ATTACHMENT II

This is a formal appeal of the Planning Department's erroneous decision to deny applications PLN-2021-17465 and PLN-2021-17466.

The staff report indicates that the project is being denied because Lot A of Tract No. 130 Honeydew Land Unit 1 as per recorded map in Book 16, Pages 125-131 is designated in its entirety as a recreation easement to the Mattole River for the surrounding properties in this subdivision and for related reasons arising from the original subdivision of that parcel.

The staff report's reliance upon an approved tentative map is inappropriate. Item 2.A) of the staff reports indicates that an approved tentative map described Lot A as being for common ownership and not for development. However, the *actual recorded map* contains no restrictions upon the ownership or development of Lot A and there is no reference to common ownership. Furthermore, Lot A is identified as a legal lot in the recorded map.. The County surveyor, auditor, clerk, and recorder each executed and acknowledged the map. A tentative, unrecorded map, is not properly relied upon by the County or any owners or purchasers of the property. Furthermore, even common area lots in a subdivision can be owned by a single party and, often are. Those lots area also typically developable.

The Environmental Health Department Condition of Approval #3 does not support denial. The county's reliance upon the Environmental Health Department's proposed condition of approval #3 in connection with the original subdivision does not support denial of the application. That condition merely says that the parcel was not (at the time of the subdivision, mind you and prior to any lot line adjustment), suitable for the installation of an individual sewage disposal system. No sewage disposal system is required of this project and that cannot serve as a ground for denial.

References to Findings from the Original Subdivision, which occurred in 1977, are inapposite. The County references findings that occurred in connection with the original subdivision, in 1977 (ie. 45 years ago) about the proximity of public services and other items. Beyond the mere fact that this reference is patently absurd, it has no bearing upon the issue at hand. Further subdivision is not being sought at this time. A lot line adjustment and zoning clearance certificate for agricultural use is being sought.

The title report exceptions do not support the County's denial of the application. The county references certain non-exclusive easements and a reference that Lot A is not for residential use per a recorded map in its denial. Non-exclusive easements have no bearing upon the approval of the property. The person who owns the property with an easement on it can use the property, including the easement area, in any way they want that does not unreasonably interfere with the use of the easement. They can make changes and improvements to the area. As long as this use doesn't prevent the use of the easement by the easement holder, the property owner can use it for any purposes. This is extremely well established in the law: Herzog v. Grosso, 41 Cal. 2d 219, 224, 259 P.2d 429 (1953); O'Banion v. Borba, 32 Cal. 2d 145, 155, 195 P.2d 10 (1948); Colegrove Water Co. v. City of Hollywood, 151 Cal. 425, 429, 90 P. 1053 (1907); Atchison, T. & S. F. Ry. Co. v. Abar, 275 Cal. App. 2d 456, 464, 79 Cal. Rptr. 807 (1st Dist. 1969); City of Los Angeles v. Howard, 244 Cal. App. 2d 538, 543, 53 Cal. Rptr. 274 (2d Dist. 1966); Heath v. Kettenhofen, 236 Cal. App. 2d 197, 204, 45 Cal. Rptr. 778 (1st Dist. 1965); City of Los Angeles v. Igna, 208 Cal. App. 2d 338, 341, 25 Cal. Rptr. 247 (2d Dist. 1962); W. C. Dillon & Co. v. Barton, 159 Cal. App. 2d 18, 21, 323 P.2d 462 (2d Dist. 1958); Robinson v. Cuneo, 137 Cal. App. 2d 573, 577. 290 P.2d 656 (3d Dist. 1955); Greiner v. Kirkpatrick, 109 Cal. App. 2d 798, 803, 241 P.2d 564 (1st Dist. 1952); Smith v. Rock Creek Water Corp., 93 Cal. App. 2d 49, 52, 208 P.2d 705 (2d Dist. 1949). Brown v. Ratliff, 21 Cal. App. 282, 294, 131 P. 769 (3d Dist. 1913). Enforcement of relative easement rights, in any event, is a civil matter outside the purview of the planning department.

The project, if approved, would not pevent use of the easement. Notably, the proposed agricultural uses will occur only in the adjusted portion of land and falls outside the easement area. These activities would, certainly, not interfere with the use of the easement in any way. Furthermore, this project does not seek a "residential use" of the property.

The project neither causes non-conformance nor increases the severity of preexisting nonconformities. The county errantly states tha the project would increase the severity of non-conformance by reducing one parcel. However, the Department ignores the reality of the lot line adjustment to reach this conclusion. The surrounding parcels in this subdivision include a number of parcels that are less than 10 acres and, the proposed parcels as adjusted here would each exceed the minimum lot size for the subdivision. There is effectively no change in the alleged non-conformity. While the LLA would reduce one parcel size from 48.36 acres to 39.96 acres[1], it would *increase* the other lot size from 8.76 acres to 17.16 acres and the proposed use, an agricultural use, is principally permitted. It is absurd to say that the severity of any preexisting nonconformities would be increased by the proposed lot line adjustment. The County subdivision ordinance requires lot line adjustments to be evaluated for conformance with the *zoning* and *building code* as opposed to the general plan (See HCC 325.5-6(c)). The zoning code provides for a 20-acre minimum for AE parcels, as opposed to a 60-acre minimum as stated by the Planning Department. Even if a 60-acre minimum were applicable generally to AE Parcels, the original subdivision approval permitted lots well below the 39.96 acres proposed here.

Overview: The recorded map has no stipulation against development of the subject parcel other than noting it is "not for residential use". The title report exceptions cited by the County do not support denial of this project. The severity of any zoning nonconformities would not be increased by this lot line adjustment and zoning clearance certificate. Zoning clearance certificates and lot line adjustments are ministerial, are not discretionary, and cannot be denied when the application meets the requirements of the applicable regulations. These two applications meet all of the requirements of the applicable regulations and have been wrongfully and unlawfully denied for these and other reasons as will be presented during the appeal

[1] It is unclear what the minimum lot size actually is, as the minimum parcel size for AE parcels can be as low as 20 acres, and it is unclear from any records that have been provided as to whether this is actually in a 60 acre minimum, as suggested by County staff.