

## ORDINANCE NUMBER 4427

### AN ORDINANCE CHANGING THE ZONING OF REAL PROPERTY WITHIN MENDOCINO COUNTY

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1. Findings. Based on the information provided in the agenda packet accompanying this ordinance and evidence in the record, the Board of Supervisors makes the following findings:

- (a) General Plan Consistency: The proposed project is consistent with the Anderson Valley Community Area Plan and will help further the achievement of the goals in the Plan. The proposed General Commercial zoning designation is typically applied in the central core of community areas where commercial facilities are desired. The site for the proposed project is located within the main commercial and industrial area of Philo and the proposed zoning district would be appropriate for the site with inclusion of the protections provided in the proposed Contract Rezone.
- (b) The rezoning of the subject property meets the stated intent and minimum lot size requirements of the General Commercial zoning district, as stated in Section 20.092.005 and 20.092.025 of the Mendocino County Code.
- (c) A Contract Rezone is necessary so as not to create problems inimical to the public health, safety or welfare of the County, in that the conditions imposed by the Contract will ensure that resources located within the parcel and nearby areas are protected from potential environmental impacts resulting from the change in zoning district.

Section 2. Rezone. Pursuant to Division I of Title 20, Chapter 20.212 of the Mendocino County Code, the zoning of the following real property within Mendocino County is hereby changed as follows:

The property described by Assessor's Parcel Numbers 046-070-26, 046-070-27, 046-070-28 (the "subject property") is rezoned from Rural Residential – 5 acre minimum with a Flood Plain combining district (RR-5:FP) and Rural Community with a Flood Plain combining district (RC:FP) to General Commercial – with a Contract Rezone and Flood Plain combining district (C-2:CR[FP]) as shown on Exhibit A, attached hereto and incorporated herein by this reference, subject to the requirements of Section 2 of this Ordinance.

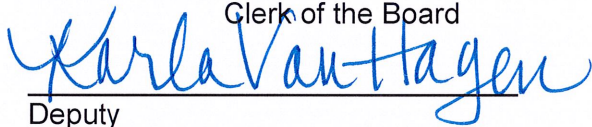
Section 3. Contract Rezone. Said zoning change made by Section 1 of this Ordinance shall be subject to the conditions set forth in the Contract for Compliance with Rezoning Conditions, attached hereto as Exhibit B and incorporated herein by this reference, to be recorded against the subject property and in Exhibit B pursuant to Government Code Section 27281.5 and Mendocino County Code Section 20.212.010.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this 19<sup>th</sup> day of March, 2019, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Haschak, Gjerde, and Williams  
NOES: None  
ABSENT: None

