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April 16, 2007

**Hand Delivery**

Santa Barbara Board of Supervisors  
c/o Mr. Kevin Ready, Esq.  
105 E. Anapamu Street, Room 201  
Santa Barbara, CA 93101

***Re: Santa Ynez Water District Application for Vacation of Madera Street.  
File R-187  
Agenda April 24, 2007***

Dear Board Members:

**Introduction.** This office represents Mark Hemming owner of 3630 Sagunto Street in Santa Ynez (Lots 6&7). Mr. Hemming accesses his property both via Sagunto Street and Madera Street. Mr. Hemming operates a construction building on the premises and also has seven commercial tenants. He and his tenants all use Madera Street to exit the property. Mr. Hemming hopes in the future to build a mixed residential/commercial building on the property and believes that access to Madera Street is crucial to such a project. The Santa Ynez River Water Conservation District ("District") owns property on either side of Madera Street (Lots 2, 18 & 20). See the Map and aerial photo attached as Exhibit A. The District has applied to the County to vacate a portion of Madera Street adjacent to the District's property. Mr. Hemming objects to any order to vacate that does not preserve his right of access over Madera.

This vacation only affects Mr. Hemming and the District. Both acquired their properties with full knowledge of the existence of Madera Street and its historic use by Mr. Hemming and his predecessors. The District now asks the County to abandon approximately 160 feet of Madera Street for the benefit of the District's property. However, any such vacation will be a detriment to Mr. Hemming's property. Why, under these circumstances should the county intervene to alter the *status quo* between two property owners?

Mr. Hemming recognizes that the District is a public entity and he has repeatedly sought to meet with the District to determine whether or not there is some accommodation that could be reached which would meet both their needs. Unfortunately, the District has refused to even meet with him.

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Mr. Hemming asked the Board to take into consideration that as a public entity the District could condemn Mr. Hemming's private easement as long as it paid him the reasonable value thereof. It appears that the District is trying to capitalize on its status as a public entity with respect to the abandonment but avoid its responsibility as a public entity to pay Mr. Hemming for the property rights he will be losing.

**Law.** The vacation of a street is at the discretion of the Board. The Board is not required to maintain a public road for the private use of an abutting owner. However, the Board may impose such conditions as it deems appropriate. "The resolution May provide that the vacation occurs only after conditions required by the Legislative Body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied." Streets and Highways Code, § 8324. Mr. Hemming requests the Board condition any resolution vacating Madera Street on the District granting Mr. Hemming continued access via Madera Street. This is exactly what this Board did in Resolution 06-233.

**Precedent.** The District's application is similar to the recent application of the Santa Ynez Community Service District ("SYCSD") to vacate another portion of Madera Street. That application was the subject of Resolution 06-233 which specifically recognized Mr. Hemming's rights and conditioned the order to vacate on SYCSD granting Mr. Hemming an easement. A copy is attached as Exhibit B. The resolution contained the following relevant language:

*WHEREAS, in order to ensure that the Hemming Parcel's access to Faraday Road via Madera Street will not be jeopardized by the vacation of the Portion by the County, the County believes it is appropriate to condition the vacation on SYCSD's granting to the Hemming Parcel an ingress and egress easement five (5) feet in width along the northern boundary of the Portion (the "Hemming Easement"). The Hemming Easement, when combined with the remaining twenty-five (25) foot width of Madera Street following the abandonment of the Portion, will provide the Hemming Parcel with ingress and egress rights over a thirty (30) foot wide portion of Madera Street; and*

.....

*NOW, THEREFORE, BE IT RESOLVED, the Board of Supervisors of COUNTY does hereby find, determine and order as follows:*

.....

5. *That this Summary Order to Vacate is conditioned upon and shall not be recorded until documentation to accomplish the Hemming Easement and the Hemming Quitclaim can be recorded concurrently herewith;"*

**Private Easement Rights.** Mr. Hemming has a private easement independent of the public easement which will survive abandonment. California law provides that when one who purchases a lot by reference to a map the purchaser obtains a private easement in the streets

shown on that map as bounding the lot which is independent of public use. *Danielson v. Sykes* (1910) 157 Cal. 686. The vacation of a street does not effect a private easement. Streets and Highways Code § 8352. Mr. Hemming's deed describes the property by reference to a subdivision map which also created Madera Street. Therefore, Mr. Hemming has a private easement in Madera Street. The State Legislature has provided that vacating a street does not extinguish such private easement. Health & Safety Code section 8353 provides as follows:

*(b) A private easement claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if, within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located."*

A copy of Mr. Hemming's deed is attached as Exhibit C. The legal description includes the following:

*"Parcel One:*

*Lots 6 and 7 in block 13 of the town of Santa Ynez, in the county of Santa Barbara, State of California, as per map filed March 12, 1888, in book 1, page 41 of maps and surveys, in the Office of the County Recorder of said county."*

A copy of the referenced map is attached hereto as Exhibit D with block 13 and Mr. Hemming's property highlighted. The map shows Madera Street bordering Mr. Hemming's property to the south. Therefore, pursuant to Streets and Highways Code § 8353 Mr. Hemming has a private easement of ingress and egress over Madera Street for the benefit of his property. The California courts interpreting § 8353 (former Civil Code section 812), state that adjacent land owners have a private easement over such streets which is unaffected by abandonment. *Neff v. Ernst* (1957) 48 Cal.2<sup>nd</sup> 628 & *Severo v. Pacheco* (1946) 75 Cal.App.2<sup>nd</sup> 30.

Counsel for the parties have exchanged letters regarding whether or not Mr. Hemming has a private easement over Madera. For the sake of brevity Mr. Hemming's position will not be reiterated here but is set forth in the attached memorandum of law. The issue before the board isn't whether or not Mr. Hemming has a private easement. The issue is whether or not the Board should condition its abandonment of Madera Street on the District recognizing Mr. Hemming's right to access. The fact the District so vociferously argues Mr. Hemming has no private easement militates in favor of the Board imposing such a condition to protect Mr. Hemming. If it does not Mr. Hemming will face expensive litigation. If he prevails, as we believe he will, the court will recognize his private easement. If he does not prevail he will have lost valuable access which he and his predecessors have long relied on.

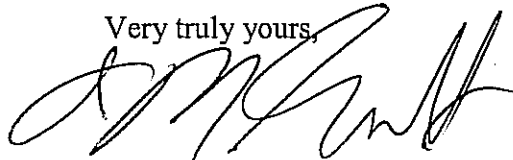
When the issue of abandoning Madera Street arose with SYCSD the parties were able to meet and negotiate a solution. The District has ignored multiple requests by Mr. Hemming to meet

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and discuss methods by which both parties needs can be met. This is particularly frustrating because that even if the Board resolves to vacate Madera Street the District will not simply be able to close it. PG&E has a 15 foot wide utility easement over Madera to service its power polls. See Exhibit E. It is hard to understand why if the District can accommodate a 15 foot wide utility strip down Madera it can not accommodate a 30 foot right of way to serve Mr. Hemming's property.

