

Attachment 1

ATTACHMENT 1

License and Release Agreement

LICENSE AND RELEASE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter "Agreement") is made by and between the COUNTY of SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and LEONARD W. KNIGHT, in his individual capacity, as Trustee of JACOB'S GOLDEN EAGLE TRUST, dated December 3, 2019, and as Trustee of the GOLDEN EAGLE TRUST, dated November 7, 1991, (hereinafter referred to as "OWNER"), with reference to the following:

WHEREAS, OWNER is the owner of that certain agricultural property in the unincorporated area of the County of Santa Barbara, State of California, located at 3668 Tepusquet Road, Santa Maria, California, also known as County Assessor's Parcel No. 131-220-012, and legally described on Exhibit "A", attached hereto and incorporated herein by reference, (hereinafter the "Property"); and

WHEREAS, the COUNTY operates a communications facility for the COUNTY's Fire Department, Sheriff's Department, and other health and safety purposes on an area of Tepusquet Peak owned by the United States Forest Service (hereinafter "USFS") pursuant to a Communications Use Lease between USFS and COUNTY, dated December 19, 2012; and

WHEREAS, the COUNTY uses Ruiz Canyon Road (hereinafter "Road"), a private road over the Property and other properties, for ingress and egress to the Tepusquet Peak communications site for public health and safety communications; and

WHEREAS, COUNTY and OWNER desire to enter this Agreement for the COUNTY's use of the Road according to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants, terms and conditions contained herein, it is mutually agreed and understood as follows:

1. **GRANT OF LICENSE:** OWNER hereby grants to COUNTY, its authorized agents, contractors, officers and employees, the right to non-exclusive use of the portion of the Road that crosses OWNER's Property, as shown on Exhibit "B", attached hereto and incorporated herein by reference, for ingress and egress, including the right to enter upon and transport workers, equipment, and materials over, within and upon the Road located on the Property.

Such right of use shall be limited to COUNTY agents, contractors, officers and employees, for the purposes of construction, maintenance, repair and all other operations required for the COUNTY's communications facility at Tepusquet Peak. It is expressly understood by COUNTY that the persons authorized to use the Road shall not enter upon the Property or use the Road for the purpose of hunting, sightseeing, camping, collecting materials, or for any other purpose not directly connected with the construction, maintenance, repair and operation of COUNTY's communications facility.

COUNTY shall provide OWNER with a designated contact to assist OWNER in identifying individuals and entities authorized to exercise the access rights granted hereunder. All individuals and entities not specifically authorized to exercise the rights granted herein shall be

accompanied by an authorized COUNTY employee when using the Road. COUNTY shall keep OWNER apprised of any changes in its authorized agents, contractors, officers or employees that may be using the Road, and will use its best efforts to ensure that all authorized users of the Road are aware of and comply with the restrictions set forth herein.

2. **MAINTENANCE AND REPAIR:** OWNER agrees to clear vegetation along the Road, and perform routine grading of the Road when necessary or upon COUNTY's request, and maintain the portions of the Road on OWNER's Property in a condition sufficient to allow COUNTY reasonable ingress and egress along the Road for COUNTY's operations at the Site. OWNER's responsibility to perform routine grading of the road is expected to be required approximately once every five (5) years.

In the event of an unusually strong storm season further grading may be required per request by COUNTY. COUNTY shall use its best efforts to minimize damage or disturbance to the Road. In the event COUNTY, or its authorized agents, contractors, officers or employees causes damage to the Road or OWNER's Property as a result of a violation of the rights granted by this Agreement, COUNTY will be responsible to repair such damage, and return said portion of the Road or Property to a usable condition, normal wear and tear excepted. COUNTY and OWNERS shall coordinate efforts to keep the Road in a usable condition and shall provide each other reasonable notice of any work to be performed on the Road.

Notwithstanding the foregoing, OWNER shall not be required to reconstruct the Road in the event of catastrophic damage to the road such as that caused by a major landslide, mudslide, earthquake, or other natural disaster.