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

  
Deputy

APPROVED AS TO FORM:  
KATHARINE L. ELLIOTT, County Counsel

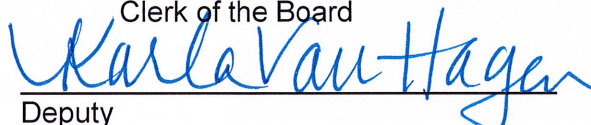
  
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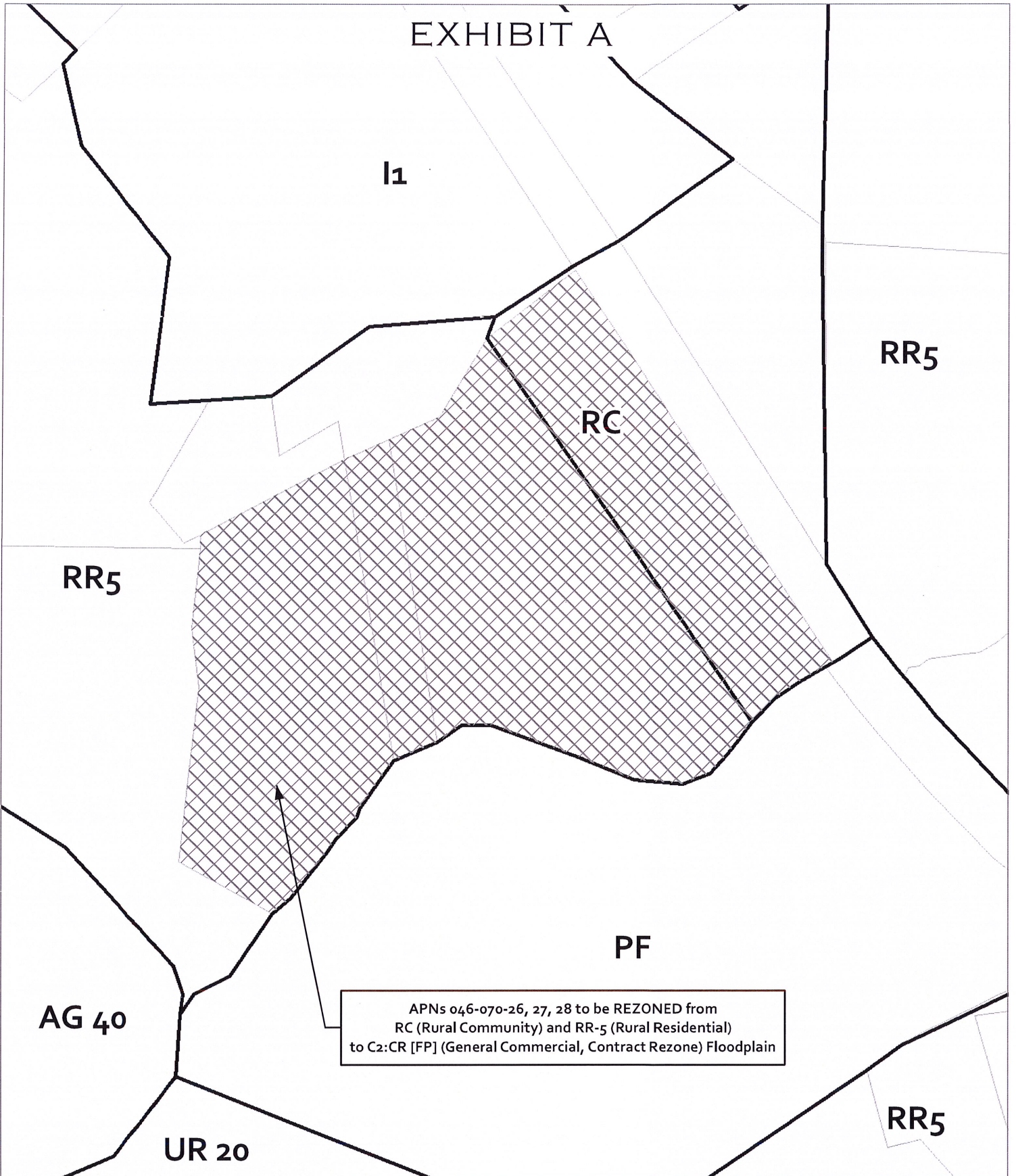
\_\_\_\_\_  
CARRE BROWN, Chair  
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO  
Clerk of the Board

  
Deputy

# EXHIBIT A



APNs 046-070-26, 27, 28 to be REZONED from  
RC (Rural Community) and RR-5 (Rural Residential)  
to C2:CR [FP] (General Commercial, Contract Rezone) Floodplain

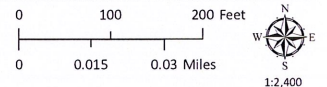
CASE: GP 2014-0002 / R 2014-0003  
OWNER: ADKINSON, Brian  
APN: 046-070-26, 27, 28  
APLCT: Brian Adkinson  
AGENT:  
ADDRESS: 8800 Hwy. 128, Philo



REZONE FROM: R-C (Rural Community) and  
RR-5 (Rural Residential, 5 Ac. minimum)  
TO: C-2:CR [FP] (General Commercial, Contract Rezone) Floodplain



Zoning Districts



REZONE EXHIBIT

**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**  
DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
County of Mendocino  
Board of Supervisors  
501 Low Gap Road  
Ukiah, CA 95482

**CONTRACT FOR COMPLIANCE WITH REZONING CONDITIONS**  
(Section 27281.5 of the Government Code)  
**REZONE R\_2014-0003**

