

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 047-261-003

**OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT
TO THE COUNTY OF SAN LUIS OBISPO**

THIS AGREEMENT is made and entered into this 26th day of December,
2014, by and between THOMAS A. BURHENN AND PEGGY S. BURHENN,
TRUSTEES OF THE THOMAS AND PEGGY BURHENN 2010 TRUST DATED
AUGUST 26, 2010, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS
OBISPO, a political subdivision of the State of California, hereinafter referred to as
"County."

WITNESSETH:

WHEREAS, Owner is the record owner of certain real property (hereinafter
referred to as "Owner's Property") located in the County of San Luis Obispo, State of
California, which is more particularly described in Exhibit C attached hereto and
incorporated by reference herein as though set forth in full; and

WHEREAS, as agreed to by Owner in mitigation BR-1 and BR-2 of Environmental
Determination ED 14-096 dated December 4, 2014, as issued by the County and as a

ck title rpt./Grading Permit PMT2014-00299

condition precedent to the approval of Grading Permit PMT2014-00299 by County for Owner's Property, Owner is required to enter into an agreement with the County, on behalf of himself and his successors in interest, to establish an open-space easement in perpetuity over a portion of Owner's Property for the purpose of preservation, restoration, and enhancement of Pismo clarkia (*Clarkia speciosa subsp. Immaculate*) and its habitat; and

WHEREAS, Owner has agreed to and shall comply with all of the requirements of conditions BR-1 and BR-2, which read as follows:

Biological Resources

BR-1. Prior to issuance of construction permits, the applicant shall record an open-space easement over 1.78 acres of the property to mitigate for the loss of potential Pismo Clarkia habitat caused by the proposed grading. The area to be contained within the open space shall be determined by a qualified biologist (see BR-2 below). The open space parcel is to be maintained as such in perpetuity.

BR-2. Prior to issuance of construction permit(s), the applicant shall retain a qualified biologist to conduct a habitat suitability analysis for the area to be contained within the open space easement. The analysis shall provide information on the area deemed most suitable for Pismo Clarkia habitat. This area shall be described by a metes and bounds legal description prepared by a licensed surveyor that the County Surveyor can approve as being definite and certain and shall be attached to the open-space easement document.

; and

WHEREAS, Owner intends that the restrictions contained in this agreement shall apply to that portion of Owner's Property (hereinafter referred to as the "Subject Property") which is more particularly described in Exhibits A and B attached hereto and incorporated by reference herein as though set forth in full; and

WHEREAS, execution of this agreement by Owner and County, and subsequent performance of its obligations by Owner and his successors in interest, will satisfy the

requirement for dedication of an open-space easement agreed to by Owner and imposed by conditions BR-1 and BR-2 referred to above; and

WHEREAS, the Subject Property has certain natural scenic beauty and existing openness, and both Owner and County desire to preserve and conserve for the public benefit the great natural scenic beauty and existing openness, natural condition and present state of use of said property of the Owner; and

WHEREAS, Owner is willing to grant to County the scenic use, as hereinafter expressed, of the land and thereby protect the present scenic beauty and existing openness of the Subject Property and provide habitat for Pismo clarkia by the restricted use of said property by Owner through the imposition of the conditions hereinafter expressed; and

WHEREAS, both Owner and County intend that the terms, conditions, and restrictions of the open-space easement granted in this agreement are in compliance with Government Code sections 51070 through 51097, inclusive, hereinafter referred to as the "Open-Space Easement Act of 1974," so as to be an enforceable restriction under the provisions of Revenue and Taxation Code section 422; and

WHEREAS, Owner has supplied County with a current title company preliminary title report, lot book guarantee, or preliminary subdivision guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on the Subject Property.