3. **ANNUAL LICENSE FEE**

a) As consideration for the rights granted herein, including OWNER's responsibilities to maintain the portion of the Road on OWNER's Property, COUNTY shall pay OWNER the annual sum, beginning for the calendar year 2022, of THREE THOUSAND THREE HUNDRED THIRTY-FOUR DOLLARS (\$3,334), (the "License Fee"). This annual payment shall be subject to annual increase as provided in Section 4 below. Payment for the COUNTY's use of the Road during the period from January 1, 2012 through December 31, 2021 shall be governed by Section 6 below and shall not be subject to the annual License Fee described in this Section.

b) The first invoice to the COUNTY from the OWNER for the first Annual License Fee for the calendar year 2022, as described in section 3.a above, shall be submitted by the OWNER to the COUNTY on December 1, 2021. Subsequent invoices for the annual License Fee, including the annual increase set forth in Section 4, shall be submitted in advance to the COUNTY by the OWNER on December 1st for each year of the term.

c) The License Fee shall be paid in advance, no later than January 1st of each year of the Term, with the first full year of the License Fee beginning January 1, 2022 as described above.

4. **ANNUAL INCREASES:** The annual License Fee described in Section 3 provided to the OWNER by the COUNTY shall be automatically increased annually by a fixed percentage

rate of three percent (3%). This 3% increase shall be applied to the annual License Fee due for the calendar year 2023 (invoiced on December 1, 2022 as described in Section 3.b., above) and on each year of the Agreement thereafter, unless the Agreement is sooner terminated.

5. **TERM:** The Term of this Agreement shall be for a period of approximately 20 years, and shall commence on the date executed by the COUNTY (the "Effective Date") and terminate on December 31, 2041, unless otherwise extended or terminated pursuant to the provisions of this Agreement.

6. **COUNTY PAYMENT FOR USE OF ROAD THROUGH DECEMBER 31, 2021 AND RELEASE BY OWNER**

a) As consideration for the releases described in this Section 6 and for the COUNTY's use of the Road from January 1, 2012 to December 31, 2021, COUNTY shall provide to the OWNER a one-time monetary payment in the sum of TWENTY SIX THOUSAND FIVE HUNDRED EIGHTY DOLLARS (\$26,580) (hereinafter, the "One-Time Payment"). The One-Time Payment shall be payable upon final execution of this Agreement and recordation of a Memorandum of License Agreement.

b) In partial exchange for the One-Time Payment, OWNER's agrees to release, settle, resolve and forever extinguish all past, present and potential Claims that OWNER has or may have against the COUNTY and its agents, servants, employees, officers, directors, administrators, representatives, elected officials, attorneys, departments, divisions, and agencies, related to COUNTY's use of the Road from January 1, 2012 to the date this Agreement is executed by COUNTY, (the "Past Road Usage"). The One-Time Payment shall also compensate OWNER for COUNTY's use of the road from the Effective Date through December 31, 2021.

For purposes of this Section, "Claims" includes (without limitation) all complaints, grievances, charges, demands, suits, liens, and appeals, and all other legal actions, causes of action, and assertions of right, whether known or unknown, foreseen or unforeseen, actual or potential, fixed or contingent, that arise in connection with the Past Road Usage, including, but not limited to, those seeking special or general damages, or any other compensation, reimbursement, relief, or legal or equitable remedy of any sort, in any forum, for any loss of salary, benefit, income, profit, or other economic advantage, or any cost, expense, debt, charge, fee (including attorney's fee), or other economic detriment, or any other injury, damage, detriment, or loss of benefit to person or property, based upon any memorandum of understanding, contract, promise, debt, or liability.

