to Dollar General in
23 anticipation of the construction of a Dollar General Store on the site of the Cookman/Meyer
24 Property. Based upon the preliminary sketches of the project, the parking lot and building
25 for the Dollar General Store will be constructed directly over the location of the Roadway
26 Easement; thereby unreasonably interfering with plaintiffs NOGAS' and their customers'
27

28 SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION

DR140658

- 4 -

1 use and rights as prescriptive owners of said easement. Copies of the site plan for the Dollar
2 General Store and the photograph depicting the location of the Dollar General Store site
3 where it overlaps the Easement are attached hereto as Exhibits E and F, respectively, and
4 made parts hereof by this reference.

5 19. Based upon the anticipated sale of the Cookman/Meyer Property to Dollar
6 General and the construction of the Dollar General Store and parking lot over the Roadway
7 Easement, plaintiffs NOGA are informed and believe and on that basis allege that defendants
8 claim an interest which is adverse to plaintiffs NOGAS' title to the Easement. These claims
9 are without any right and defendants have no right, title, estate, lien, or interest superseding
10 plaintiffs NOGAS' title to the Easement.

11 20. WHEREFORE, plaintiffs pray for judgment against defendants as set forth
12 below

13 **SECOND CAUSE OF ACTION**

14 **(Promissory Estoppel by Plaintiffs Noga)**

15 21. Plaintiffs NOGA allege and incorporate herein by reference all allegations
16 contained in paragraphs 1 through 20 with the same force and effect as though fully set forth
17 herein.

18 22. On or about November 22, 2002, Plaintiff Noga, defendants Cookman and
19 Meyer and Keith Forbes, doing business as Humboldt Hill Property Partnership acquired a
20 parcel of real property that was subsequently split into three lots which became the Noga
21 Unimproved Parcel, The Cookman/Meyer Property and a lot that went to Keith and Rena
22 Forbes, which property lies adjacent to, and south of, the Cookman/Meyer Property
23 commonly referred to as Assessor Parcel no. 305-101-040 and located at 2042 Eich Road.

24 23. In or around March 2009, the partners of Humboldt Hill Property Partnership,
25 including defendants, made promises and representations to each other that none of the
26 partners would develop, or allow their respective property to be sold and developed into a
27

28 **SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION**

DR140658

- 5 -

1 business that would be detrimental to or compete with the other's business such as the
2 County Club Market. Defendants knew or should have known that plaintiffs NOGA would
3 be reasonably induced to rely on, and in fact did justifiably rely upon this representation
4 made by Cookman and Meyer.

5 24. Despite these representations by Cookman and Meyer, defendants entered into
6 an agreement with a third party for the sale of the Cookman/Meyer Property for the
7 development and operation of a Dollar General store. The operation of this store would be
8 detrimental to NOGAS' operation and ownership of Country Club Market.

9 25. As a result of defendants' breach of the agreement plaintiffs sustained damages
10 in the amount to be determined at trial.

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

12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title By Plaintiff Friends of South Broadway)**
14 **(Cal. Civ. Proc. Code, § 760.010 et seq.)**

15 26. Plaintiff, FRIENDS, incorporates by reference the allegations in paragraphs
16 1 through 25 above as though fully set forth herein.

17 27. Plaintiff, FRIENDS, and its members, hold an interest in the Roadway
18 Easement as members of the general public. For more than five years prior to 1972
19 numerous and diverse members of the public made open, continuous, and adverse use of the
20 Roadway Easement to access the Noga Property. For example, 18 wheelers use and have
21 used the Roadway Easement for parking their big rigs. That use demonstrates an implied
22 dedication of a public easement in the Roadway Easement under the common law doctrine
23 of applied dedication as it existed prior to the adoption of Civil Code section 1009 in 1972.
24 See *Friends of the Trails v. Blasius* (2000) 78 Cal. App. 4th 810.

25 28. Defendants claim an interest in the Roadway Easement adverse to the
26 FRIEND'S and the public. Defendants are owners of the fee title to the properties in which
27 the Roadway Easement is located, and they deny that the portion of South Broadway on

28 SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION

DR140658

- 6 -

1 which the Roadway Easement is located is subject to any public easements.

2 29. FRIENDS seek a determination of the public's title to a nonexclusive easement
3 in the Roadway Easement as of the date of the filing of this Amended Complaint. If a public
4 easement was perfected prior to the 1972's, the public retains title today.

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

6 **FOURTH CAUSE OF ACTION**
7 **(Declaratory Judgment By Plaintiff Friends of South Broadway)**

8 30. Plaintiff, FRIENDS, incorporates by reference the allegations in paragraphs
9 1 to 29 above as though fully set forth herein.