Mr. Hemming respectfully requests that the Board condition any order to vacate on the District's recognition of Mr. Hemming's private easement over Madera Street and that both the order and any quitclaim issued pursuant to that order include reference to such an easement.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ian M. Guthrie', written in a cursive style.

Ian M. Guthrie

IMG: lag

Enclosures

Cc: Mark Hemming (via email)  
Mr. Jeff Havlik (via email)  
Alexandra Barnhill (via email)

## Memorandum of Law

**TO:** Kevin Ready, Esq.  
**FROM:** Ian M. Guthrie  
**RE:** Private Easement Rights Post Abandonment  
**DATE:** April 16, 2007

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### **I. Introduction**

This office represents Mark Hemming owner of 3630 Sagunto Street in Santa Ynez (Lots 6&7 on the attached map). Mr. Hemming accesses his property both via Sagunto Street and Madera Street. The Santa Ynez Rive Water Conservation District ("District") owns property on either side of Madera Street (Lots 2, 18 & 20). The District has applied to the County to vacate a portion of Madera Street adjacent to the District's property. A map indicating the lots and street is attached as Exhibit A. Mr. Hemming objects to any order to vacate that does not preserve his right of access over Madera.

If the County vacates Madera Street Mr. Hemming will still have a private right easement over it based on common law and Streets and Highways §§ 8352 & 8353. Unfortunately, the District has refused to recognize this right. Therefore, if the Board vacates Madera Street without protecting Mr. Hemming's right of access he will have to engage in expensive litigation with the District to preserve his access. This is why this Board included in Resolution 06-233 vacating another portion of Madera Street in favor of the Santa Ynez Community Service District a requirement that the Services District recognize Mr. Hemming's right of access. A copy of that resolution is attached as Exhibit B.

### **II. Map**

All of the parcels and streets involved are shown on the Map of the town of Santa Ynez filed on March 12, 1888 ("Map"). A reduced copy is attached as Exhibit D. The Map predates the enactment of the Map Act in 1907. The first version of the Map Act and all subsequent versions have contained grandfather clauses recognizing preexisting subdivisions. Stats 1907, Ch., 231 pp. 290-292; Miller & Star, Cal Real Estate § 25: 148. Thus, for all intents and purposes the Map is the subdivision track map for the town of Santa Ynez and the source of title to virtually all real property therein.

The County considers the Map to be a subdivision tract map. As County Counsel can confirm, the floor of the Santa Ynez valley was jointly owned by the Bishop of Monterey and the Bishop of Los Angeles in 1887. The Bishops gave power of attorney to the Santa Ynez Land and Improvement Company ("Santa Ynez Land Co.") to develop the town of Santa Ynez and the whole valley floor. The Santa Ynez Land Co. prepared tract maps, including the Map, which were filed with the County and are the source of virtually all property titles in Santa Ynez. The County's interest in Madera Street derives from the Map. It includes an express dedication to the public of all the roads shown thereon, including Madera Street, stating:

The Streets, Roads, and Avenues as the same are laid down and delineated on this Map are hereby dedicated by the Santa Ynez Land and Improvement Company, a corporation as public highways for use of the public....

The county adopted a formal resolution accepting the dedication of the streets shown in the Map in approximately 1959

### III. Mr. Hemming's Deed

Mr. Hemming's deed describes the property by reference to the Map which also created Madera Street and shows it abutting his property. A copy of Mr. Hemming's deed is attached hereto as Exhibit C. The legal description includes the following:

*"Parcel One:*

*Lots 6 and 7 in block 13 of the town of Santa Ynez, in the county of Santa Barbara, State of California, as per map filed March 12, 1888, in book 1, page 41 of maps and surveys, in the Office of the County Recorder of said county."*

A copy of the referenced Map is attached hereto as Exhibit D with block 13 and Mr. Hemming's property circled. The Map shows Madera Street bordering Mr. Hemming's property to the south. Therefore, Mr. Hemming has a private easement of ingress and egress over Madera Street for the benefit of his property as explained below.

### IV. Common Law

#### A. Private Easement by Reference to Map

The law in California has long been that when one sells a lot by reference to a map the purchaser obtains a private easement in the streets shown on the map as bounding their lot which is independent of the public use. This rule was recognized by the California Supreme Court in *Danielson v. Sykes*, (1910) 157 Cal. 686. Interestingly, that case involved a Santa Barbara track subdivided in 1883. In *Danielson* the Supreme Court stated:

It is a thoroughly established proposition in this state that when one lays out a tract of land into lots and streets and sells the lots by reference to a map which exhibits the lots and streets as they lie with relation to each other, the purchasers of such lots have a private easement in the streets opposite their respective lots, for ingress and egress and for any use proper to a private way, and that this private easement is entirely independent of the fact of dedication to public use, and is a private appurtenance to the lots, of which the owners cannot be divested except by due process of law....

When a lot conveyed by a deed is described by reference to a map, such map becomes a part of the deed. If the map exhibits streets and alleys it necessarily implies or expresses a design that such passageway shall be used in connection with the lots and for the convenience of the owners in going from each lot to any and all other lots in the track so laid off. The making and filing of such a plat duly signed and acknowledged by the owner, as was the case here, is equivalent to a declaration that such right is attached to each lot as an

appurtenance. A subsequent deed for one of the lots, referring to the map for the description, carries such appurtenance as incident to the lot. Such we understand to be true foundation for the rule first above stated.

*Danielson v. Sykes* 157 Cal at 689-690 (emphasis added)

When the Santa Ynez Land Co. filed the Map in 1888 it created all the lots and streets in Santa Ynez. The Map includes an express dedication of those streets. All the lots in Santa Ynez, including Mr. Hemming's lot, have since been deeded and described by reference to the Map. Thus, under *Danielson v. Sykes* Mr. Hemming has an implied in law private easement to the streets abutting his property including Madera Street.

#### **B. The Mikels Case Distinguished.**

Counsel for the District in correspondence has relied on *Mikels v. Rager* (1991) 232 Cal. App. 3d 334 although it is unclear just how this case supports the District's position. The holding in *Mikels* turns on its own unique and complicated facts and pleadings. In *Mikels* the Appellate Court merely reversed the trial court's summary judgment on the basis that there were no undisputed facts sufficient to establish an implied easement by reservation.

The facts and procedural milieu in *Mikels* is complex and any attempt to summarize it will undoubtedly fail to do it justice. The Kings' owned various lots including one which they subdivided into two lots (Parcel 1 and Remainder Parcel) by recording a parcel map. The parcel map included a reference to an abandoned road known as Almond Street. Parcel 1 ultimately passed to the *Mikels*. The Kings then asserted both a public and private easement over the stretch of Almond Street that ran over the *Mikels*' Parcel 1. The portions of the case the District relies on deal only with the private easement issue.

