

DATE: December 14, 2012
MEETING OF: January 29, 2013
FROM: Staff
RE: **ACTION ITEMS X.3 – AHP Long Term Lease**

BACKGROUND

The Agricultural History Project has a 25-year lease with the 14th DAA for 3.82 acres of the Santa Cruz County Fairgrounds that terminates in 2015. A long-term lease is necessary for AHP to secure future financial support.

The Board must approve the lease draft in order for AHP to request approval from, Department of Food and Agriculture and DGS for a long-term lease.

The Agricultural History Project (AHP) is a 501(c)(3) charitable organization whose mission is to preserve and promote the history of agriculture on the Central Coast. AHP leases 3.82 acres on the Fairgrounds (approximately 1.98 is at the entrance to the Fairgrounds and 1.84 acres on the right hand side of the exit road from the Fairgrounds) to operate an agricultural museum and living history farm on the premises.

AHP has financed and constructed 4 buildings, valued at approximately \$3,000,000, which houses agricultural artifacts and exhibits and items used as teaching tools for school groups and the general public. DAA owns the ground and buildings. AHP owns the contents. DAA is not expected to rebuild in case of destruction of the buildings.

AHP is asking for right to use the 3.82 acres, the main entrance roadway, the parking areas and bathroom facilities located on DAA's fairgrounds. AHP will pay a prorated cost to DAA of repairing, replacing and maintaining those portions of the fairgrounds.

FISCAL IMPACT

Monthly rental income of \$350, annually adjusted to reflect any increase in Cost of Living Index, not to exceed 3%/year. AHP will pay all costs incurred with DGS.

STAFF RECOMMENDATION

That the Board approves a motion to accept the Agricultural History Project Long Term Lease Draft and send to DGS for approval.

ATTACHMENTS

- Agricultural History Project Long Tem Lease Agreement Draft.

AGRICULTURAL HISTORY PROJECT LEASE AGREEMENT

This Agricultural History Project Lease Agreement (hereinafter "**Lease**" or "**Agreement**") is made and entered into on _____, 2013, by and between the 14th District Agricultural Association, a state institution, ("**DAA**") and the Agricultural History Project, a California nonprofit public benefit corporation, ("**AHP**") (collectively referred to as "**Parties**").

RECITALS:

WHEREAS in 1990, the DAA and AHP entered into a long term lease agreement that allowed for the construction of buildings and other museum facilities on approximately 1.98 acres of DAA property with a subsequent addition of approximately 1.84 acres, for the purpose of preserving the agricultural history of the California central coast and enhancing educational programs by constructing acceptable facilities for public use to display historical artifacts, to develop a living history farm and to provide educational programs;

WHEREAS the AHP has undertaken the financing, construction and operation of four (4) buildings, valued at approximately \$3,000,000, that have added aesthetic beauty to the Fair Grounds and has been instrumental to AHP in accomplishing its mission;

WHEREAS the DAA recognizes the substantial contributions made by AHP in bringing the public to the Santa Cruz County Fair Grounds to view its agricultural artifacts, attend its educational programs and learn about the rich agricultural history of the California central coast;

WHEREAS the DAA recognizes that an integral part of the AHP mission is to provide educational opportunities to elementary school students of Santa Cruz County, allowing student groups to visit AHP and learn how food is grown and harvested. More than 1,200 students attend this program each school year. This educational opportunity has been extended to the entire community through the program "Day on the Farm", which continues to grow in popularity.

WHEREAS the DAA recognizes the commitment AHP has made during the annual "County Fair" with contributions of volunteers, exhibits and interactive programs to ensure the Fair's success;

WHEREAS the DAA recognizes that for AHP to secure ongoing financial support, AHP requires a long term commitment from DAA in AHP's use and operation of the buildings and facilities it has constructed on the leased premises;

WHEREAS the DAA, understanding the substantial commitment AHP has made to the Santa Cruz County Fair Grounds and AHP's commitment to agriculturally based educational programs, and recognizing the importance of AHP's continuing operations to the success of the Fair Grounds, it is in the best interests of DAA for AHP to secure a long term lease agreement;