IN CONSIDERATION OF the adoption by the Board of Supervisors of Ordinance Number \_\_\_\_\_ and the grant of a rezone of Assessor's Parcel Numbers 046-070-26 (Parcel 1 of CC\_2016-0024), 046-070-27 (Parcel 2 of CC\_2016-0024), 046-070-28 (Parcel 3 of CC\_2016-0024), which parcels are depicted in Exhibit A, attached hereto and incorporated herein by this reference, and which parcels are more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the "Property"), from RR-5:FP and RC:FP to C-2:CR[FP], the owner of the above-referenced property, Brian Adkinson ("Owner"), hereby warrants that he is the owner of the foregoing property, and Agrees and Promises to comply with the following conditions pursuant to Section 27281.5 of the California Government Code and Section 20.212 of Mendocino County Code.

**CONDITIONS**

The following conditions are hereby imposed upon the Property, certain of which must be fulfilled prior to or in conjunction with the issuance of an approved building permit to construct any structure for a permitted use or the establishment and construction of accessory structure(s) associated with a permitted use, or the approval of any discretionary action (including a subdivision), hereinafter referred to as "Project", within the boundaries of the Property shown in Exhibit A:

1. The Contract Rezone to C-2 will limit the **Permitted Uses** on the subject property as follows:

**A. Residential Use Types**

- Family residential-single family

**B. Civic Use Types**

- Cultural exhibits and library services

**C. Commercial Use Types**

- Administrative and business offices
- Animal sales and services-household pets
- Commercial Recreation-
  - Outdoor Sports and Recreation-Limited (samples are tennis courts and athletic fields)
  - Indoor Entertainment (samples are theaters, dance halls, and auditoriums)
  - Outdoor Entertainment (samples are sports arenas, racing facilities, and amusement parks)
- Eating and drinking establishments (samples are restaurants and bars)
- Food and beverage preparation-without consumption (samples include catering)
- Food and beverage retail sales (samples are grocery store, liquor stores and retail bakeries)
- Mail order businesses (sample is phone or on-line sales)
- Personal services (samples are barber shop, beauty parlor, health or physical fitness studios)
- Retail sales-general (samples are department, apparel, furniture stores, specialty items, art supplies and framing and many more)
- Transient Habitation-Lodging (sample are hotels, motels and inns)
- Transient Habitation-Resort and Recreational Facilities

**D. Agricultural Use Types**

- Horticulture
- Packing and processing-limited (packing or processing crops grown on the property)

- Row and field crops
- Tree crops

Uses subject to a **Minor Use Permit**, as follows:

**A. Residential Use Types**

- Family residential – two family
- Family residential – multifamily
- Family residential – dwelling groups

**B. Civic Use Types**

- Day care facilities/small schools
- Group care

**D. Industrial Use Types**

- Custom manufacturing

Uses subject to **Major Use Permit**, as follows:

**A. Residential Use Types**

- Mobile home residential

**B. Civic Use Types**

- Educational facilities

**C. Commercial Use Types**

- Transient habitation – campground

2. A maximum limit of 8,000 square feet of space for “Retail sales-general” and/or “Eating and drinking establishments,” as measured from the footprint of the proposed building.
3. Prior to issuance of a building permit for any development, an Exhibit Map of the site shall be prepared clearly delineating the 150 foot riparian buffer, as measured from the centerline of the creek, with respect to any existing or proposed structures on the property. Copies of the exhibit map shall be kept on file with Mendocino County Department Planning and Building Services for reference.
4. In accordance with recommendations provided by the California Department of Fish and Wildlife, only six (6) accommodation units, campground pavilion, accessory structure, and spa are allowed within the 150 foot buffer to the centerline of Mill Creek and Indian Creek.
5. All work on the Property must comply with the California Fish and Game Code (FGC). Applicable FGC sections include, but are not limited to, those that address:
  - a. Diversion of water from, or impacts to the bed, channel or bank of a stream;
  - b. Take of nesting birds or their eggs;
  - c. Water pollution, or placing deleterious materials where they may pass into a stream; and
  - d. Impacts to threatened or endangered species.
6. Prior to issuance of a building permit, a Site Development Plan shall be required for any future development on the subject property prepared to the satisfaction of the Mendocino County Department of Planning and Building Services providing, at a minimum, the following details:
  - a. site plan including design layout, circulation and parking details
  - b. building elevations and floor plans
  - c. signage and lighting for proposed commercial or other activity
  - d. topography and approximate slope gradient
7. Prior to issuance of a building permit for any development, the applicants will be required to prepare a site plan with their vision of the ultimate build-out on the Property for the review and recommendation of the California

Department of Transportation ("Caltrans") for traffic safety along Highway 128 and at the ingress/access point on the Property. Written verification from Caltrans shall be submitted to the Mendocino County Department of Planning and Building Services that all requirements have been met to the satisfaction of that agency.