The Kings' cited *Danielson v. Sykes* and argued that when Parcel 1 was conveyed by a deed referring to the parcel map a private easement over Almond Street attached to each lot on the map, i.e. the King's Remainder Parcel. The *Mikels*' court acknowledged the rule in *Danielson v. Sykes* stating as follows:

This scenario [conveying a lot by reference to a map, including streets as in *Danielson*] fulfills the three elements required for implied easement to arise in that (1) when the owner of the property being subdivided draws up a map dividing the property into lots divided and encumbered by roads, and then sells lots with reference to such map, the roadways are obvious (on the map) and by their very nature and the fact of the sales of lots clearly intended to be permanent, (2) the sale of lots creates the necessary separation of titles, and (3) the easements are reasonably necessary to the lot owners' beneficial enjoyment of their land, in that they enable the owners to move freely among and between the various lots within the subdivision as well as an adjoining city streets.

*Mikels v. Rager* 232 Cal 3d at 358.

The crucial issue in *Mikels*, which distinguishes it from our case, was that the Kings, as the recorders of the parcel map, could not establish an easement by implied grant but only by implied reservation. In other words the Kings were in the position of the original grantor, Santa

Ynez Land Co. in our case, rather than in the position of a subsequent grantee such as Mr. Hemming. This fact is vital in understanding the *Mikles* case and is one of the many reasons it is inapplicable to our situation. The *Mikles* court put it this way:

Before we discuss the Kings' failure to establish the necessary intent, we must also point out that the King's are wrong to the extent they contend that the easement in their favor was created by way of the implied grant of an easement. One cannot grant an easement to oneself; one can only *reserve* such an interest in the land granted to another.

That is exactly what is going on in this case; The Kings are not interested in a declaration that their *grantee* has an easement; Instead their are trying to establish that they, as grantors, reserve by implication an easement in their favor as a burden over the property conveyed to the Desimones and then to the Mikles by conveying Parcel 1 to the Desimones through a deed description referring to Parcel Map 4013."

*Mikles v. Rager*, 232 Cal 3d at 359

The distinction between an easement implied by reservation and an easement implied by grant is crucial because easements by reservation are disfavored. In fact this was the basis of the courts holding in *Mikles*.

#### 1. Intent.

Counsel for the District make a confusing argument re intent. Counsel first seems to argue that *Mikles* requires some evidence of an express intent to grant easements on the part of the original owner and creator of the Map, the Santa Ynez Land Co., beyond the filing of the Map. This is not the case, intent is implied from the very fact the Santa Ynez Land Co.'s. Map created the lots and streets and its original grants are by reference to that Map. The discussion of intent in *Mikles* is wholly supportive of Mr. Hemming's position. The *Mikles* court states the intent rule as follows:

[I]t presupposes intent on the part of the original grantor by depicting the road on the map and by referring to the map in the deed, to create an easement, as opposed to depicting the road and referring to the map for the purposes of description only or as an aid in identification, this intent being unambiguously shown by the creation and depiction on the map of new streets, as opposed to the depiction on the map of a street already depicted on earlier recorded documents.

*Mikles v. Rager*, 232 Cal. 3d at 359 (emphasis added.)

Counsel for the District then seems to argue that Mr. Hemming's immediate grantor, Lawrence White, had no intent to create an easement when he described the property in his 2004 deed to Mr. Hemming by reference to the Map. Mr. White's intent is irrelevant. Only the intent of the original grantor, i.e. Santa Ynez land Co. is relevant. As the *Mikles* court made abundantly clear, the very fact the Santa Ynez land Co. created and depicted new streets and lots when it recorded the Map in 1888 conclusively implies a private easement. Thereafter, the easements would be an appurtenance to all subsequent grants without any need for an express reference thereto.



Counsel for the District next argues that the *Danielson v. Sykes* doctrine only applies to maps adopted under the Subdivision map Act and that the Santa Ynez land Co Map is “merely a land survey.” However the *Danielson v. Sykes* doctrine is not limited to formal subdivision maps. In any event as discussed above the Map is for all intents and purposes a subdivision map. It is the original map establishing all of the lots and streets in the town of Santa Ynez and the basis for everyone’s title involved in this dispute including the County’s interest in Madera Street. From all the law stated above it should be eminently clear that the Map does not need to make any express representation regarding the creation of a private easement, but that such easements are implied from its very existence. Counsel for the District has stated that “the only possible conclusion [to be drawn from the Map] is that Mr. Hemming’s grantor relied on the attached survey map for descriptive or identification purposes only, not to convey any easements.” This statement is incomprehensible based upon the above authority and in particular the *Mikles* case. As set fourth above the issue of intent only relates to the original grantor and the issue of identification only comes into play if a map includes pre existing streets. Of course Mr. Hemming’s grantor referred to the Map in his 2004 deed to Mr. Hemming to identify the property. However, that is not the issue. The issue is did the Santa Ynez land Co. make the original conveyance by reference to the Map. There is no evidence that either Madera or any of the other streets shown on the Map were pre existing the filing of the Map.

The District’s counsel quotes the *Mikels* court out of context by stating:

Courts will only find an implied easement in a road if there is, ‘an unambiguous representation on the map that there was a private easement.’

The *Mikles* court was not stating a rule of law, it was merely speculating about what might have satisfied the intent requirement to establish an easement by reservation. The full quote reads as follows:

The undisputed presence of an unambiguous representation on the Map that there was a private easement in favor of the remainder parcel over “Almond Street,” combined with the deed of the Desimones of Parcel No.1, which referred to the Map, could have supplied the necessary intent on the part of the King’s as grantors to reserve an easement in favor of the remainder parcel to support a conclusion as a matter of law that there had been applied an implied reservation of an easement. However, the Kings did not establish as a fact that there was such an unambiguous representation of a private easement; see for example, *Metzger v. Bose* (1960) 183 Cal App. 2d 13, Overruled on another ground, *Valenta v. County of Los Angeles* (1964) 61 Cal. 2d 669,662, in which the plaintiff conveyed land to the defendants, without expressly reserving and easement in an existing county road. After the county abandoned the road, the plaintiff claimed that because he had described the property granted to defendant by reference to a recorded land survey, which survey showed the county road, he had reserved and easement by implication. The court held that the survey was not a subdivision map, and did not purport to make any representation as to private easements, there being ‘no reason to suppose, in the absence to anything else, that the reference to a public road carried any implications as to rights over the public road of in the land occupied thereby beyond the rights belonging to the public in general.’ Therefore,

the court concluded, the plaintiff was not entitled to an easement under the theory of implied reservation.