NOW, THEREFORE, the Parties hereto, incorporating the above recitals as part of their Agreement, and in consideration of the mutual covenants, terms and conditions contained herein, do hereby agree as follows:

ARTICLE 1 – LEASE OF PREMISES:

1.01 GRANT OF LEASE

- a. DAA hereby leases to AHP and AHP hereby leases from DAA that certain property consisting of approximately three (3) acres of land as shown in the highlighted areas noted as Parcels 1 & 3 of Exhibit A, attached hereto and incorporated herein (“**Premises**” or “**Leased Premises**”).
- b. DAA agrees that AHP shall have the right to use the main entrance roadway, the parking areas and bathroom facilities located on DAA’s fairgrounds. For use of these DAA facilities, AHP shall pay DAA the prorated cost (based on AHP’s prorate use) of repairing, replacing and maintaining those portions of DAA’s fairgrounds.
- c. This Lease is subject to the covenants, terms and conditions as herein set forth. AHP agrees that it shall obtain all necessary licenses, permits and approvals from all applicable governmental entities for the operation on the Leased Premises.
- d. On termination of this lease for any reason, AHP shall be given one (1) year to remove all fixtures, papers, equipment and agricultural artifacts from the leased premises.

1.02 SUBLEASE AND ASSIGNMENT

AHP shall not rent or sublease the Premises or any portion thereof or assign this Agreement without DAA’s prior written consent.

ARTICLE 2 – TERM OF LEASE

2.01 TERM

The term of this Lease shall be for ninety nine (99) years commencing upon the approval of this lease by the Department of General Services on _____, 2013 and ending 99 years later, unless sooner terminated pursuant to the provisions in this Lease.

2.02 HOLDING OVER

In the event AHP holds over and continues in possession of the Premises after the expiration of any term of this Lease, then AHP's continued occupancy of the Premises shall be considered on a 6-month to 6-month basis subject to all the terms and conditions of this Lease.

ARTICLE 3 – RENT

3.01 RENT

AHP shall pay monthly to DAA as base rent for the Premises the sum of \$350 per month on or before the first day of each and every calendar month beginning on the date of approval of this Lease by the Department of General Services. Thereafter, there shall be an annual increase in the amount of the rent as described below in Section 3.02 commencing on the first anniversary of this Lease and continuing every year thereafter.

Rental payments shall be mailed to the DAA office at the Santa Cruz County Fair Grounds or to such other person or such other place as DAA may from time to time designate to AHP in writing.

3.02 ADJUSTMENTS TO FIXED RENT

The Base Rent provided for in paragraph 3.01, above, shall be adjusted annually from the date this lease is executed by the parties and on each anniversary thereof (the "Adjustment Date"), according to any increase in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers ("CPI") for San Francisco-Oakland-San Jose Metropolitan Area (based on the standard reference base of 1982-84 equals 100), based on the following formula: Base Rent will be multiplied by the most current CPI preceding the first calendar month during which the adjustment is to take effect, and divided by the most recent CPI preceding the commencement date of the Lease. In no event shall any adjusted Base Rent be less than the Base Rent for the month immediately preceding the adjustment."

If at the rental adjustment date, the index specified shall not exist in the same form as existing on the date of this Lease, the parties shall substitute any official index published by the Bureau of Labor Statistics, or other agency as may be comparable thereto, and as may carry out the intent of this provision.

Notwithstanding the forgoing provisions, in no event shall the Cost of Living adjustment for any one year hereunder result in an increase of more than three percent (3%).

3.03 LATE CHARGES

All rents shall be paid to DAA without deduction or offset and shall be subject to an additional late payment charge equal to ten percent (10%) of the base rental rate then existing for payments not made within ten (10) days following the date such payments are otherwise due under Section 3.01.