NOW, THEREFORE, in consideration of the premises and in compliance with the provisions of Government Code sections 51070 through 51097, inclusive, and in further consideration of the mutual promises, covenants, and conditions herein

contained and the substantial public benefits to be derived therefrom, the parties hereto agree as follows:

1. Grant of open-space easement. Owner hereby grants to County, for the term specified in paragraph 8 below, an open-space easement in and to the Subject Property described above. The open-space easement granted herein conveys to County an estate and interest in the real property of the nature and character specified in the Open-Space Easement Act of 1974, which is subject to the express conditions and restrictions imposed herein upon the use of the property by Owner. To that end, and for the purpose of accomplishing the intent of the parties hereto, Owner covenants on behalf of himself, his successors and assigns with the County, its successors and assigns to do and refrain from doing, severally and collectively, upon the Subject Property, the various acts hereinafter mentioned.

2. Restrictions on use of the Subject Property. The restrictions imposed upon the use of the Subject Property by Owner and his successors in interest and the acts which Owner and his successors in interest shall refrain from doing, and permit to be done, upon the Subject Property are as follows:

(a) No buildings, structures, or other improvements shall be placed, constructed, or erected upon the Subject Property and no activities shall be undertaken or allowed upon the Subject Property that may conflict with long term protection, preservation, and enhancement of Pismo clarkia and its habitat.

(b) No advertising of any kind shall be placed on or within the Subject Property.

(c) Owner shall not plant or permit to be planted any vegetation upon the Subject Property except as authorized by the approved grading permit referred to above, and as necessary for erosion control.

(d) The general topography of the landscape within the Subject Property shall be maintained in its present condition and no grading, excavation, or topographic changes shall be made.

(e) No use of the Subject Property which will or does materially alter the landscape, its habitat, or other attractive scenic features of the property, other than those specified herein, shall be done or suffered.

(f) Owner shall not extract natural resources from the Subject Property except for development of Owner's underlying water rights at a location approved by the Environmental Coordinator of the County.

(g) Owner shall not remove or alter native plants or animals from the Subject Property.

(h) Owner shall not use the Subject Property for agricultural development or for agricultural staging activities or storage of any kind.

(i) Owner shall not cut timber, trees, or other natural growth, except as may be required to optimize the habitat for the Pismo clarkia and for fire protection, thinning, elimination of diseased growth, and similar protective measures.

(j) Owner shall not use the Subject Property or any portion thereof as a parking lot, storage area, or dump site or otherwise deposit or allow to be deposited on the Subject Property or any portion thereof, temporarily or otherwise, anything whatsoever which is not indigenous or natural to the Subject Property.

(k) Owner shall not cover or cause the Subject Property to be covered in whole or in part with any asphalt, stone, concrete, or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land unless otherwise authorized by the provisions of this agreement.

(l) No land division of a legal parcel containing the Subject Property shall occur except after obtaining all necessary approvals required by Title 21 of the San Luis Obispo County Code, nor shall Owner or Owner's successors in interest otherwise convey (other than under threat of condemnation) a portion of a legal parcel containing the Subject Property less than the whole of said legal parcel to one or more parties or convey a legal parcel containing the Subject Property to two or more parties each of whom acquire title to less than the whole of said legal parcel. Any such conveyance or transfer of a legal parcel containing the Subject Property or a portion thereof by Owner or Owner's successors in interest shall be considered null and void.

3. Reservations of use by Owner. Notwithstanding the provisions of paragraph 2 above, the following property rights in the Subject Property are excepted from this grant and are expressly reserved to Owner:

(a) The right to construct, develop, and maintain all roads, trails, and other improvements authorized by the approved grading permit referred to above, and any amendments or modifications thereto which may be approved by the County.

(b) The right to undertake and allow for scientific investigation conducted as part of a project or plan instigated by the Owner, and otherwise approved by the Owner and the United States Fish and Wildlife Service and/or the California Department of Fish and Game.

(c) The right to the use and occupancy of the Subject Property, subject to the conditions and restrictions imposed in this agreement.

4. Compliance with County regulations. Land uses permitted or reserved to Owner in this agreement are subject to and require compliance with all applicable county ordinances and regulations, including those regulating land use.