*Mikles v. Rager* 232 Cal 3d at 360 (Emphasis Added).

It is clear that the court was again focusing on the unique aspect of the *Mikles* case which was the fact the party seeking an easement was the original grantors who were seeking to establish an easement by implied reservation rather than by implied grant. Nothing in the *Mikles* case suggest that an unambiguous representation on the map that there is a private easement is required to imply an easement by grant with reference to a map. If this were so it would vitiate the rule of *Danielson*.

## 2. Ownership by Subdivider

District Counsel next seems to argue that the Santa Ynez Land Co. was not the owner (or owner's agent) of the roads when is file the Map in 1888. There is no question but that the Santa Ynez Land Co. was the owner of all the property shown on the Map at the time it was filed. If it were not then everyone's title in Santa Ynez including the District's and County's would be in doubt. This argument seems to relate to the District's argument that the *Danielson* doctrine only applies to a tract map under the Map Act. This is not the law and not the holding of *Mikles*. District counsel's quotation from *Michelson* this point is taken out of context and does not support its argument. The complete quotation is as follows:

However, all the cases in which an implied easement appurtenant was found to exist based on reference to a map involved the drawing up, by the unsubdivided property's original owner, of the subdivision tract map with a network of roads as part of the map, and the subsequent reference to the map, and hence such newly created and depicted roadways in the deeds *by the owner, as grantor, the purchasers of the lots as grantees.*"

*Mikles v. Rager*, 232 Cal 3d at 358.

The point the court was making was not that a formal tract map under the map act is required to invoke the reference-to-a-map method of creating an easement but that it only applied to the creation of an easement by grant in grantees form the original subdivider and not to the reservation of an implied easement to the original subdivider.

Tellingly the *Mikles* court cites *Danielson v. Sykes* and *Petitpierre v. Maguire* (1909)155 Cal. 242. Both of these cases involve maps that were recorded prior to the adoption of the Map Act. Not only do these cases not support the District's argument that a private easement in an abutting road exists only when the map is a formal subdivision tract map adopted pursuant to the Map Act but they negate it. The *Petitpierre* case did not involve a formal map but a deed that referred to various parcels and a frontage street. The Supreme Court found that was sufficient to convey an easement in the reference street to the subsequent grantee stating as follows:

It appears to be thoroughly settled that where an owner of land sells the same as fronting on or bounded by a certain space designated in the conveyance as a street

or way, which he also owns, he covenants that the same is a street or way, and will not be heard thereafter to deny it as against his grantee or his successors.

*Petitpierre v. Maguire* 155 Cal at 246-247.

Upon the facts stated, the case appears further to fall within the well-settled rule that where one lays out a tract of land owned by him into lots and makes a plan thereof showing streets, and sells, according to such plan, lots as bounding on such streets without any limitation, he irrevocably devotes such portions marked as streets, so far as the grantees and their successors are concerned, to use the streets. It can make no difference that the tract so subdivided is small, consisting as here of only one lot two hundred and seventy-five by one hundred feet, or that the street shown is a mere cul-de-sac. The deed to McCloskey itself constitutes a plat showing the subdivision by the owner of this land into two lots divided by a street to be known as Linden Street and a sale according to such plat. It cannot be doubted that McCloskey's rights under the deed were the same as they would have been had the owners prior to the sale to him made and filed in the recorders office a plat of this land showing these two lots with Linden Street dividing the same, and he had purchased according to such plat.

*Petitpierre v. Maguire* 155 Cal at 249.

The *Petitpierre* case makes it clear that no particular formality with respect to the referenced map is required to invoke the rule. There is simply no authority to support the District's argument that the *Danielson* rule re. the reference-to-a-map method of creating an easement only applies to a formal tract map recorded pursuant to the Map Act. Indeed the *Petitpierre* case makes it clear that a survey map, deed or any other document is sufficient.

*Metzger v. Bose* (1960) 130 Cal. At 2d 13, cited by the District for the proposition that only a "subdivision map" can give rise to a private easement has been overruled. *Valenta v. County of Los Angeles* (1964) 61 Cal 2d 669, 672. Even were *Metzger* still good law it does not support the District's position. Indeed the court in *Metzger* acknowledged the rule set forth in *Danielson v. Sykes* and stated that a formal subdivision map was not required to invoke that rule stating:

"The fact that the map has not been filed for record and is not filed until after execution of the deed, or that the lots are sold with reference to a sales map used by the grantor, which map is not quite the same as the recorded map, does not prevent one who purchases in reliance on such a map from asserting his easement against the subsequent grantee of his grantor where a subsequent purchaser had notice, actual or constructive, of the claimed easement."

*Metzger v. Bose*, 183 Cal. App. 18 (quoting from 17 California Juris prudence 2d 105, Easements, § 12.)

The real basis for the courts ruling in *Metzger* was that, just as in *Mikel v. Reager*, the case involved a grantor attempting to claim an easement by implied reservation rather than implied grant.

### **C. Abutter's Rights**

In addition to an implied easement by a reference to a map Mr. Hemming also has an easement under the Abutter's Rights Doctrine. The two concepts are separate and distinct. The doctrine of Abutters Rights can be stated as follows:

“An owner of property that abuts a public street has two kinds of rights in the public thoroughfare. The owner has the same rights as the public in general for unobstructed passage over the public street and also has certain private rights as an owner of abutting property, including a right-of-way easement for access to the general system of streets....

The two rights are distinct, and the abutting property owner's private easement in the public street remains after the street is vacated or abandoned.”

*Miller & Star, California Real Estate 3d § 15:69.*

The California Supreme Court formulated the Abutter's Rights doctrine as follows:

We have long recognized that the urban land owner enjoys property rights, additional to those which he exercises as a member of the public, in the street upon which his land abuts. Chief among these is an easement of access in such street. This easement consists of the right to get into the street upon which the landowner's property abuts and form there, in a reasonable manner, to the general system of public streets.

*Breidert v. Southern Pacific (1964) 61 Cal 2d 659,663 (internal citations omitted.)*

Mr. Hemming has abutter's rights in Madera Street by dint of the fact it borders his property.

### **V. Statutory Law**

The Legislature of California has recognized that the vacation of a street by a public entity does not effect a private easement over the same street. Streets and Highways § 8352. Streets and Highways § 8353 deals specifically with private easements created by a map and provides as follows:

(a) Except as provided in subdivision (b), the vacation of a street or highway extinguishes all private easements therein claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown, other than a private easement of ingress and egress to the lot from or to the street or highway.

(b) A private easement claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if, within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located.”