ARTICLE 4 – USE OF THE PREMISES

4.01 PERMITTED USE

During the term of this Lease, AHP agrees to operate an agricultural museum and living history farm (“project”) on the premises. The project shall consist of the museum facility, a living history farm and related educational programs and activities as required to further the goals of the “mission statement” of AHP. The parties anticipate that the concept of the project will be modified from time to time to reflect changes in community preferences and available resources. In addition AHP can use the Premises to conduct fundraising events intended to provide funds for the exclusive use of AHP and/or DAA. AHP shall obtain DAA’s prior written approval for the date and time of all fundraising events. AHP shall not commit any waste or conduct any nuisance on the Premises. AHP shall comply with all applicable laws and all reasonable written regulations established, from time to time, by DAA.

4.02 DAA’S USE OF THE PREMISES

AHP agrees that DAA may use the portion of the Premises described in Exhibit A as the “dirt road” or Parcel #2 for pedestrian and vehicular ingress and egress and parking during the period beginning one week before the scheduled opening and ending one week after the close of each annual Santa Cruz County Fair.

4.03 COMPLIANCE WITH THE LAWS

AHP shall, at AHP’s own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, both federal, state, county and municipal (including those required capital improvements to the Premises) relating to AHP’s use and the occupancy of the Premises whether those statutes, ordinances, regulations and requirements are not enforced or are subsequently enacted. The judgment of any court of competent jurisdiction, or the admission by AHP in a proceeding brought against AHP by any governmental agency, that AHP has violated any such statute, ordinance, regulation or requirement shall be conclusive as between AHP and DAA and shall constitute grounds for termination of this Lease by DAA.

ARTICLE 5 – CONSTRUCTION, ALTERATIONS AND REPAIRS

5.01 AHP shall repair and maintain buildings and other facilities located on the Leased Premises and, for all work valued in excess of TEN THOUSAND DOLLARS (\$10,000.00), AHP will be required to first obtain DAA’s written consent to commence such work. All construction work requiring DAA’s written consent shall be performed in accordance with plans and specifications approved by DAA and whatever applicable state agency authority is required. AHP shall comply with all directives promulgated by any state agency regarding construction work. Construction work on the Premises and other improvements under this Lease may be “public projects” requiring the payment of prevailing wages under Labor Code Section 1720 *et seq.* AHP shall comply with all laws relating to the payment of prevailing wages.

ARTICLE 6 –ALTERATIONS AND REPAIRS

6.01 OPERATION AND MAINTENANCE

AHP shall operate the project in a reasonable manner and shall maintain the Premises, including all landscaping, in a neat and clean condition. AHP shall, at its cost, provide all personnel, goods and services required for such operation. AHP shall keep the project open to the public without charge during the Santa Cruz County Fair for the same hours as the fair is open to the public. AHP shall provide security for the Premises and its use of other portions of the Fair Grounds. AHP shall pay all costs associated with its use of the Premises, including the costs of utilities provided to the Premises.

6.02 LIENS

With respect to all AHP maintenance, repairs and alterations, AHP shall keep the Premises free and clear from any and all liens, claims, demands for work performed, materials furnished, or operations conducted on the Premises at the insistence or request of DAA. AHP shall give DAA five (5) days written notice prior to commencing any construction on the Premises in excess of TEN THOUSAND DOLLARS (\$10,000.00) or prior to hiring any mechanic, contractor or vendor to perform work if the project requires the delivery of materials to the Premises in excess of FIVE THOUSAND DOLLARS (\$5,000). DAA may, at DAA's option, pay and discharge any such lien which AHP may cause to accrue against the Premises and all such amounts shall be reimbursed by AHP to DAA.

ARTICLE 7 – INDEMNITY AND INSURANCE

7.01 INDEMNITY

AHP shall indemnify, defend, and hold DAA and the State of California and their officers, agents, employees, contractors, guests and invitees harmless from any and all claims, liabilities, losses, damages, expenses and causes of action ("losses") arising out of or in connection with the Premises or its activities pursuant to this Agreement; provided that AHP shall not be obligated to indemnify, defend or hold a person or entity harmless for losses resulting from that person's or entity's own negligence or willful misconduct.

7.02 LIABILITY INSURANCE

During the term of this Agreement, AHP shall maintain insurance coverage in the type and amount as required by DAA in its Interim Rental Rules and Regulations as published in writing to AHP from time to time.