5. Construction of improvements. Owner shall not construct or permit the construction of any improvements on the Subject Property except as expressly reserved herein or as authorized in the Open-Space Easement Act of 1974. Provided, however, nothing contained in this agreement shall prohibit the construction of either public service facilities installed for the benefit of the Subject Property or public service facilities installed pursuant to an authorization of the Board of Supervisors of the County or the Public Utilities Commission.

6. No authorization for public trespass. The grant of easement contained herein and its acceptance by the County of San Luis Obispo does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any portion of the Subject Property or as granting to the public or any member thereof any tangible rights in or to the Subject Property or the right to go upon or use or utilize the Subject Property in any manner whatsoever. It is understood that the purpose of this agreement is solely to restrict the uses to which the Subject Property may be put so that the property may be kept as near as possible in its natural condition for the benefit of the public by preserving habitat for the Pismo clarkia.

7. Effect on prior easements. Nothing contained in this agreement shall limit or affect any easements that are of record and that have been heretofore granted by Owner on, over, under, or across the Subject Property or any portion thereof.

8. Duration of easement. The grant of easement to County contained in this agreement shall be effective when it has been approved and accepted by resolution of the Board of Supervisors in the manner required by law, and it shall remain in effect in perpetuity unless abandoned or otherwise terminated by the Board of Supervisors in accordance with the provisions of the Open-Space Easement Act of 1974. Provided, however, no easement shall be abandoned or otherwise terminated without first obtaining approval of a Minor Use Permit authorizing such abandonment or termination.

9. Enforceable restriction. Upon acceptance of the open-space easement granted herein, the Subject Property shall be deemed to be "enforceably restricted" within the meaning of section 422 of the Revenue and Taxation Code and section 8 of Article XIII of the Constitution of the State of California.

10. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any conveyance, transfer, or sale made by Owner of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

11. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

12. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover

damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

13. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

14. Enforceability. If any term, covenant, condition, or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices shall be addressed as follows:

To the County: Director of Planning and Building
County of San Luis Obispo
County Government Center, Room 300
San Luis Obispo, California 93408

To the Owner: Thomas A. Burhenn
614 Fairview Ave.
Sierra Madre, California 91024

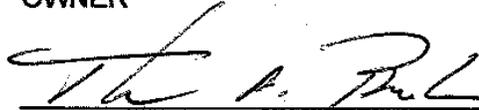
Either party may change such address by providing notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

16. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice.

of the obligations contained herein to be performed by the Owner and the successors in interest to all or any portion of Owner's Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER



THOMAS A. BURHENN, TRUSTEE OF THE
THOMAS AND PEGGY BURHENN 2010 TRUST
DATED AUGUST 26, 2010



PEGGY S. BURHENN, TRUSTEE OF THE
THOMAS AND PEGGY BURHENN 2010 TRUST
DATED AUGUST 26, 2010

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

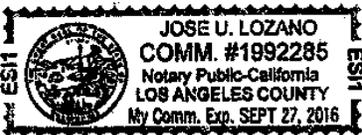
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles }

On DECEMBER 26, 2014 before me, Jose U. Lozano, Notary Public,
Date Here insert Name and Title of the Officer

personally appeared THOMAS A. BURHENN AND PEGGY S. BURHENN
Name(s) of Signer(s)

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.

Place Notary Seal Above

Signature [Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: OPEN-SPACE AGREEMENT GRANTING AN OPEN-SPACE EASEMENT TO COUNTY OF SAN LUIS OBISPO

Document Date: DECEMBER 26, 2014 Number of Pages: FIFTEEN (15)

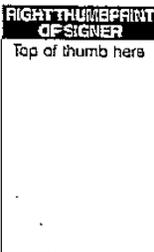
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

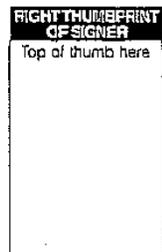
Signer Is Representing: _____



Signer's Name: _____

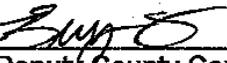
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