10 31. An actual controversy presently exists between FRIENDS and defendants
11 regarding their respective rights and duties with regard to the Roadway Easement. FRIENDS
12 contend that the portion of South Broadway on which the Roadway Easement is located is
13 subject to a nonrestrictive public easement to access the Noga Property. Defendants deny
14 that the public holds any easement in that portion of South Broadway on which the Roadway
15 Easement is located.

16 32. A judicial declaration of the rights and responsibilities of the parties, and of the
17 public, is necessary and appropriate at this time because defendants have deprived, or intend
18 to deprive, the public of access to the Roadway Easement on South Broadway.

19 33. Neither FRIENDS nor other members of the public, have any plain, speedy,
20 or adequate remedy in the course of ordinary law.

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

22 **FIFTH CAUSE OF ACTION**
23 **(Mandatory Injunction By All Plaintiffs)**

24 34. Plaintiffs incorporates by reference the allegations in paragraphs 1 to 33 above
25 as though fully set forth herein.

26 35. In or around 2014 defendants or their agents took measures to stop the public
27 from using the Roadway Easement. These measures include selling the Cookman/Meyer

28 SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION
DR140658

- 7 -

1 Property to Dollar General in anticipation of the construction of a Dollar General store on
2 the site of the Cookman/Meyer Property. Based upon the preliminary sketches of the project,
3 the parking lot and building for the Dollar General store will be constructed directly over the
4 location of the Roadway Easement; thereby unreasonably interfering with plaintiffs' use and
5 rights as owners of said easements.

6 36. Neither FRIENDS nor other member of the public has an adequate remedy at
7 law for the harm caused by defendants' obstruction of public access to the Roadway
8 Easement over South Broadway.

9 37. Plaintiffs seek a mandatory injunction compelling defendants and their agents
10 from developing the Cookman/Meyer Property in such a way that interferes with the
11 Roadway Easement.

12 WHEREFORE, plaintiffs pray for judgment as follows:

13 As to the First Cause of Action for Prescriptive Easement:

14 1. For judgment quieting title as to plaintiff s' right to use the Easement for
15 ingress and egress;

16 2. Plaintiffs' costs of suit incurred herein; and

17 3. Such other and further relief as may be just and proper.

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

19 4. For an amount to be determined at trial, with interest on this sum at 10 percent
20 per year from December 4, 2014, as allowed by law;

21 5. Plaintiffs' costs of suit incurred herein; and

22 6. Such other and further relief as may be just and proper.

23 As to the Third Cause of Action for Quiet Title:

24 7. Quieting title in the public to the Roadway Easement to access the Noga
25 Property;

26 8. Plaintiffs' costs of suit incurred herein; and
27

28 SECOND AMENDED COMPLAINT FOR PRESCRIPTIVE EASEMENT; FOR PROMISSORY ESTOPPEL;
FOR QUIET TITLE; FOR DECLARATORY RELIEF; AND FOR MANDATORY AND PROHIBITORY
INJUNCTION

DR140658

- 8 -

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- 9. Such other and further relief as may be just and proper
- As to the Fourth Cause of Action for Declaratory Relief:
- 10. Declaring that the Noga Property is subject to the Roadway Easement;
- 11. Plaintiffs' costs of suit incurred herein; and
- 12. Such other and further relief as may be just and proper.

As to the Fifth Cause of Action for Mandatory Injunction:

- 13. For and order preventing defendants or their predecessors in interest from interfering with the Roadway Easement;
- 14. Plaintiffs' costs of suit incurred herein; and
- 15. Such other and further relief as may be just and proper

Dated: October 1, 2015

FLOYD LAW FIRM

By 
Bradford C Floyd, Attorneys for Plaintiffs

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VERIFICATION

I, DAVE HARRIS, the undersigned, declare as follows:

I have read the foregoing Second Amended Complaint for Prescriptive Easement, for Promissory Estoppel; for Quiet Title; for Declarative Relief; and for Mandatory and Prohibitory Injunction and know its contents.

I am an officer of Friends of South Broadway, a plaintiff in this proceeding and am authorized to make this verification for and on its behalf, and I make this verification for that reason. 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 declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 20th day of ~~October~~^{September} 2015 at Eureka, California.



DAVE HARRIS

EXHIBIT A

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;

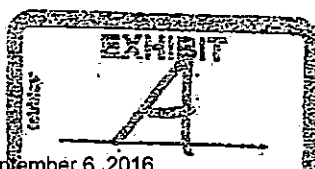
thence North 75 degrees 50 minutes East 4 feet to the point of beginning.

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

EXHIBIT B

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 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.