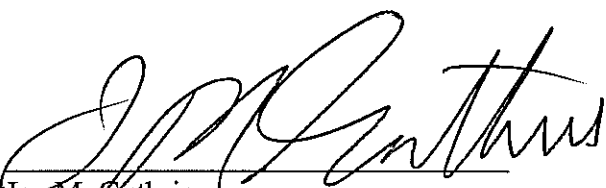
The California courts interpreting section 8353 (former Civil Code section 812) state that adjacent land owners have a private easement over such streets which is unaffected by abandonment. *Neff v. Ernst* (1957) 48 Cal.2<sup>nd</sup> 628 & *Severo v. Pacheco* (1946) 75 Cal.App.2<sup>nd</sup> 30.

The division of the Streets and Highways code dealing with the vacation of streets gives the Board of Supervisors the power to condition its order of vacation. *Streets and Highways code § 8324*. Even if Mr. Hemming had no private easement he would still be justified in requesting that the Board of Supervisors condition any vacation of Madera Street upon the district agreeing to recognize and preserve his historic access to his property over Madera Street.

**Conclusion**

There is no question but that Mr. Hemming has a private easement over Madera Street and that he has every right to ask the Board of Supervisors to take this into account in considering the vacation of Madera Street. Assuming arguendo, Mr. Hemming does not have a private easement, he would still not withdraw objections to the vacation of Madera Street. Indeed he would have even more reason to object and request that the county exercise it's discretion to condition any vacation upon him continuing to enjoy the access over Madera Street which his parcel has historically enjoyed.

SCHLEY LOOK & GUTHRIE LLP

By:   
Ian M. Guthrie

RANCHO CANADA DE LOS PINOS

143-22

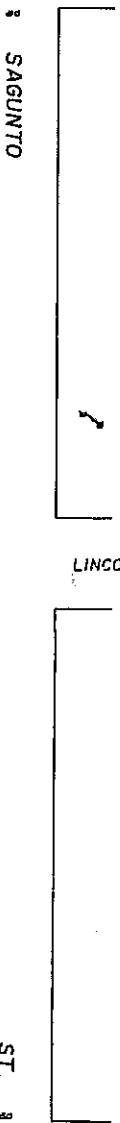
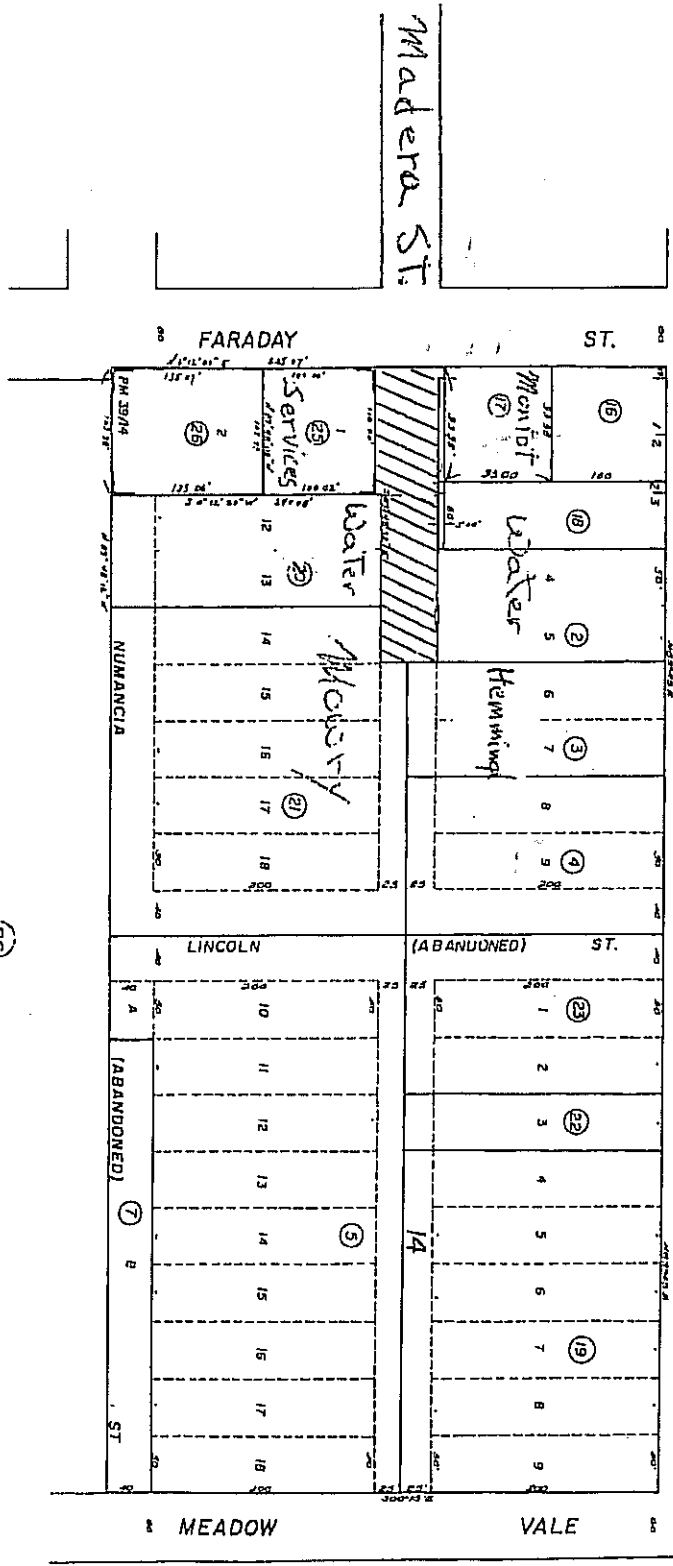


EXHIBIT A



= The "Portion"