APPROVED AS TO FORM AND LEGAL EFFECT:

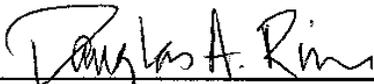
RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: 2/4/15

LEGAL DESCRIPTION APPROVED AS TO FORM:

DOUGLAS A. RION
County Surveyor

By: 

Dated: 2/3/2015

[NOTE: This Open-Space Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]
187phagr.docx

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF SAN LUIS OBISPO)

On _____, before me, _____, Deputy
County Clerk-Recorder, County of San Luis Obispo, State of California, personally
appeared _____, who proved to
me on the basis of satisfactory evidence to be the person whose name is subscribed to
the within instrument and acknowledged to me that he/she executed the same in
his/her authorized capacity, and that by his/her signature on the instrument the person,
or the entity upon behalf of which the person 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.

JULIE L. RODEWALD, County Clerk-
Recorder and Ex-Officio Clerk of the
Board of Supervisors

By: _____
Deputy County Clerk-Recorder

[SEAL]

Exhibit "A" Legal Description

That Portion of Lot 18 of the Subdivision of the J.F. Branch Tract, Rancho Santa Manuel, in the County of San Luis Obispo, State of California, according to the map filed November 1, 1882 in Book 1, Page 32 of Maps in the office of the County Recorder of said county, described as follows:

Commencing at Stake F127 on the west line of said Lot 18 and on the east line of a road 33 feet wide, said point being the most northerly corner of the property conveyed to William S. Agueda by deed dated April 23, 1924 and recorded in Book 166, Page 373 of deeds in said county, thence along the northeasterly line of the property so conveyed, South 68° East a distance of 200.00 feet to the True Point of Beginning;

Thence continuing along said northeasterly line, South 68° East a distance of 616.00 feet,

Thence leaving said northeast line at right angles, North 22° East a distance of 126.00 feet,