ARTICLE 8 – DESTRUCTION OF PREMISES

8.01 OBLIGATIONS TO REPAIR OR REBUILD

If at any time during the term of this Lease, the Premises (including any improvements thereto) are damaged or destroyed, DAA shall have no obligations to repair, restore or rebuild the Premises, or the building or improvements situated on the Premises and shall have the option of terminating this Lease unless AHP, within one hundred and eighty days (180) from the date of the loss gives notice of its intention to repair, restore or rebuild the damaged Premises.

ARTICLE 9 – DISPUTE RESOLUTION

9.01 MEDIATION

The parties agree that if any controversy, dispute or claim arising out of this Lease, or its breach, termination, interpretation or validity cannot be promptly settled by direct communications these disputes shall first be submitted for resolution by mediation by a mediator to be agreed upon by all parties. If the parties cannot agree on a mediator, either party may petition the appropriate court for selection of a mediator pursuant to California Code of Civil Procedure (CCP) Section 1775.6. Each party shall share equally in the costs of the mediator. A party's request or petition for mediation must be in writing and must be submitted to the other party within one hundred and eighty days (180) following the event giving rise to the dispute. The mediation shall take place in Santa Cruz County, California, before a single mediator, with specific location to be agreed upon by all parties.

9.02 BINDING, NON APPEALABLE ARBITRATION

If the best efforts of all parties to mediate the disputes do not result in a settlement of their differences, then any remaining claim, dispute or controversy shall be determined by **binding, non-appealable arbitration** pursuant to CCP Section 1280 *et seq.* The arbitration shall take place in Santa Cruz County, California before a single arbitrator agreed upon by all parties or, if no agreement, as selected by the court as provided in CCP Section 1281.6. In the event of arbitration, the decision of the arbitrator shall be binding and conclusive on all parties and **each party waives their right to appeal** except as allowed in CCP Section 1285 *et seq.*

9.03 WAIVER OF RIGHT TO JURY TRIAL

This Agreement is intended to bind and benefit all successors in interest to the parties. Judgment on any award may be entered in any court having jurisdiction. **Any right to a jury trial is intentionally waived.** The costs of arbitration shall be in accordance with CCP Section 1284.2. Any demand for arbitration must be made within ninety (90) days **after a failed mediation.**

9.04 INTERIM OR PROVISIONAL RELIEF

Notwithstanding anything herein to the contrary, nothing in this Section will preclude any party from seeking interim or provisional relief, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief concerning the dispute, either prior to or during the proceeding, if necessary to protect the interest of such party.

ARTICLE 10 – MISCELLANEOUS

10.01 NOTICES

All notices shall be deemed given when made in writing and deposited in the United States mail, certified, postage prepaid and addressed to such party at its address follows:

To AHP: Agricultural History Project
 P.O. Box 1181
 Watsonville, CA 95077

To DAA: Santa Cruz County Fair
 14th District Agricultural Association
 2601 East Lake Avenue
 Watsonville, CA 95076

Either party may change its address for the receipt of notices by giving written notice of such change to the other party. Either party may give personal notice to the other party.

10.02 ESSENCE OF TIME

Time is of the essence for every provision, covenant, and condition of this Agreement.

10.03 ENTIRE AGREEMENT

This Agreement contains all the agreements of the parties hereto and supersedes all prior negotiations and agreements related to the Premises. There have been no representations by DAA or understandings made between DAA and AHP other than those set forth in this Agreement.

10.04 AMENDMENTS

This Agreement may only be modified or amended by a written instrument duly executed by the parties hereto.

10.05 PARTIAL INVALIDITY

If any provision of this agreement is held by a court or arbitrator to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding.

10.06 SIGNATURES

Each party may sign this Agreement by facsimile, electronic signature or email and each affirms and warrants that such signatures are valid and enforceable as original signatures. It is acknowledged that this Agreement can be executed in counterparts, which when taken together, shall constitute one fully executed Agreement.