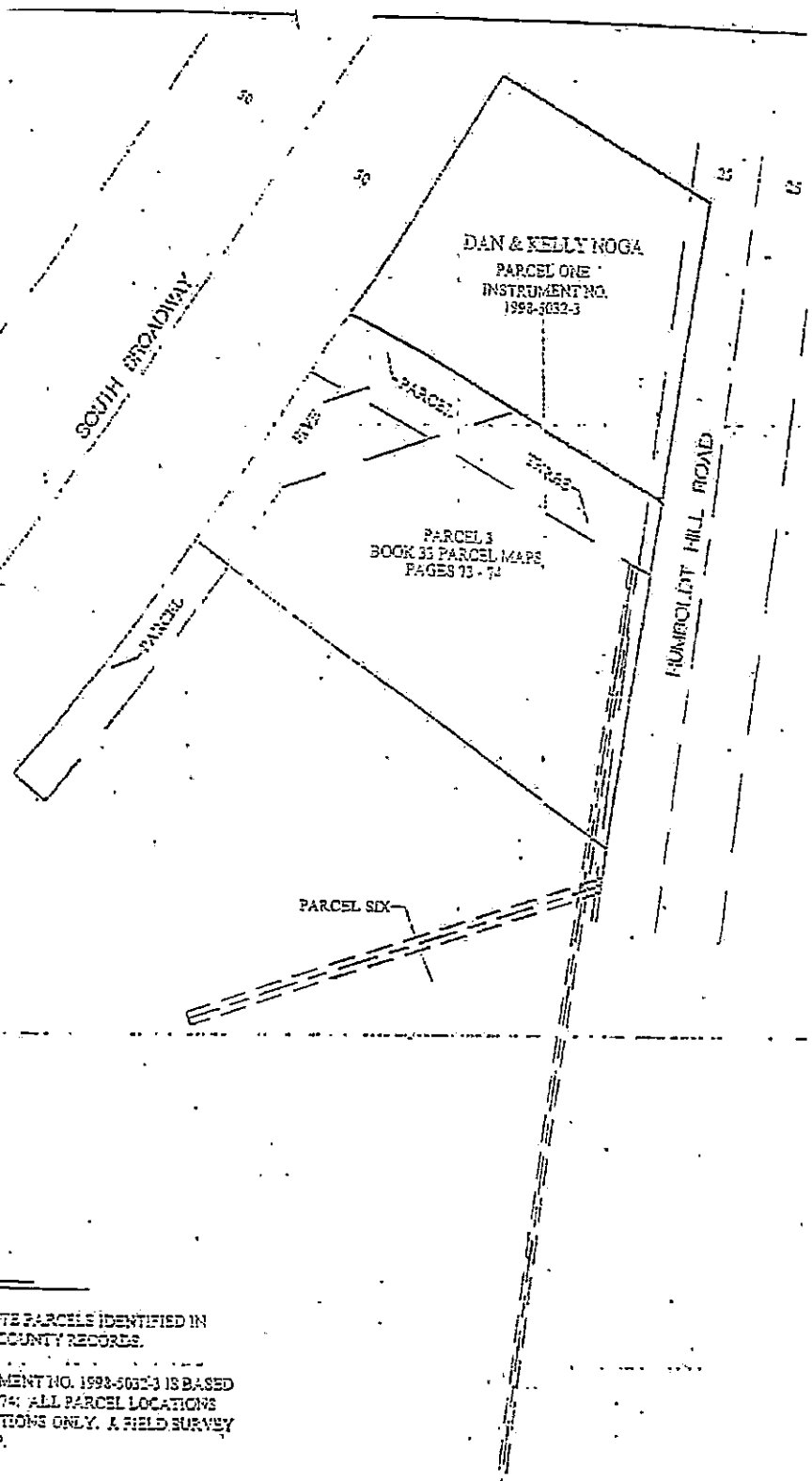
Reserving therefrom, for the benefit of Parcel 1 of said Parcel Map No. 3439, a non-exclusive easement for ingress and egress over and across that portion of Parcel One above lying within Parcel "A" as shown on said Parcel Map.

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.

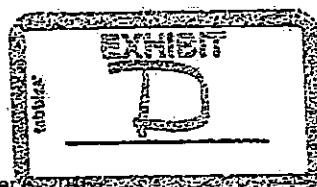
APN: 305-101-054





NOTES

1. THE PURPOSE OF THIS MAP IS TO ILLUSTRATE PARCELS IDENTIFIED IN INSTRUMENT NO. 1998-3032-3, HUMBOLDT COUNTY RECORDS.
2. THE LOCATION OF PARCEL ONE OF INSTRUMENT NO. 1998-3032-3 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.