OWNER understands that they may later discover facts different from, or in addition to, those presently known, believed, or suspected to be true concerning the subjects or consequences of this Agreement, and further understand that, despite any such discoveries, this Agreement shall remain binding. OWNER specifically waives all rights under Civil Code section 1542, which provides as follows:

1542. General Release—Claims Extinguished. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

7. **COUNTY OBLIGATIONS:** The COUNTY shall be obligated as follows:
- a) The COUNTY, its authorized agents, employees and contractors shall exercise reasonable precautions necessary to prevent damage to and protect OWNER's Property and the Road during COUNTY's use of the Road during the Term of this Agreement. In no event shall COUNTY, or any of its agents, employees, contractors, enter upon any portion of the Property other than the Road; or in case of emergency or as otherwise authorized by law.
 - b) COUNTY shall ensure that each contractor using the Road to perform work on behalf of COUNTY meets COUNTY's standard insurance requirement.
 - c) Upon expiration or earlier termination of this Agreement, COUNTY shall record a Termination of License Agreement in order to remove this item from title to the Property upon written request from, and at no expense to, OWNER.
8. **OWNER'S LIABILITY:** By COUNTY's performance of this Agreement, OWNER assumes no liability for loss or damage to COUNTY's property, or injury to or death of any agent, employee, or contractor of COUNTY, unless such loss, damage, injury, or death results, in whole in or in part, from OWNER's negligence.
9. **KEYS AND COMBINATIONS:** A key or combination shall be furnished to COUNTY for any locked gate under OWNER's control along the Road. OWNER shall notify COUNTY of any change in the gate key or combination and provide a copy of the new key or combination to COUNTY at the time of such change.
10. **NOTICES:** Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by first class mail to the following:

IF TO OWNER: Jacob's Golden Eagle Trust
P. O. Box 2670
Santa Maria CA 93457
Attn: Leonard Knight
Phone: (805) 598-4806

IF TO COUNTY: County of Santa Barbara
Communications Division
4568 Calle Real, Building C
Santa Barbara, CA 93110
Attn: Communications Manager
Phone: (805) 681-5581

With a copy to: County of Santa Barbara
Real Property Division
1105 Santa Barbara St.
Courthouse, East Wing, 2nd Floor
Santa Barbara, CA 93101
Attn: Real Property Manager
Phone: (805) 568-3081

All notices hereunder shall be in writing and shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by the party as provided for herein.

11. **DEFAULT**: Except as otherwise required herein, should COUNTY at any time be in material default hereunder with respect to any covenant contained herein, OWNER shall give notice to COUNTY specifying the particulars of the default and COUNTY shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the OWNER, unless the cure of such default shall reasonably take more than thirty (30) calendar days, in which case COUNTY shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

12. **REMEDIES**: In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including, but not limited to, the following:

a) The non-defaulting party may waive the default or breach in accordance with Section 13, **WAIVER**, herein below.

b) The non-defaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.

c) Where COUNTY is the non-defaulting party, COUNTY may terminate the Agreement and surrender use of the Road.

d) Where OWNER is the non-defaulting party, OWNER may terminate the Agreement and COUNTY shall terminate use of the Road within sixty (60) days of written notice from the OWNER.

13. **WAIVER**: No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

14. **TERMINATION**: This Agreement shall terminate and all rights of COUNTY shall cease, and COUNTY shall quietly and peacefully discontinue COUNTY's use of the Road:

a) Upon expiration or earlier termination of the Agreement as provided in Section 5, **TERM**;

b) Upon the failure of COUNTY to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 11, **DEFAULT**;

c) Upon COUNTY's good faith determination that the Road is no longer feasible for its intended use, and COUNTY's written notice to OWNER;

d) The USFS terminates COUNTY's rights to operate a communications site in the vicinity of Tepusquet Peak; or

e) Upon termination of funding as stated in Section 22, NONAPPROPRIATION, and COUNTY's exercise of its right to terminate;

The foregoing notwithstanding, the provisions of Sections 6 and 23 shall survive any termination of this Agreement.

15. **AGREEMENT APPROVAL:** This Agreement is subject to the approval of the COUNTY Board of Supervisors. Execution of this Agreement by the chairperson, or designee, of the Board of Supervisors shall evidence said approval by the Board.

16. **SUCCESSORS AND ASSIGNS:** The rights under this Agreement shall also extend to and bind the heirs, devisees, executors, administrators, successors, and assigns of the parties.

17. **COVENANT OF QUIET USE AND POSSESSION:** OWNER hereby covenants that COUNTY shall have use of the Road without interference or disturbance from OWNER or those claiming under OWNER during the term of this Agreement.

18. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. **CONSTRUCTION:** The parties agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The terms and provisions of this Agreement embody the parties' mutual intent, and this Agreement shall not be construed more liberally in favor of, nor more strictly against, any party hereto.

20. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

21. **CERTIFICATION OF SIGNATORY(IES):** Each and every signatory(ies) of this Agreement represents and warrants that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and OWNER to its terms and conditions or to carry out the duties contemplated herein.

22. **NONAPPROPRIATION:** OWNER understands that monies paid to OWNER by COUNTY as rent are derived from federal, state, or local sources, including local taxes, and are subject to curtailment, reduction, or cancellation. In the event that no funds or insufficient funds

are appropriated or budgeted by federal, state or COUNTY governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, COUNTY shall have the right to terminate this Agreement. Termination shall be effective upon the expiration of three (3) calendar months after the termination notice is delivered by COUNTY to OWNER, and the liability of the parties hereunder for further performance under the terms of the Agreement shall thereupon cease, but neither party shall be relieved of their duty to perform their obligations up to the date of termination or that are intended to survive the termination.

23. **AUTHORITY OF OWNER; INDEMNIFICATION:** OWNER enters into this agreement on his own behalf, on behalf of the JACOB'S GOLDEN EAGLE TRUST, dated December 3, 2019, on behalf of the GOLDEN EAGLE TRUST, dated November 7, 1991, and on behalf of his heirs, beneficiaries, executors, administrators, agents, servants, representatives, attorneys, successors, and assigns and those of the GOLDEN EAGLE TRUST, dated November 7, 1991, and those of the JACOB'S GOLDEN EAGLE TRUST, dated December 3, 2019 ("OWNER Parties"). OWNER represents and warrants that he has the authority to execute this Agreement on behalf of the OWNER Parties, to grant the releases set forth in Section 6, and to consummate the transactions contemplated hereby, and that no additional signatures are required. OWNER agrees to fully defend, indemnify and hold harmless COUNTY for all liability, claims, demands, damages and costs that may arise should OWNER's capacity be other than that which is represented and warranted in this Section.

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Project: Tepusquet Peak Access
(Ruiz Canyon Road)
RP File: 001140
APN: 131-220-012

IN WITNESS WHEREOF, COUNTY and OWNER have executed this Agreement to be effective as of the date executed by the COUNTY.

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST
MONA MIYASATO
CLERK OF THE BOARD

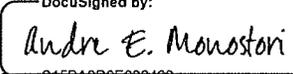
Bob Nelson, Chair
Board of Supervisors

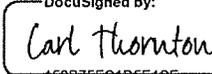
Date: _____

By: _____
Deputy

APPROVED:

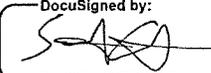
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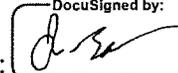
By: 
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Andre Monostori, Assistant Director
Information and Communications

By: 
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Carl Thornton, Communications Manager
Information and Communications

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

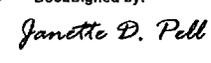
APPROVED AS TO FORM:
BETSY SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

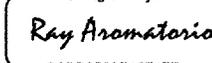
By: 
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Scott Greenwood
Deputy Auditor-Controller

By: 
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Deputy

APPROVED:

APPROVED:

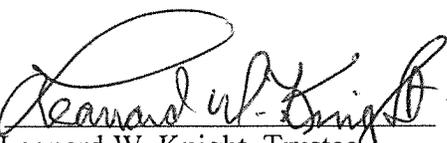
By: 
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Janette D. Pell, Director
General Services Department

By: 
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Ray Aromatorio, Risk Manager
Risk Management

Project: Tepusquet Peak Access
(Ruiz Canyon Road)
RP File: 001140
APN: 131-220-012

“OWNER”