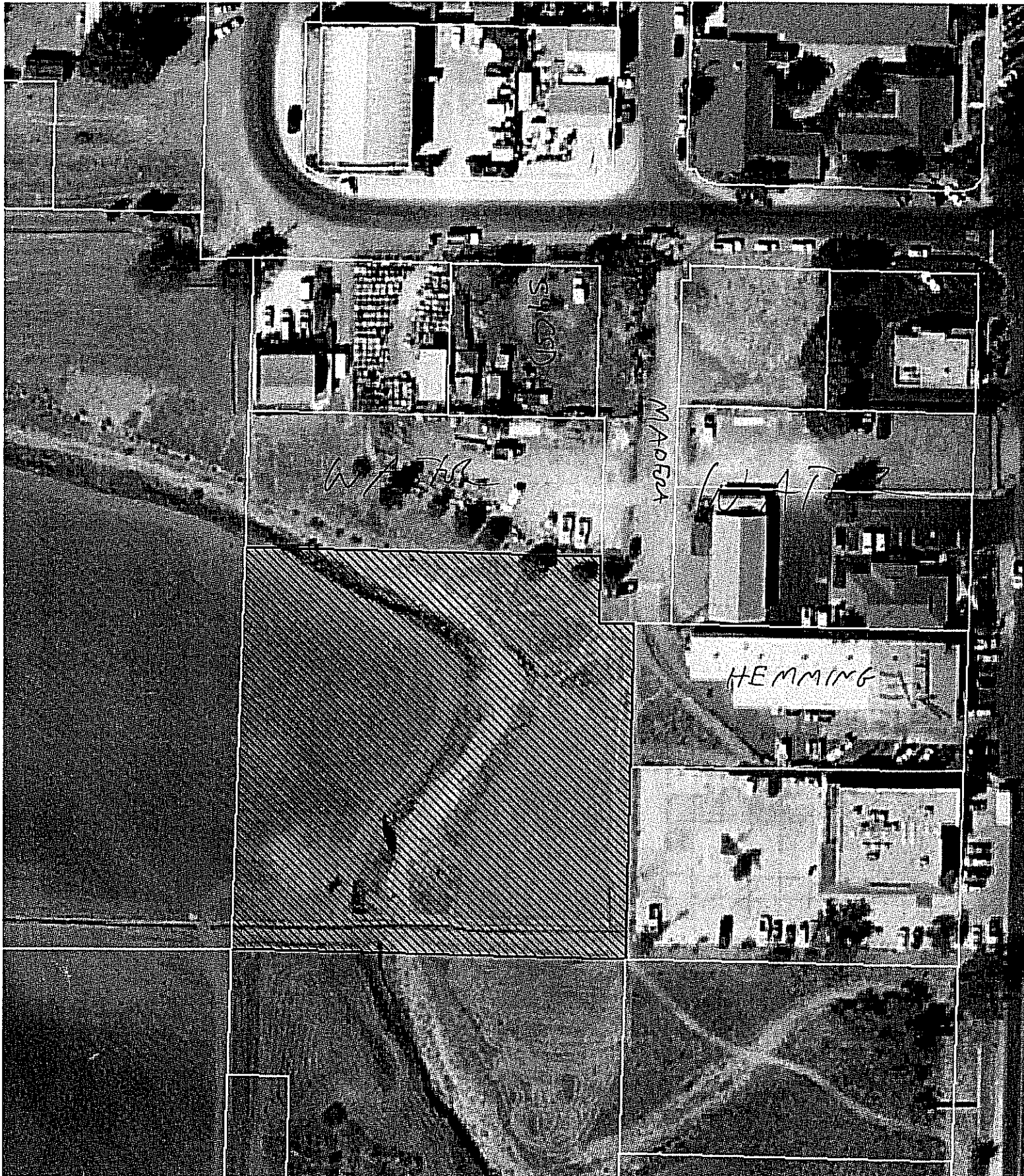
Bk 141

R.M. Bk. 1, Pg. 41 - Town of Santa Ynez

NOTE - Assessor's Block Numbers Shown in Ellipses.  
Assessor's Parcel Numbers Shown in Circles.

Assessor's Map Bk. 143 - Pg. 22  
County of Santa Barbara, Calif.

2/87 25122



SPRING

WATER

MADRID

HEMMING

Recording requested by and )  
 to be returned to: )  
 Santa Barbara County )  
 Public Works Department, )  
 Surveyors Office, Attn: JJH )  
 WILL CALL )

NO FEE PER GOVERNMENT CODE § 6103

RESOLUTION NO. 06-233

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
 COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

In The Matter of the Summary Vacation )  
 of an Unused Portion of the Madera Street )  
 Right-of-Way in the Unincorporated Area of ) STREETS AND HIGHWAYS  
 Santa Barbara, ) CODE SECTION 8320 et seq.

SUMMARY ORDER TO VACATE  
 (PORTION OF A COUNTY RIGHT-OF-WAY)

WHEREAS, the County of Santa Barbara (hereinafter "COUNTY") is the owner of that certain road right-of-way known as Madera Street in the unincorporated area of the County of Santa Barbara known as Santa Ynez, State of California. Said right-of-way is identified and recorded in Official Records; Book 1693, Page 372, and in Instrument number 84-16006, in the office of the County Recorder of the County of Santa Barbara. The location of the right-of-way proposed for vacation is described and shown on "Exhibit A" attached hereto (hereinafter the "Portion"); and

WHEREAS, the Santa Ynez Community Services District ("SYCSD") is the owner of the property located at 1080 Faraday Road and designated as Assessor's Parcel No. 143-220-025 (the "SYCSD Parcel"). SYCSD is the applicant for the abandonment of the Portion by the County, which Portion is located immediately adjacent to and north of the SYCSD Parcel; and

WHEREAS, the property located at 3630 Sagunto Street in Santa Ynez and designated as Assessor's Parcel No. 143-220-03 (the "Hemming Parcel") is accessed from Sagunto Street but also utilizes Madera Street as a means of ingress and egress. The Hemming Parcel is more particularly described as lots 6 and 7 in Block 13 as per map filed March 12, 1888 in Book 1, Page 42 of Maps and Surveys in the Santa Barbara County Recorder's Office; and

WHEREAS, the owner of the Hemming Parcel claims a private ingress and egress easement over the entire fifty (50) foot width of Madera Street, including the Portion, based on the fact that the Hemming Parcel was purchased by reference to a map upon which Madera Street is shown; and

WHEREAS, in order to ensure that the Hemming Parcel's access to Faraday Road via Madera Street will not be jeopardized by the vacation of the Portion by the County, the County



believes it is appropriate to condition the vacation on SYCSD's granting to the Hemming Parcel an ingress and egress easement five (5) feet in width along the northern boundary of the Portion (the "Hemming Easement"). The Hemming Easement, when combined with the remaining twenty-five (25) foot width of Madera Street following the abandonment of the Portion, will provide the Hemming Parcel with ingress and egress rights over a thirty (30) foot wide portion of Madera Street; and

**WHEREAS**, in consideration of the granting of the Hemming Easement by SYCSD, the owner of the Hemming Parcel has agreed to quitclaim to SYCSD the Hemming Parcel's claimed private easement rights over the twenty (20) foot wide portion of Madera Street located immediately adjacent to and north of the SYCSD Parcel (the "Hemming Quitclaim"); and

**WHEREAS**, the County wishes to condition its approval of this Summary Order to Vacate on the concurrent recording of documentation to accomplish the Hemming Easement and the Hemming Quitclaim; and

**WHEREAS**, it has been determined by the Santa Barbara County Public Works Department that the Portion is unnecessary for present or prospective public use as a county road or bicycle path pursuant to Section 892[a] of the Streets and Highways Code and that the COUNTY has no plans to use or develop the Portion for public use; and

**WHEREAS**, the County's Public Works Department, Transportation Division has determined it is in the public interest to vacate the public's interest in the Portion; and

**WHEREAS**, the Board of Supervisors of Santa Barbara County deems it to be in the best interest of the public to declare that the Portion is in excess of COUNTY'S present and foreseeable needs; and

**WHEREAS**, pursuant to Streets & Highways Code sections 8334 and 8334.5 this right-of-way vacation is entitled to a Summary Vacation.