WEGA
PROPERTY

SITE
OF DOLLAR
GENERAL
STORE

E
WEST

DANONIAWAY
DANONIAWAY (Sewer)

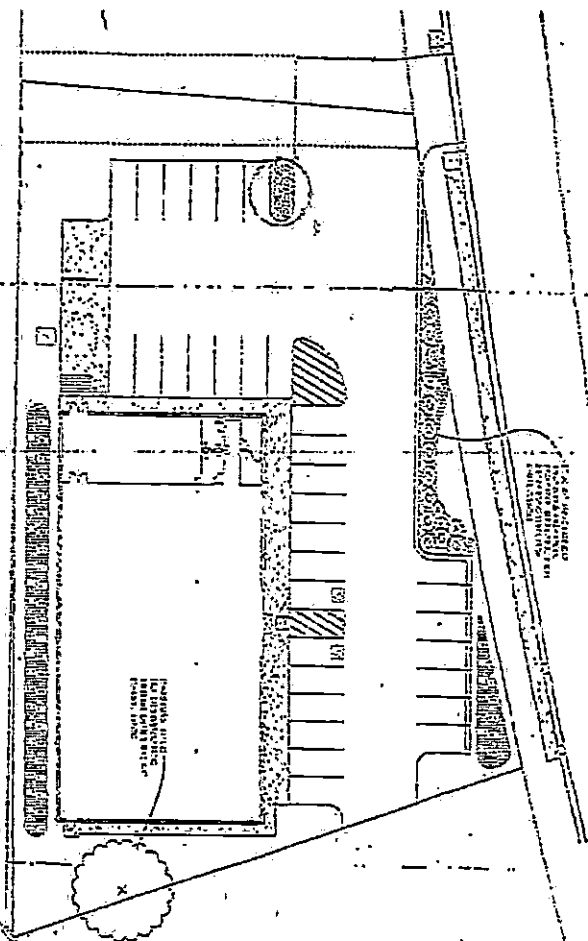
THE REFLECTOR

W. 10th St
W. 11th St

Map of the City of Dallas, Texas

© 2014 City of Dallas

| LANDSCAPE MATERIAL | COMMON NAME | RECOMMENDATION | NOTE | WATER SOURCE | PLANTING METHOD |
|--------------------|----------------------------|-----------------|------------|--------------|-----------------|
| 1 | CONSTITUTIONAL BIRD FEEDER | | | | |
| 2 | CASTLEWOOD PLANTAINS | medium to large | to 6' tall | to 6' tall | 4x4 |
| 3 | SPYRUS JAPONICA | small to medium | to 4' tall | to 4' tall | 4x4 |
| 4 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 5 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 6 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 7 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 8 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 9 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 10 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 11 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 12 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 13 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 14 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 15 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 16 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 17 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 18 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 19 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |
| 20 | CONSTITUTIONAL BIRD FEEDER | medium to large | to 6' tall | to 6' tall | 4x4 |



LANDSCAPE LEGEND

1. CONSTITUTIONAL BIRD FEEDER
 2. CASTLEWOOD PLANTAINS
 3. SPYRUS JAPONICA
 4. CONSTITUTIONAL BIRD FEEDER
 5. CONSTITUTIONAL BIRD FEEDER
 6. CONSTITUTIONAL BIRD FEEDER
 7. CONSTITUTIONAL BIRD FEEDER
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 17. CONSTITUTIONAL BIRD FEEDER
 18. CONSTITUTIONAL BIRD FEEDER
 19. CONSTITUTIONAL BIRD FEEDER
 20. CONSTITUTIONAL BIRD FEEDER

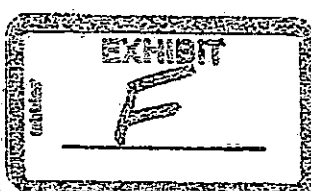
LANDSCAPE SPECIFICATIONS

1. CONSTITUTIONAL BIRD FEEDER
 2. CASTLEWOOD PLANTAINS
 3. SPYRUS JAPONICA
 4. CONSTITUTIONAL BIRD FEEDER
 5. CONSTITUTIONAL BIRD FEEDER
 6. CONSTITUTIONAL BIRD FEEDER
 7. CONSTITUTIONAL BIRD FEEDER
 8. CONSTITUTIONAL BIRD FEEDER
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 17. CONSTITUTIONAL BIRD FEEDER
 18. CONSTITUTIONAL BIRD FEEDER
 19. CONSTITUTIONAL BIRD FEEDER
 20. CONSTITUTIONAL BIRD FEEDER

SCAPE NOTES:

1. The landscape design is based on the site plan and the building layout. The design is intended to provide a functional and aesthetically pleasing outdoor environment. The design includes a variety of plant species and landscaping elements that are suitable for the site conditions. The design is intended to provide a functional and aesthetically pleasing outdoor environment. The design includes a variety of plant species and landscaping elements that are suitable for the site conditions.

VEG PLAN



1 PROOF OF SERVICE

2 The undersigned declares:

3 I am over the age of 18 years and not a party to this action. My address is 819 Seventh Street,
4 Eureka, California, which is located in Humboldt County where the service described below took place.