8. Prior to issuance of a building permit for any development, Best Management Practices and performance standards for prevention of stormwater runoff and erosion shall be specified for the construction phase of the project. The Best Management Practices and performance standards are subject to review and approval by the Mendocino County Planning Division and California Department of Fish and Wildlife.
9. Prior to issuance of a building permit for any development within 150 feet of the centerline of Mill Creek and Indian Creek, the applicant shall demonstrate compliance with the recommended mitigation measures found on pages 16-17 of the Biological Scoping Survey Report, dated April 21, 2015, prepared by Spade Natural Resources Consulting. Copies of the referenced Biological Scoping Survey Report, dated April 21, 2015, prepared by Spade Natural Resources Consulting shall be kept on file with Mendocino County Planning and Building Services for reference. Mitigation Measures are as follows:
  - a. Pomo Bronze Shoulderband Snail – prior to any vegetation removal or ground disturbance a qualified biologist shall survey the site and collect and relocate any individuals of species. Removal of non-native invasive plant species including periwinkle, English ivy, and Himalaya blackberry shall be completed to the greatest extent practicable. Herbicides shall not be used for vegetation removal as they may have a deleterious effect on the snails. Additional plantings of native vegetation shall be considered, big leaf maple, in particular may provide additional favorable habitat for the Pomo bronze shoulderband.
  - b. Sonoma Tree Vole – If Douglas fir trees are to be removed, a Sonoma tree vole survey shall occur within two weeks of tree removal activities. If tree voles are detected, the California Department of Fish and Wildlife shall be consulted and appropriate measures taken to assure protection of this special status wildlife species.
  - c. Special Status Birds and Bats – If vegetation removal and/or structure removal is needed, special status bird and bat surveys may be needed as follows:
    - i. The bird breeding season typically extends from February to August. Ideally, the clearing of vegetation and the initiation of construction can be done in the non-breeding season between September and January. If these activities cannot be done in the non-breeding season, a qualified biologist shall perform preconstruction breeding bird surveys within 14 days of the onset of construction or clearing of vegetation. If active breeding bird nests are observed, generally no ground disturbance activities should occur within a minimum 100-foot exclusion zone. These exclusion zones may vary depending on species, habitat and level of disturbance. The California Department of Fish and Wildlife shall be consulted as to the required exclusion zone. The exclusion zone shall remain in place around the active nest until all young are no longer dependent upon the nest. A biologist should monitor the nest site weekly during the breeding season to ensure the buffer is sufficient to protect the nest site from potential disturbances.
    - ii. As with birds, bat roost sites can change from year to year, so pre-construction surveys are usually necessary to determine the presence or absence of bat roost sites in a given area. Pre-construction bat surveys do not need to be performed if work or vegetation removal is conducted between September 1 and October 31, after young have matured and prior to the bat hibernation period. However, if it is necessary to disturb potential bat roosts sites between November 1 and August 31, pre-construction surveys shall be conducted. Pre-construction bat surveys involve surveying trees, rock outcrops, and buildings subject to removal or demolition for evidence of bat use (guano accumulation or acoustic or visual detections). If evidence of bat use is found, then biologists shall conduct acoustic surveys under appropriate conditions using an acoustic detector, to determine whether a site is occupied. If bats are found, a minimum 50 foot buffer shall be implemented around the roost tree. Removal of roost trees shall occur in September and October, or after the bats have left the roost.