**NOW, THEREFORE, BE IT RESOLVED**, the Board of Supervisors of COUNTY does hereby find, determine and order as follows:

1. That the above recitals are true and correct; and
2. That the portion of the Madera Street right-of-way being vacated is particularly described and shown on "Exhibit A" attached hereto (the "Portion"); and
3. That this Summary Order to Vacate is in compliance with, and made under authority granted in Streets and Highways Code of the State of California, 8330 et seq.; and
4. That pursuant to Section 8324 of the Streets and Highways Code, the public's right-of-way interest in the Portion is hereby vacated; and

A. 11

- 5. That this Summary Order to Vacate is conditioned upon and shall not be recorded until documentation to accomplish the Hemming Easement and the Hemming Quitclaim can be recorded concurrently herewith; and
- 6. That after the above items are complete this Resolution, attested to by the Clerk of the Board under the seal of the Board, shall be recorded in the Office of the County Recorder in the County of Santa Barbara, State of California, and that the date of recording shall become the effective date of this Summary Order to Vacate.

///  
///  
///

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Barbara, State of California, this 25th day of July, 2006 by the following vote:

**AYES:** Supervisors Carbajal, Rose, Firestone, Gray and Centeno  
**NOES:** None  
**ABSENT:** None  
**ABSTAINED:** None

ATTEST:  
MICHAEL F. BROWN  
CLERK OF THE BOARD

By: [Signature]  
Deputy

COUNTY OF SANTA BARBARA

By: [Signature]  
Chair, Board of Supervisors

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
STEPHEN SHANE STARK  
COUNTY COUNSEL

By: [Signature]  
Deputy

**KEVIN E. READY, SR. DEP. COUNTY COUNSEL**

This is a true certified copy of the original document on file or of record in my office. It bears the seal and signature, imprinted in purple ink, of the Clerk of the Board of Supervisors.



Clerk of the Board, Santa Barbara County, California

Date: 8/2/06 by Deputy [Signature]

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE



2004-0008691

RECORDING REQUESTED BY  
First American Title Company

Recorded  
Official Records  
County Of  
SANTA BARBARA  
JOSEPH E. HOLLAND  
Recorder

REC FEE 19.00  
TAX 1155.00  
SURVEY 10.00

AND WHEN RECORDED MAIL TO:  
Mark A. Hemming  
2832 Quail Valley Road  
Solvang, CA 93463

08:00AM 30-Jan-2004 jdd  
Page 1 of 5

*Handwritten initials/signature*

Space Above This Line for Recorder's Use Only

A.P.N.: 143-220-03

MONUMENT SURVEY \$10.00

File No.: 4205-1298607 (BF)

**GRANT DEED**

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$1,155.00; CITY TRANSFER TAX \$0.00;  
SURVEY MONUMENT FEE \$

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

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Lawrence E. White, a married man as his sole and separate property, as to an undivided 1/2 interest and The Horst and Ingeborg Dohring Living Trust, UTD, February 7, 2003, Horst Dohring and Ingeborg Dohring, Trustees, as to an undivided 1/2 interest,

hereby GRANTS to Mark A. Hemming, a married man as his sole and separate property

the following described property in the Unincorporated Area of Santa Ynez, County of Santa Barbara, State of California:

See legal description attached hereto as Exhibit "A" and made a part hereof

THIS DOCUMENT IS EXECUTED IN COUNTERPART, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL, AND ALL OF WHICH TOGETHER  
Dated: 01/23/2004 SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT.

\_\_\_\_\_  
Lawrence E. White

The Horst and Ingeborg Dohring Living Trust,  
UTD, February 7, 2003, Horst Dohring and  
Ingeborg Dohring, Trustees

*Handwritten signature: Horst Dohring*  
\_\_\_\_\_  
Horst Dohring, Trustee

*Handwritten signature: Ingeborg Dohring*  
\_\_\_\_\_  
Ingeborg Dohring, Trustee

STATE OF CALIFORNIA }  
COUNTY OF Humboldt } ss.  
}

On 1-26-04, before me, the undersigned personally appeared Horst Dohring and Ingeborg Dohring 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 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.

*This area for official notarial seal*

Signature

*Diana Fraga*

My Commission Expires: 4.30.05



STATE OF California }  
COUNTY OF Santa Barbara } ss.  
}

On January 29, 2004 before  
me, Judith Rattray personally  
appeared Lawrence E White  
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 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.

*This area for official notarial seal*

Signature

Judith Rattray  
My Commission Expires: Dec 3, 2004



**EXHIBIT 'A'**

Date: January 28, 2004

File No.: 4205-1298607 ( BF)

**PARCEL ONE:**

**LOTS 6 AND 7 IN BLOCK 13 OF THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP FILED MARCH 12, 1888, IN BOOK 1, PAGE 41 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.**

**PARCEL TWO:**

**THE NORTHERLY ONE-HALF OF THAT PORTION OF THE CERTAIN ALLEY IN BLOCK 13 OF THE TOWN OF SANTA YNEZ, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, LYING EASTERLY OF THE SOUTHERLY PROLONGATION OF THE EASTERLY BOUNDARY LINE OF LOT 5 OF SAID BLOCK 13 AND LYING WESTERLY OF THE SOUTHERLY PROLONGATION OF THE EASTERLY BOUNDARY LINE OF LOT 7 OF SAID BLOCK 13, AS ABANDONED BY THAT CERTAIN ORDER TO ABANDON RECORDED MAY 12, 1955, AS INSTRUMENT NO. 8610 IN BOOK 1314, PAGE 337 OF OFFICIAL RECORDS.  
A.P.N. 143-220-03**