5 On October 1, 2015, I served all parties in said action with the following document:

6 **SECOND AMENDED COMPLAINT OR PRESCRIPTIVE EASEMENT; FOR**
7 **PROMISSORY ESTOPPEL; FOR QUIET TITLE; FOR DECLARATORY RELIEF;**
8 **AND FOR MANDATORY AND PROHIBITORY INJUNCTION**

8 X U.S. Mail: by placing a true copy thereof enclosed in a sealed envelope, addressed
9 as shown below and placing the envelope for collection and mailing on the date
10 and at the place shown below, following our ordinary business practices. I am
11 readily familiar with this business' practice for collecting and processing
12 correspondence for mailing. On the same day that correspondence is placed for
13 collection and mailing, it is deposited in the ordinary course of business with the
14 United States Postal Service in a sealed envelope with postage fully prepaid.

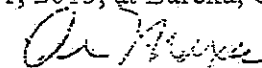
12 _____ Personal Service: by placing a true copy thereof enclosed in a sealed envelope,
13 addressed as shown below and causing same to be delivered to the individual
14 named below or to that individual in care of a member of her/his office, prior to
15 5:00 p.m.

15 _____ Overnight Mail: by placing a true copy thereof enclosed in a sealed envelope
16 addressed as shown below and causing said envelope to be deposited in a box or
17 other facility regularly maintained by the express service carrier, or delivered to an
18 authorized courier or driver authorized by the express service carrier to receive
19 documents, in an envelope or package designated by the express service carrier
20 with delivery fees paid or provided for.

18 _____ Facsimile or Electronic Transmission: Based on a court order or an agreement
19 of the parties to accept service by email or electronic transmission, I caused the
20 documents to be sent to the persons at the e-mail addresses or at the facsimile
21 numbers listed above. I did not receive, within a reasonable time after the
22 transmission, any electronic message or other indication that the transmission was
23 unsuccessful. I am readily familiar with my firm's business practice of processing
24 and transmitting documents via facsimile or electronic transmission(s) and any
25 such documents would be transmitted in the ordinary course of business.

23 **ADDRESSEE(S):**
24 William F. Barnum, Esq.
25 Barnum Law Office
26 PO Box 173
27 Eureka CA 95502-0173
28 wfb@barnumlaw.net
Attorney for Defendants

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct. Executed on October 1, 2015, at Eureka, California.


Ann Maxcy

FLOYD LAW FIRM

Attorneys:

Bradford C Floyd
Carlton D. Floyd

819 Seventh Street
Eureka, California 95501
Telephone:(707) 445-9754
Facsimile:(707) 445-5915
E-mail: befloyd@floydlawfirm.net

July 7, 2016

Humboldt County Planning Commission
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 Commissioners:

By way of this letter, my client is adopting the arguments set forth in the letter to the Commissioners from Kimberly Tays dated July 4, 2016, and her supplemental comments dated July 5, 2016. Copies of these letters are attached hereto as **Exhibits A** and **B**, respectively. In addition to adopting Ms. Tays' comments (objections), we add the following objections based upon our review of the Staff Report and its attachments.

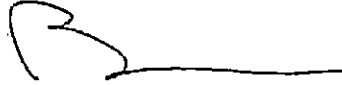
First, we object to a 16-foot (+/-) wetlands set back from the designated wetlands area to the improvement. The Code requires a 100-foot setback. Given the quantified wetlands on the subject property and its location in relationship to Humboldt Bay and the ocean, a 16 foot (+/-) setback provides insufficient protection. Furthermore, the wetlands delineation prepared by Virginia Dains is dated May 6, 2015. In her Wetland Determination Form, Ms. Dains indicates she inspected the subject property on February 25, 2015, during a "very dry January and February." Also, the vegetation on site had been mowed down just a few months prior to Ms. Dains' inspection. Since February 25, 2015, the vegetation on the subject property, especially vegetation associated with wetlands, has changed dramatically. For instance, Hooker's willow now abound and are 10 to 15 feet tall, as depicted by photographs we will be submitting to the Commission. We believe a wetland study performed today would find a much greater area of wetlands than designated by Ms. Dains.

Second, as noted in the Staff Report, the footprint of the proposed building requires 32 parking spaces for the retail store and warehouse. The applicant has requested, and staff approved, a reduction from 32 parking spaces to 24. Staff accepts a parking survey provided by Dollar General Store. The three stores used in Dollar General's survey sample were in Gridley, Los Molinos, and Orland, California. The respective populations for those cities are 6,531, 2,037, and 7,482. Hardly representative of the population surrounding the proposed site. The number of vehicles entering and exiting Country Club Market, which carries similar products, and has a footprint of just over half of the footprint proposed by Dollar General, indicates a much greater parking demand than estimated by Dollar General. Country Club Market was required to, and provides, 28 parking spaces.