**EXHIBIT B**

- iii. In summary, no impacts would be expected and therefore no pre-construction surveys would be required for the species above if vegetation removal (including standing dead trees) is scheduled for the months of September or October. The months of November through August would require a bird and/or bat survey dependent on the time of year.
- iv. The need for further surveys for marbled murrelet and northern spotted owl may be determined by the California Department of Fish and Wildlife.
- d. Special-status Amphibians and Reptiles – for general development, project contractors shall be trained by a qualified biologist in the identification of the special-status amphibians and reptiles. Construction crews will begin each day with a visual search around all stacked or stored materials, as well as, along any silt fences to species. If a species is detected, construction crews shall contact the California Department of Fish and Wildlife or a qualified biologist prior to re-initiating work. If a rain event occurs, all modular activities will cease for a period of 48 hours after the rain stops. Prior to resuming construction activities, trained construction crew member(s) will examine the site for the presence of special-status amphibians and reptiles. If none are found, activities may resume.
- e. Special-status Vegetation – Before any removal of native vegetation of the aforementioned special-status vegetation communities (redwood forest, red alder forest, California bay forest, and Douglas-fir – Tanoak forest), consultation with the County of Mendocino Planning and Building Department and California Department of Fish and Wildlife shall occur to determine the appropriate course of action.
- f. Watercourses – Buffers of a minimum of 100 feet from the banks shall be established around all watercourses, buffers a minimum of 50 feet shall be observed from the drip line of all riparian vegetation (except as otherwise authorized in the conditions of approval). The buffer width required will depend on the development proposed adjacent to the watercourse and the natural resources that are dependent upon the watercourse and the adjacent upland habitat.
- g. Invasive English ivy (*Hedera helix*), periwinkle (*Vinca major*), French broom (*Genista monspessulana*), and Himalaya-berry (*Rubus armeniacus*) shall be removed from all portions of the property to the greatest extent practicable. Landscaping on the parcel shall consist of non-invasive plants.

IT IS AGREED that the forgoing agreement and promise shall constitute a deed restriction and shall run with the land and constitute an equitable servitude and restrictive covenant on the use and enjoyment of the Property. Any act, contract, or authorization by Owner whether written or oral which uses or would cause to be used or would permit use of the Property contrary to the terms of this Contract will be deemed a violation and a breach hereof. The County may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Contract. In the event of a breach, any forbearance on the part of a party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement rights regarding any subsequent breach.

In the event of non-compliance with the aforesaid conditions, consent is hereby given that the aforesaid property may be rezoned in compliance with Government Code Sections 65853, et seq., and shall be subject to other action authorized by the Mendocino County Code.

IT IS FURTHER AGREED that this contract shall be binding upon the successors and assigns of the owners of the land known as Assessor Parcel Numbers 046-070-26, -27, -28, which is depicted in Exhibit A, attached hereto and incorporated herein by this reference, and more particularly described in Exhibit B, and shall be effective only after it is signed by the owners and verified by the County of Mendocino.