Initials: \_\_\_\_\_

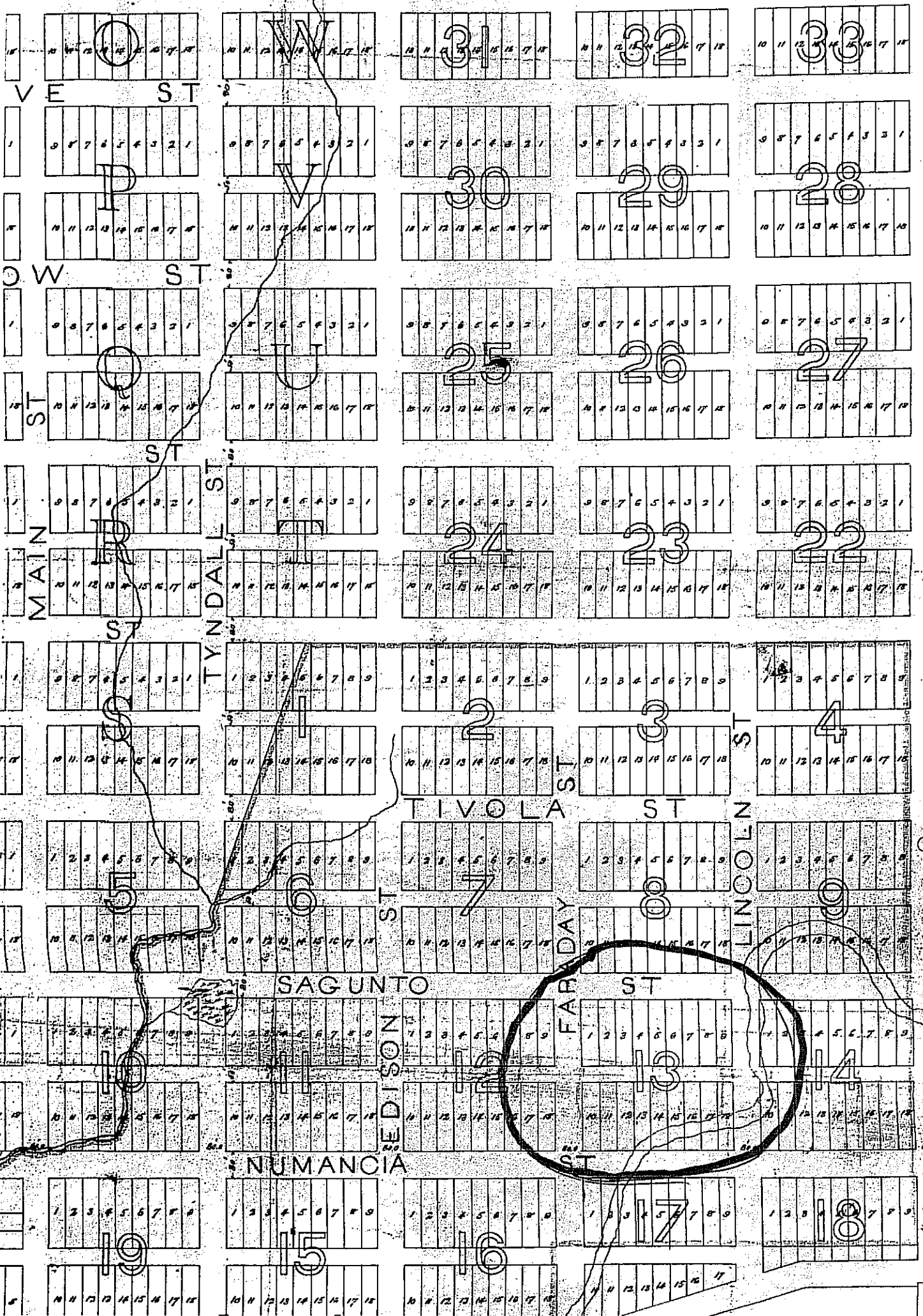
# MAP OF THE TOWN OF SANTA YNEZ

As Surveyed by

JOHN GILCREST  
Surveyor

NOV-DEC. 1887.

Scale, 200 Feet to an inch.



As the said  
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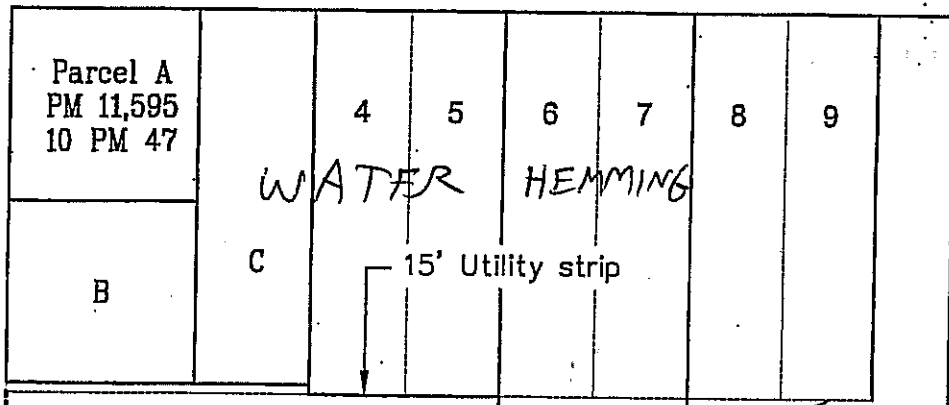
SANTA YNEZ  
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Company  
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by Simon  
and by M  
Sherman  
by  
of  
by M

# EXHIBIT "B"

Plat No. C'C'-48-02

Lincoln St.

Sagunto Street

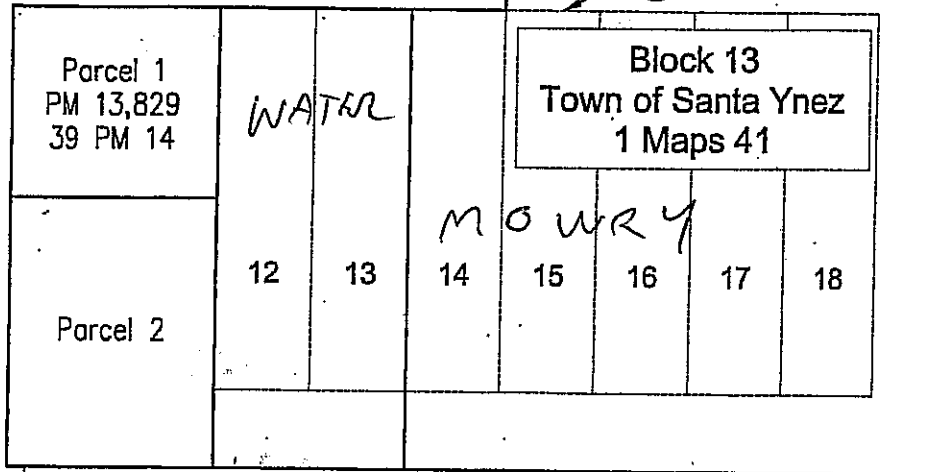


7449  
1122

Madera St.

50' Alley

Faraday Street



Section 7, NE 1/4 of SW 1/4

CITY, RANCHO, SUBDIVISION, ETC.

Santa Ynez

SCALE  
1" = 100'  
DATE  
05/02/06

SECTION	TOWNSHIP	RANGE	MERIDIAN
7	6N	30W	SBB&M

COUNTY OF: Santa Barbara

CHG	DATE	DESCRIPTION	AUTH	BY	CH	F.B.:	DR. BY: trp	CH. BY: cjm
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REFERENCES 69319.dwg	PG&E	Los Padres DIVISION	40541439 AUTHORIZ	N/A DRAWING NO.	CHG.
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