Humboldt County Planning Commission
July 7, 2016
Page Two

Thank you for your consideration of the above. As previously stated, we object the approval of this project.

Respectfully submitted,

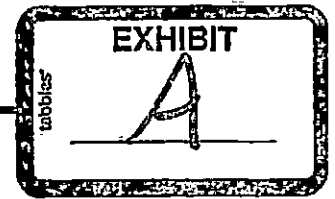
A handwritten signature in black ink, consisting of a stylized initial 'B' followed by a horizontal line.

Bradford C Floyd

BCF/gme
Enclosures

EXHIBIT A

Brad Floyd



From: Kimberly Tays <kimkat067@gmail.com>
Sent: Monday, July 04, 2016 12:38 AM
To: planningclerk@co.humboldt.ca.us
Cc: Kraemer, Melissa@Coastal; Jennifer Kalt; bcfloyd@floydlawfirm.net; Colin Fiske
Subject: Comments on CDP 14-033; Dollar General (DG) Proposed Development

Dear Planning Clerk:

Please forward this email regarding Dollar General's proposed project on a 0.87-acre vacant parcel of land within the certified Humboldt Bay Area Plan (HBAP) in Eureka, CA, to Humboldt County Planning Commissioners Alan Bongio, David Edmonds, Noah Levy, Kevin McKenny, Robert Morris, Ben Shepherd and Lee Ulansey.

I oppose Dollar General's project for the following reasons:

(1) Interference with Natural Drainage Patterns: The mitigation measures identified in the Humboldt County Planning Dept.'s staff report are insufficient to protect the 150 sq.ft. wetland. The amount of impermeable surfaces that would be introduced to the undeveloped site (including a 9,300 sq. ft. building surrounded by an asphalt parking lot, sidewalks, retaining walls, curbs and gutters), in addition to the grading that would need to be done, will interfere with the drainage patterns and degrade this sensitive wetland. The water that would typically reach the wetland from the surrounding area will not reach it once the site is developed, as a *concrete curb will encircle the wetland buffer to prevent parking area runoff from entering the wetland*. While the staff report states the hydrology of the wetland will be *augmented by roof runoff which is channeled from the rear of the building into a vegetated swale and which overflows into the wetland area through curb openings (figure 1)*, it seems unlikely that water from the roof will be enough to recharge this small wetland. I am also questioning the type of materials that will be used for the roof (the plans were difficult to read) and whether those materials would contain pollutants or if, during the dry season, air-borne pollutants could settle on the roof and then drain into the wetland and degrade the water quality.

(2) Unacceptable Reduction to Buffer Zone: The staff report states that the standard buffer of 100 feet needs to be reduced to allow for this development. Instead of a 100-foot buffer, a setback that varies between 16 to 20 feet (or an average of approx. 17 feet) is being proposed, thus reducing the standard buffer by 83%. Due to the fact that over 90% of wetlands in California have been lost or impacted from development, this wetland should not be compromised to allow for the development of a chain store that does not sell anything that consumers cannot buy at other nearby chain stores (i.e., K-Mart, Walmart, Target, etc.). The problem with reducing the buffer by such a large percentage is that this small wetland, which currently benefits from an undeveloped, vegetated environment, will be almost completely hemmed in by hardscape and man-made structures. While the applicant proposes to plant native plants in the wetland and buffer zone, the rest of the vegetation that currently surrounds the wetland will be paved over and displaced by a 9,300 sq. ft. building. This will drastically reduce the amount of vegetation that exists on the site and provides important habitat for wildlife. Altering this site in such a drastic way, and providing almost no buffer zone, will surely degrade the quality of this wetland and will impact the health and wellbeing of the wildlife that uses or depends on this unique environment. We cannot afford to continue on with this sort of development, as we have so few wetland environments left in coastal California.

(3) Light Pollution: DG proposes to install 2 large illuminated signs (for a total of 291 sq. ft. of lighting) that will be on 7 days a week until 10 p.m. I am assuming the Dollar General sign that will be attached to the building will be illuminated all night long, in addition to the lighting that will be turned on for safety purposes. Since no specific lighting plan was included in the staff report, the public has no way of knowing the extent of the light pollution that will be created by this development and how it will impact wildlife using the wetland, especially species that are nocturnal and require darkness to navigate and forage.