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Brian Adkinson  
Owner

---

Date

ACKNOWLEDGEMENT

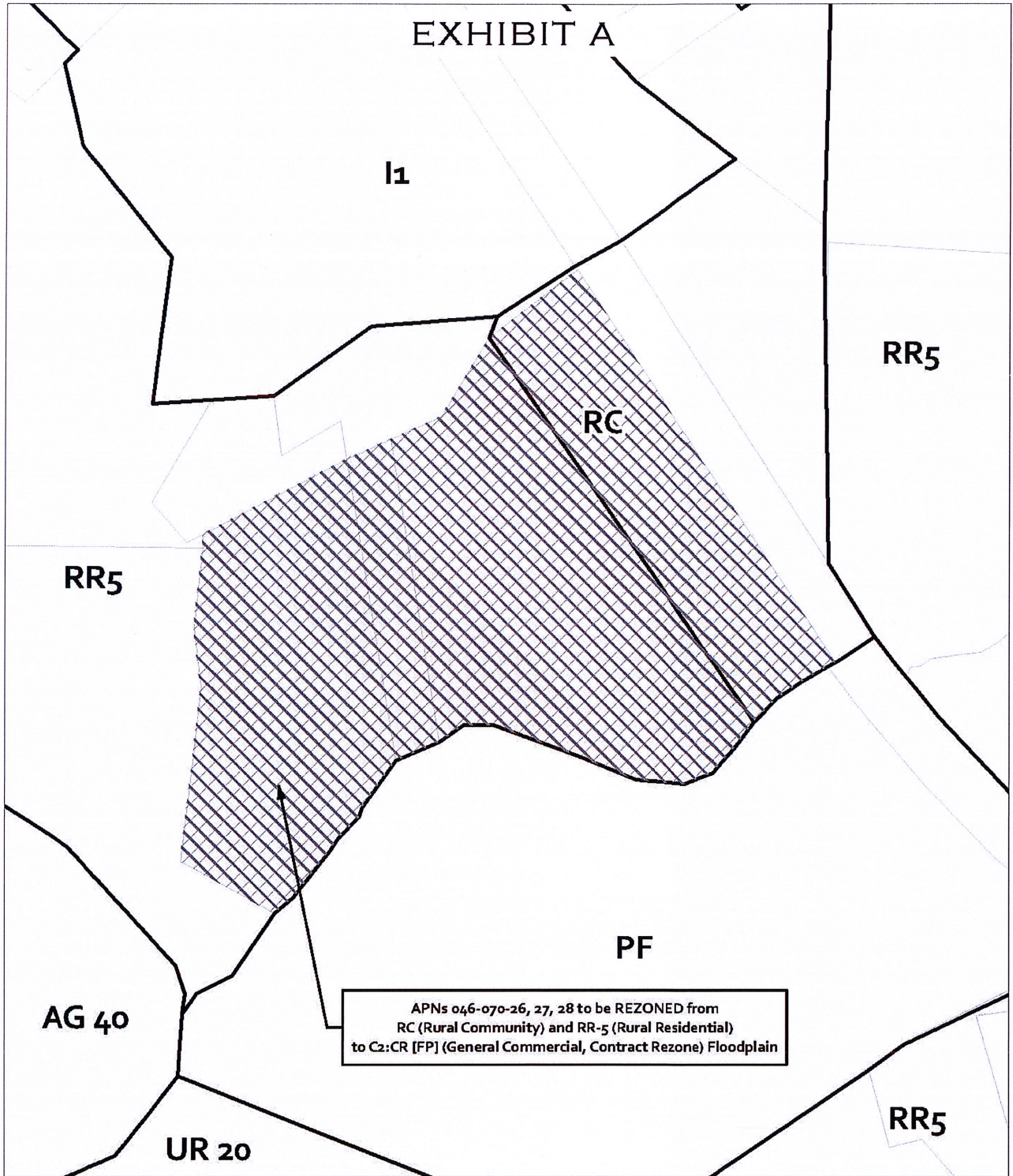
STATE OF CALIFORNIA  
County of Mendocino

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned a Notary Public, in and for said State, personally appeared \_\_\_\_\_ 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 acknowledge 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


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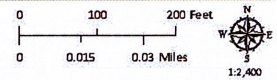





APNs 046-070-26, 27, 28 to be REZONED from RC (Rural Community) and RR-5 (Rural Residential) to C-2:CR [FP] (General Commercial, Contract Rezone) Floodplain

CASE: GP 2014-0002 / R 2014-0003  
 OWNER: ADKINSON, Brian  
 APN: 046-070-26, 27, 28  
 APLCT: Brian Adkinson  
 AGENT:

 REZONE FROM: R-C (Rural Community) and RR-5 (Rural Residential, 5 Ac. minimum)  
 TO: C-2:CR [FP] (General Commercial, Contract Rezone) Floodplain



 Zoning Districts

REZONE EXHIBIT

**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**  
 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

## Exhibit "B"

(Legal description for Parcel 1 of CC 2016-0024)

Commencing at the corner common to Sections 17, 18, 19 and 20, Township 14 North, Range 14 West, Mount Diablo Meridian; and running thence South 80°10' West, 917.24 feet to the westerly side of State Highway 128; thence Southeasterly along the westerly line of said highway, 837.5 feet; thence South 51°00' West, 187.33 feet; thence South 60°10' West, 265.0 feet; thence South 13°00' East, 66.24 feet to the **POINT OF BEGINNING** of the parcel of land being herein described; thence South 62°59' West, 243.50 feet; thence South 03°10' West, 168.24 feet; thence South 11°30' East, 106.92 feet; thence South 03°48' West, 274.52 feet; thence South 60°42' East, 182.59 feet to a point on the southerly bank of Indian Creek; thence Northeasterly 295.54 feet, more or less, on the said southerly bank of Indian Creek; thence North 13°00' West, 493.76 feet to the Point of Beginning, containing 3.6 acres, more or less, and comprising a portion of the east half of the northeast quarter of said Section 19.