JACOB’S GOLDEN EAGLE TRUST, dated December 3, 2019

By:  trustee
Leonard W. Knight, Trustee

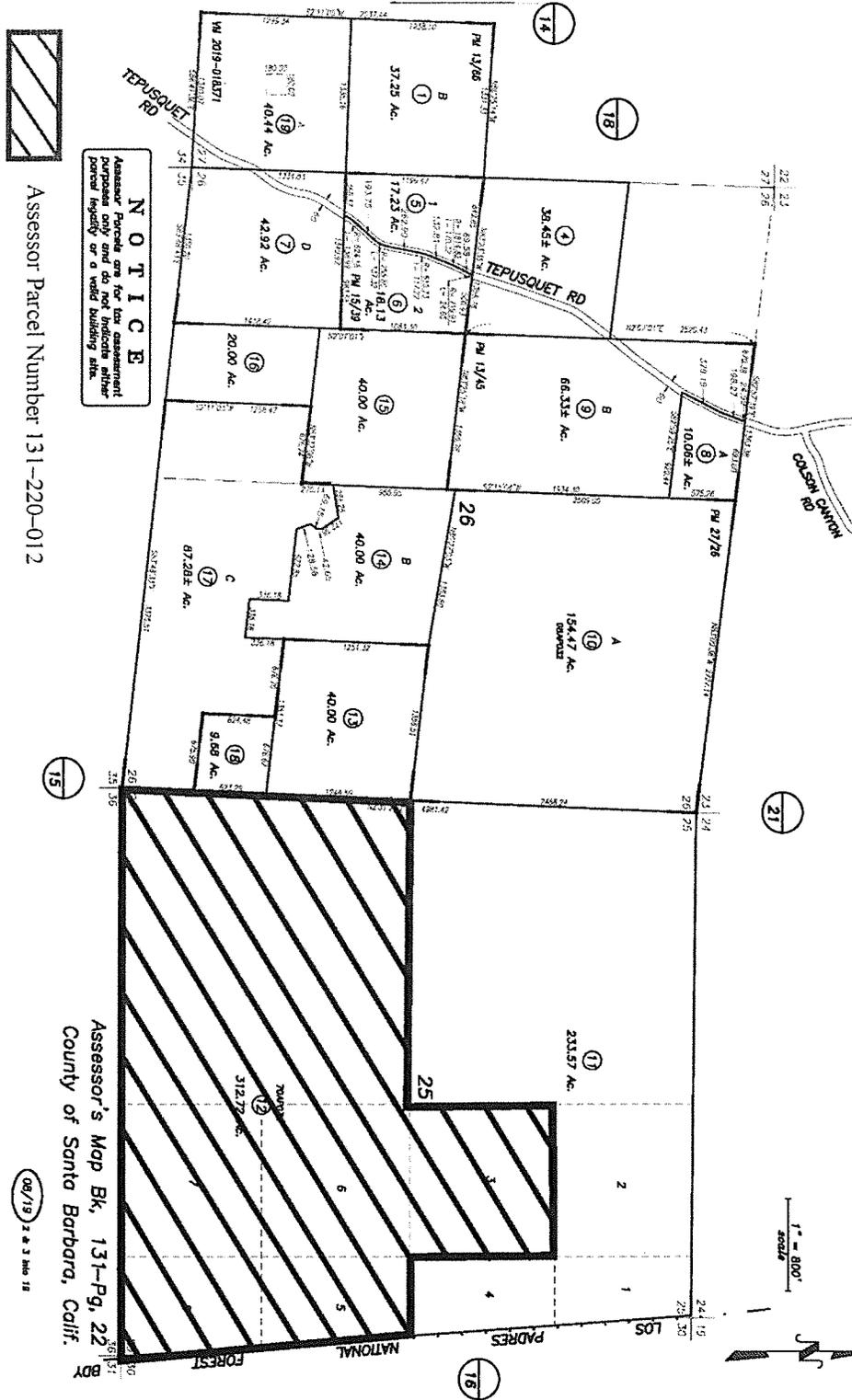
Date: 3/15/2021

Exhibit "A"