(4) Traffic Congestion/Noise Pollution/Greenhouse Emissions: The traffic predictions about this project are confusing and ambiguous. A memo dated October 8, 2014 (included in the staff report) states: *the typical Dollar General Store is expected to generate approximately 583 daily trips OR 385 'new' daily trips*. [Emphasis added.] However, when you read the Dollar General Humboldt Hills Plan of Operation (also included in the staff report), it says: *We typically have 10-13 trips per hour so the increase in [sic] not significant*. Using the figures of 10 and 13 trips per hour, I calculated there would be 50,400 and 65,520 vehicle trips, respectively, per year. I arrived at those figures by multiplying 10 and 13 vehicles per hour x 14 (the number of store hours) x 30 days/month x 12 months/year. If you compare the vehicle trips mentioned in the October 8 memo with the vehicle trips mentioned in the Plan of Operation, you will see there is a large discrepancy in the forecasted vehicle trips

generated by this store. Instead of 50,400 and 65,530 annual vehicle trips, the figures rise dramatically to 138,600 vehicle trips and 209,880 new vehicle trips, respectively, per year. I came up with the latter two figures by multiplying, separately, 385 *new* daily trips and 583 daily trips x 30 days/month x 12 months/year. These figures do not include the number of large trucks (3 STAA-sized trucks per day) and the unspecified number of smaller delivery trucks that would visit the site. DG is minimizing the impacts from its vehicle and truck traffic on the nearby streets and neighborhoods. The traffic data does not even use traffic studies conducted in California. The data surveys were conducted in Florida in the years 2010, 2011 and 2012. Vehicle and truck traffic has increased in the past 4-6 years, especially since the economy has improved and people are driving more now that gas prices have dropped. In Florida, especially during the years 2011 and 2012, gas prices were around \$3.50 to \$4.00 per gallon (causing people to drive less) compared to current gas prices of around \$2.40 per gallon. The applicant needs to provide current data that is relevant to this area of California in order to adequately address the traffic congestion, noise pollution and greenhouse gas emissions that would be emitted from customer vehicles and delivery trucks (not to mention the increased damage to our roads and danger that these bigger trucks pose to drivers on our rural roads). This tremendous increase in vehicle and truck traffic (and attendant noise pollution and gas emissions) will negatively impact the nearby neighborhoods and community, at large. It will also disturb the wildlife that uses the wetland environment.

(5) Lack of Wildlife Studies: I did not see any studies indicating the type of birds, amphibians, etc. that currently use this wetland. The only studies I saw in the staff report related to the various types of vegetation growing in and around the wetland. A biological evaluation needs to be conducted to assess the types of birds and other wildlife that use the wetland and how those species would be impacted by this development.

(6) CA Coastal Commission Suggestions: In the letter dated August 24, 2014 from Melissa Kraemer of the CA Coastal Commission, Ms. Kraemer mentions: (1) *reducing the amount of proposed hardscape*, (2) *requiring the use of porous pavement rather than traditional asphalt for the proposed parking lot*, and (3) *requiring preservation of native vegetation*. After looking online at images of DG stores, it is apparent the proposed design for this store differs little from the cookie-cutter style stores it has built throughout the U.S. The October 8 memo that is included in the staff report mentions that: *Dollar General Stores are typically stand-alone 9,100 sf retail stores located off of state highways and "Main Streets" in suburban and rural areas*. The stand-alone store proposed for this site is 9,300 sq.ft. (200 sq.ft. bigger than the typical-sized store), which means the applicant made no attempt to decrease the footprint of the store in order to allow for an adequate buffer between the development and wetland. In spite of the suggestion to incorporate a porous pavement into the parking lot design instead of traditional asphalt, it appears that regular asphalt is being used for this parking lot, evidenced by the need to build a curb to encircle the wetland buffer in order to direct pollutant-laden runoff away from the wetland. If a porous surface or paving stones were introduced into the parking lot design, that would allow rain water to percolate into the ground and recharge the wetland. Porous surfaces would also reduce the threat of pollution entering the wetland, as the ground would work to filter out the pollutants. While the plans call for the planting of native plants in and around the wetland, any native plants outside that very small area would be destroyed by the building, parking lot and hardscape surfaces.

(7) Stand-Alone Stores Encourage Single-Driving Trips: Not only will this development degrade a sensitive wetland environment, building stand-alone retail stores, such as the one proposed here, encourages single-driving trips, as this store would not be centrally located or connected to other shopping areas. The only store that DG would be near is the locally owned Country Club Market that would surely suffer due to an inability to compete with DG's corporate bulk-buying power. The money that DG would make from this store would be sent to its headquarters in Tennessee, unlike the market that is owned by the Nogas. Any jobs that would be created by DG could be lost if the Country Club Market was put out of business.

(8) Reduced Walkability/Bikeability: More car and truck traffic diminishes the walkability and bikeability of our communities, as people are intimidated by the inhospitable nature of such an environment. When people drive everywhere, this further exacerbates the obesity problems in this country.