14th District Agricultural Association,

The Agricultural History Project,
A California nonprofit corporation and
a 501(c)(3) corporation

By: _____

By: _____

Chief Executive Officer

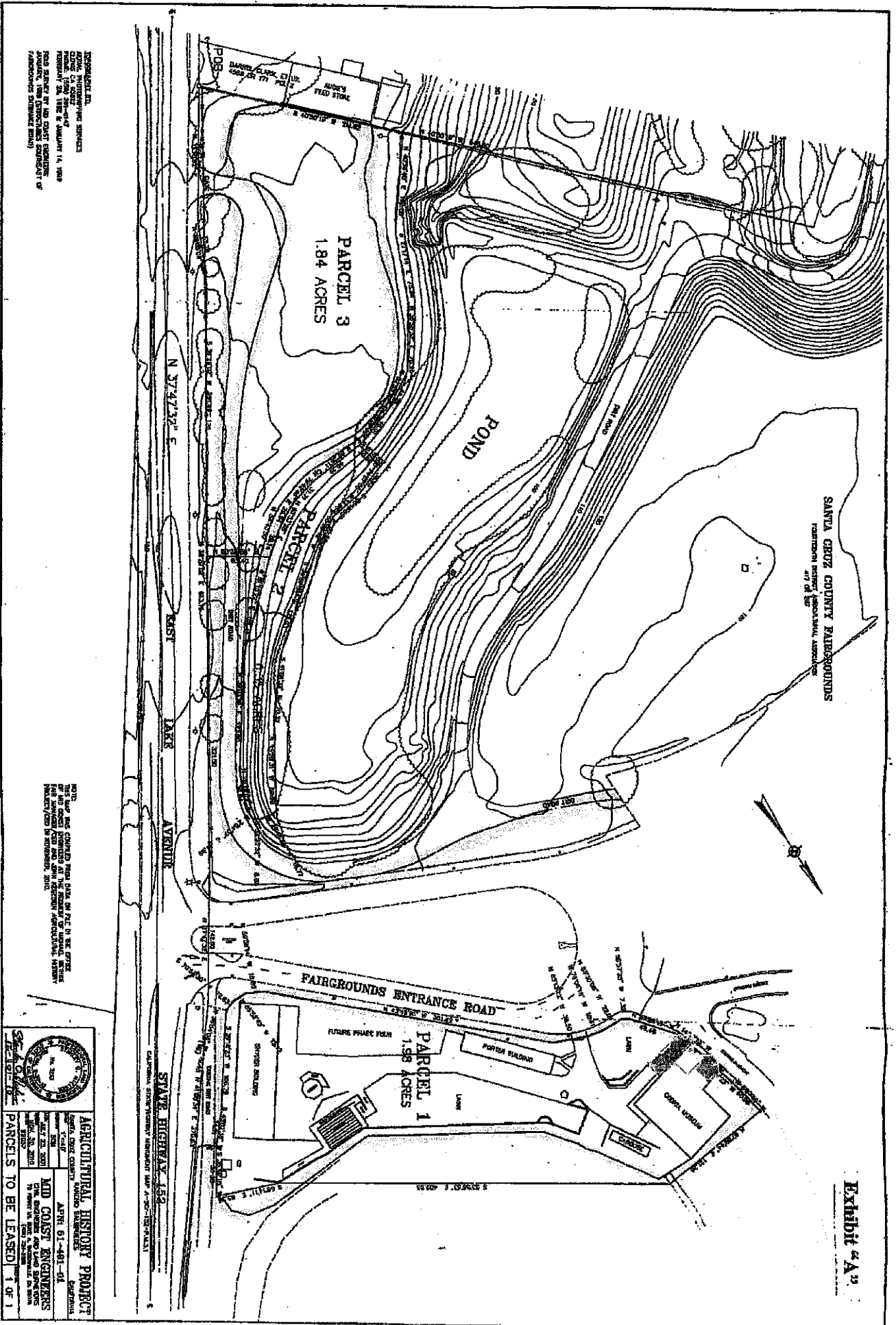


Exhibit "A"

PARCEL ONE

BEING a portion of the lands conveyed to the Fourteenth District Agricultural association by indenture dated May 2, 1941 and recorded in Volume 417 of Official Records, at Page 288, Santa Cruz County Records and being bounded and described as follows:

BEGINNING at a 1¼ inch pipe "PP32" on the northwestern boundary of East Lake Avenue, State Highway no. 152 as shown on the map entitled, "California State Highway Monument Map ASCr-152-PM. 3.1, S-146.5" at the most eastern corner of the Parcel Two of the lands conveyed to Darrell Clark, et ux, by deed recorded November 2, 1989 in Volume 4586 of Official Records, at page 171, Santa Cruz County Records; thence from said point of beginning along the northwestern boundary of East Lake Avenue, as shown on the above mentioned map, following courses; North 37° 18' 02" East 139.54 feet, North 28° 05' 08" East 52.76 feet, North 36° 29' 02" East 613.16 feet and north 37° 47' 32" East 142.00 feet; thence leaving said northwestern boundary North 38° 04' 08" West 19.42 feet to the TRUE POINT OF BEGINNING; thence

1. South 70° 53' 30" West 12.63 feet,
2. North 85° 52' 43" West 15.19 feet,
3. North 59° 08' 14" West 18.80 feet,
4. North 43° 49' 10" West 301.42 feet,
5. North 65° 13' 22" West 36.50 feet,
6. North 76° 06' 18" West 18.61 feet,
7. North 85° 30' 08" West 22.04 feet,
8. North 56° 57' 25" West 7.32 feet,
9. North 35° 29' 13" West 48.46 feet,
10. North 14° 17' 13" West 36.93 feet,
11. North 12° 48' 23" West 41.87 feet,
12. North 8° 37' 59" West 40.98 feet,
13. North 87° 59' 44" East 121.26 feet,
14. South 53° 56' 53" East 402.05 feet,
15. South 66° 14' 11" East 65.33 feet,
16. South 36° 40' 18" West 50.38 feet,
17. South 45° 02' 38" West 34.51 feet and
18. South 39° 16' 23" West 106.79 feet to the true point of beginning and

CONTAINING 1.98 acres of land, a little more or less.

COMPILED NOVEMBER 2010 BY MID COAST ENGINEERS, JOB NO. 92037

PARCEL THREE

SITUATE in the Rancho Salsipuedes and

BEING a portion of the lands conveyed to the Fourteenth District Agricultural Association by indenture dated May 2, 1942 and recorded in Volume 417 of Official Records, at Page 288, Santa Cruz County Records and being bounded and described as follows:

BEGINNING AT A 1¼ inch pipe "PP32" on the northwestern boundary of East Lake Avenue, State of Highway No. 152 as shown on the map entitled. "California Highway Monument Map A-SCr-152-PM.3.1, S-146.5" at the most eastern corner of Parcel Two of the lands conveyed to Darrell Clark, et ux, by deed recorded November 2, 1989 in Volume 4586 of Official Records, at Page 171, Santa Cruz County Records; thence from said point of beginning leaving the northwestern boundary of East Lake Avenue and along the northeastern boundary of the above mentioned Parcel Two and said boundary produced

1. North 40° 50' 19" East 211.82 feet; thence leaving said northwestern boundary of the following courses;
2. North 40° 59' 40" East 102.80 feet,
3. North 27° 17' 14" East 75.38 feet,
4. North 36° 58' 37" East 70.26 feet,
5. North 62° 55' 52" East 44.29 feet,
6. North 75° 39' 09" East 46.01 feet,
7. North 88° 26' 11" East 60.29 feet,
8. North 79° 42' 46" East 31.71 feet,
9. North 63° 53' 28" East 29.94 feet,
10. North 54° 43' 50" East 29.14 feet,
11. South 53° 30' 58" East 63.40 feet to the above mentioned northwest boundary of East Lake Avenue, thence
12. South 36° 29' 02" West 291.66 feet,
13. South 28° 05' 08" West 52.76 feet and
14. South 37° 18' 02" West 139.54 feet to the point of beginning.

CONTAINING 1.84 acres, more or less,
COMPILED NOVEMBER 2010 BY MID COAST ENGINEERS, JOB NO. 92037