This description is from the deed recorded December 20, 1950 in Book 282, Official Records, Page 277, Mendocino County Records.

EXCEPTING THEREFROM any portion of the above described property that lies within the property described in the Quitclaim Deed recorded April 27, 1960 in Book 538, Official Records, Page 580, Mendocino County Records.

Portion of AP 046-070-14

(Legal description for Parcel 2 of CC 2016-0024)

Commencing at the corner common to Sections 17, 18, 19 and 20, Township 14 North, Range 14 West, Mount Diablo Meridian; and running thence South 80°10' West, 917.24 feet to the westerly side of State Highway 128; thence Southeasterly along the westerly line of said highway, 837.5 feet; thence South 51°00' West, 187.3 feet; thence South 60°10' West, 185.0 feet to the **POINT OF BEGINNING** of this description; thence on the exterior boundaries of the land to be described as follows; South 13°00' East, 574.67 feet to the southerly bank of Indian Creek to a point in the northerly boundary of a certain parcel of land described in a deed from Charles L. Donohoe to the State of California, dated Feb. 1, 1942 and recorded in Liber 156 of Official Records, page 209, Mendocino County Records; thence along said creek in a Southwesterly direction 80.0 feet; thence North 13°00' West, 560.0 feet to a point in the southerly boundary of a certain parcel of land described in a deed from Harold E. Eyles and Hazel D. Eyles to Fred H. Perkins and Adelaide G. Perkins, and recorded in Liber 200 of Official Records, page 378, Mendocino County Records; thence North 60°10' East, 80.0 feet to the Point of Beginning, containing 1.1 acres, more or less, and comprising a portion of the east half of said Section 19.

This description is from the deed recorded December 20, 1950 in Book 254, Official Records, Page 378, Mendocino County Records.

EXCEPTING THEREFROM any portion of the above described property that lies within the property described in the Quitclaim Deed recorded April 27, 1960 in Book 538, Official Records, Page 580, Mendocino County Records.

Portion of AP 046-070-14

## Exhibit "B" Continued

(Legal description for Parcel 3 of CC 2016-0024)

Commencing at the corner common to Sections 17, 18, 19 and 20, Township 14 North, Range 14 West, Mount Diablo Meridian; and running thence South 80°10' West, 917.24 feet to the westerly side of State Highway 128; thence Southeasterly along the westerly line of said highway, 837.5 feet to the **POINT OF BEGINNING** of this description; thence on the exterior boundaries of the land to be described as follows; South 51°00' West, 187.33 feet; thence South 60°10' West, 185 feet; thence South 13°00' East, 574.67 feet to the southerly bank of Indian Creek to a point in the northerly boundary of a certain parcel of land described in a deed from Charles L. Donohoe to the State of California, dated Feb. 1, 1942 and recorded in Liber 156 of Official Records, page 209, Mendocino County Records; thence along said creek in a northeasterly direction 604 feet to the Section line between said Sections 19 and 20; thence North along said Section line to the center of the channel of said creek; thence along the center of the channel of said creek, in a Northeasterly direction, 6 rods and 12 feet to the westerly line of State Highway 128; thence in a Northwesterly direction along the westerly line of said highway, 802 feet to the Point of Beginning, containing 7.5 acres, more or less, and comprising a portion of the east half of the northeast quarter of said Section 19.

This description is from the deed recorded August 22, 1946 in Book 200, Official Records, Page 494, Mendocino County Records.

EXCEPTING THEREFROM any portion of the above described property that lies within the property described in the Quitclaim Deed recorded April 27, 1960 in Book 538, Official Records, Page 580, Mendocino County Records.

Portion of AP 046-070-14