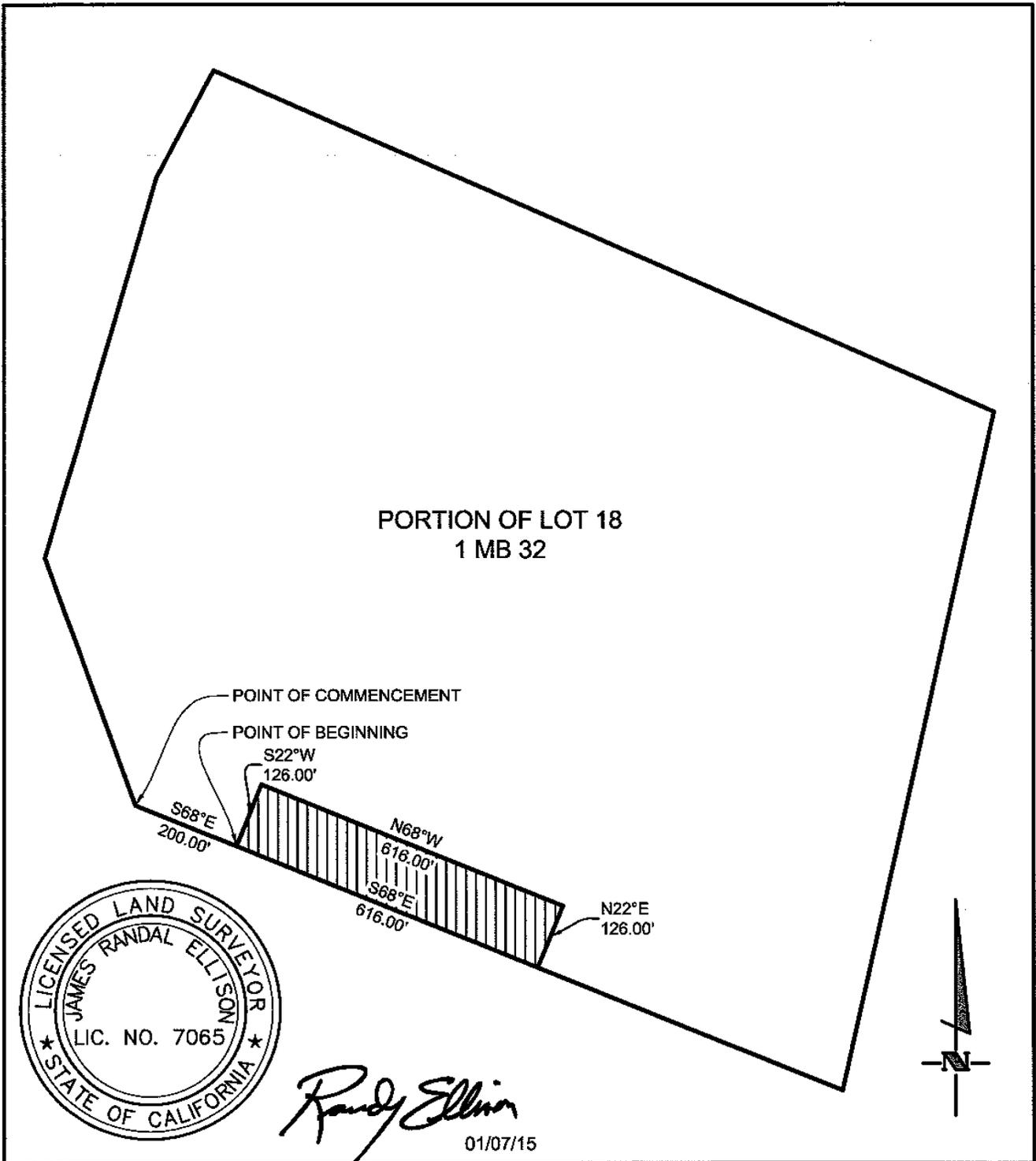
Thence parallel with and 126.00 feet distant northeasterly from said northeasterly line, North 68° West a distance of 616.00 feet,

Thence South 22° West a distance of 126.00 feet, to the True Point of Beginning

Containing 1.78 acres



01/07/15



Randy Ellison
01/07/15



**ABOVE
GRADE
ENGINEERING**

1304 Broad Street, San Luis Obispo, CA 93401
phone: (805) 540-5115 • fax: (805) 540-5116
A California Corporation • State Status FD # 06256

EXHIBIT "B"

OPEN SPACE EASEMENT

SCALE: NTS
JOB NUMBER: 11060
BY: JNW
DATE: 01/07/15

EX-B

EXHIBIT C

All that part of Lot 18 of the Subdivision of the J.F. Branch Tract, Rancho Santa Manuela, in the County of San Luis Obispo, State of California, according to map recorded November 1, 1882 in Book 1 of Maps, at Page 32, records of said County described as follows:

Beginning at Stake F127 on the west line of said Lot 18 and on east line of road 33 feet wide, said point being the most northerly corner of the property conveyed to William S. Agueda by deed dated April 23, 1924 and recorded in Book 166 of Deeds, at Page 373, records of said County; thence South 68° East along the northeasterly line of the property so conveyed, 21.79 chains to Stake C2 the most easterly corner thereof; thence North 12° 40' East, 20.00 chains to 3C on the northeasterly line of said Lot 18; thence North 66° 20' West along said northeasterly line 24.48 chains to Stake F133 on the east line of the aforesaid road, said point being the most northerly corner of said Lot 18; thence South 28° 10' West and along the east line of said road, 3.50 chains to Stake F131; thence South 16° 10' West, 11.39 chains to Stake F129; thence South 19° 50' East, 7.46 chains to point of beginning.

Said property is more particularly described in that certain deed dated January 16, 1945 and recorded in Volume 383 of Official Records, page 246, San Luis Obispo County.

APN: 047-261-003