Assessor Parcel Number 131-220-012

SEC 25 & POR. SEC 26 & 27 T10N R32W SBB&M

131-22

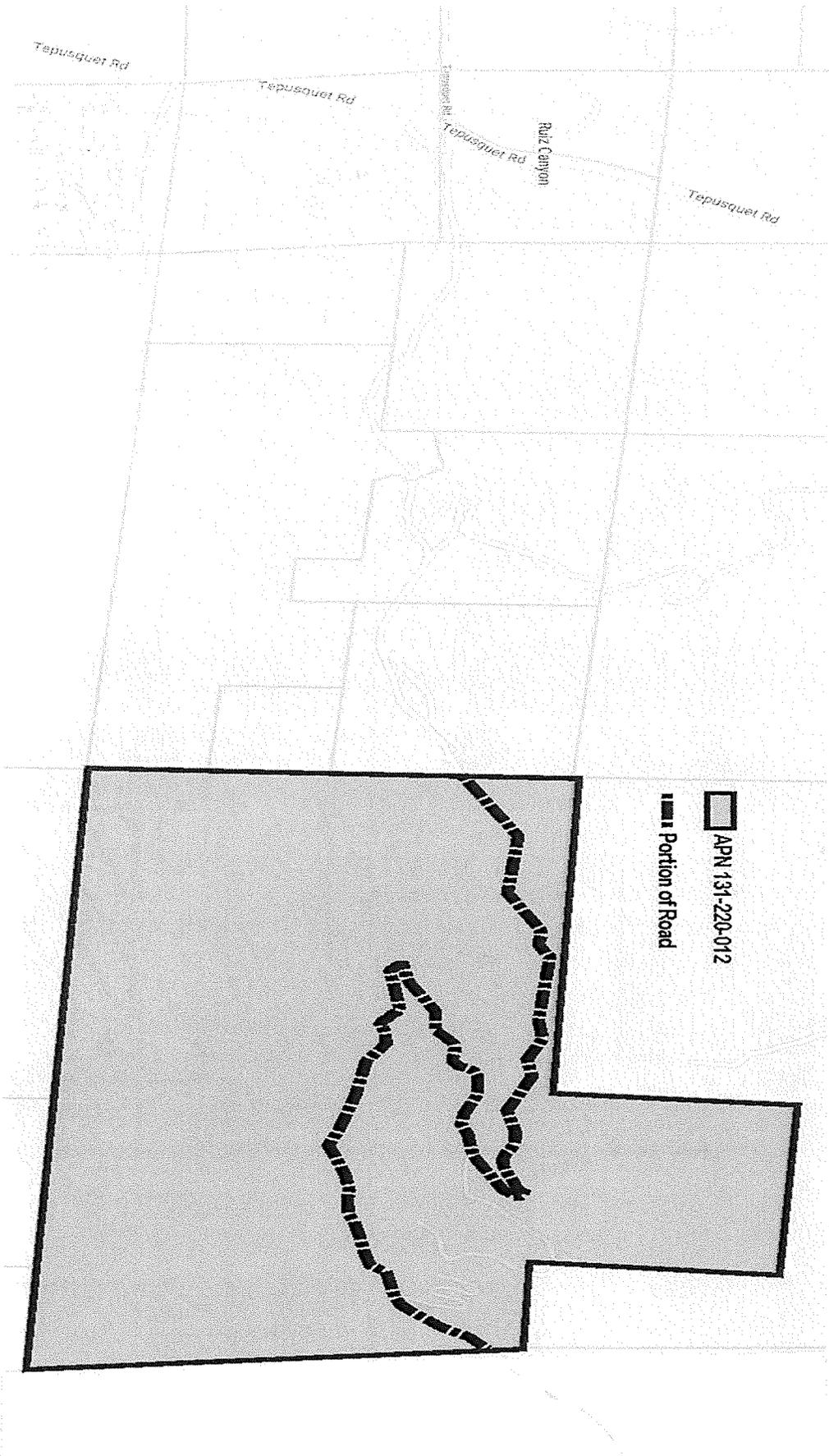


NOTICE
 Assessor's Parcels are for tax assessment purposes only and do not indicate either parcel legality or a valid building site.

Assessor's Parcel Number 131-220-012

Assessor's Map Bk, 131-Pg, 22
County of Santa Barbara, Calif.

08/19 2 2 3 18



Portion of the Road

Exhibit "B"