(9) Alternative Building Sites: The staff report states that there is no alternative to this proposed project site, but this is not a true statement. Instead of destroying important (and increasingly rare) wetland habitat, DG should investigate renting space in the Bayshore Mall, as there is plenty of space available for new retail stores. By filling up the Bayshore Mall with different retailers, shoppers are provided with the opportunity to consolidate their shopping trips versus driving, specifically, to stand-alone stores such as the one that DG proposes to build.

I am respectfully requesting the Humboldt County Planning Commissioners deny Dollar General's project, as proposed, due to the significant impacts it would have on this sensitive wetland environment.

Sincerely,

EXHIBIT B

Brad Floyd

From: Kimberly Tays <kimkat067@gmail.com>
Sent: Tuesday, July 05, 2016 1:06 PM
To: planningclerk@co.humboldt.ca.us; cc: Kraemer, Melissa@Coastal; Jennifer Kalt; Bradford Floyd
Subject: Supplemental Comments on CDP 14-033; Dollar General (DG) Proposed Development

Dear Planning Clerk:

Please forward my supplemental comments (to be attached to my July 4 email) regarding Dollar General's proposed project on a 0.87-acre vacant parcel of land within the certified Humboldt Bay Area Plan (HBAP) in Eureka, CA, to Humboldt County Planning Commissioners Alan Bongio, David Edmonds, Noah Levy, Kevin McKenny, Robert Morris, Ben Shepherd and Lee Ulansey.

Upon further examination of the staff report regarding the above-mentioned project, I have concerns about Conditions of Approval 14 and 19 re: the stormwater issue (MS4 Program) and the issue regarding the statement that this project would not harm fish and wildlife.

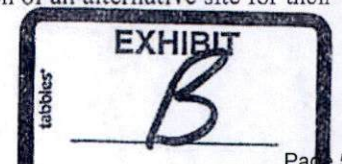
Under Condition of Approval 14, it says: *The applicant shall submit a Drainage Plan for approval by the Department of Public Works that incorporates Low Impact Development techniques into the project design in a manner complementary to the requirements of COA #3 (oil-water filtration) and COA #4 (stormwater detention). The Drainage Plan shall comply with the standards of a Regulated Project under the State Water Board's Phase II Small Municipal Separate Storm Sewer System (MS4) Program. Areas identified as treatment areas shall be maintained for the life of the project. The purpose of these combined measures is to maximize the retention of storm water on site such that pollutant-laden runoff from the proposed new parking lot and other impermeable surfaces does not degrade surrounding coastal wetlands and waters. (p.13 of staff report)*

MY COMMENTS RE: COA #14, ABOVE: The Drainage Plan must be presented to the Planning Commissioners, so they know what they are approving, and also to the public so that we have a complete picture of what is being proposed and how the impacts will be mitigated. **Allowing the Drainage Plan to be approved by the Public Works Department (after review and approval of the project) deprives the public of the information we need to be properly informed about the true impacts of this project on a sensitive wetland.** Other than the plan to direct roof runoff into a channel and vegetated swale to overflow into the wetland through curb openings, I have seen no other plans that incorporate LID techniques into this project. Roof runoff may replenish the wetland somewhat, but the wetland is still being deprived of the runoff it would normally receive if the site was not hemmed in by asphalt, pavement and a large building. Diverting contaminated runoff away from the wetland only serves to deprive the wetland of the water it needs to stay healthy and functioning, which would, in turn, harm wildlife.

Under Condition of Approval 19, it says: *Within five (5) days of the effective date of the approval of this permit, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.25. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DFW) fee plus a \$50 document handling fee. The fee is effective through December 31, 2016 at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DFW by phone at (916) 651-0603 or through the DFW website at www.wildlife.ca.gov for a determination that the project will have no effect on fish and wildlife. [Emphasis Added] *If DFW concurs, a form will be provided exempting the project from the \$2,210.25 fee payment requirement. In this instance, only a copy of the DFW form and the \$50.00 handling fee is required. (p. 14 of staff report)**

MY COMMENTS RE: 19, ABOVE: A wildlife study needs to be prepared prior to approval of this project, as the Planning Commissioners and public members are in the dark about what wildlife is using the wetland and may be impacted by this project. Allowing the applicant to **simply make a phone call to DFW's office in Sacramento** (to a person that has not even visited the site or evaluated the impacts)--**with no records of what was discussed or how the determination was made that the project will have no effect on fish and wildlife**--means the public review process is being circumvented and the Planning Commissioners and public members are being deprived of the information they need to be properly informed about the true impacts of this project.

As mentioned in my July 4 email, I am opposed to this proposed project and am asking the Planning Commissioners to deny the project until further information is provided about the true impacts of this development and more efforts are made by the applicant to reduce the impacts their project will have on a sensitive wetland environment, including consideration of an alternative site for their store (i.e., Bayshore Mall and other vacant retail space in Eureka).



Regards,
Kimberly Tays
Resident of Humboldt County