

WEIMAR CROSS #2

Weimar Cross # 2 Property Transactions

Parcel 63 (Van Horne/Mary Smith Trust Boundary Line Adjustment)

Facts: On May 16, 2003 Thomas and Patricia Van Home (Van Home) recorded their purchase of Parcel 63 (11.0 acres) of the property known as Weimar Cross # 2 from Jay Park for the price of \$336,000. Later that same day Van Home recorded a deed of trust secured by Parcel 63 whereby they borrowed \$203,046 from Stockmans Bank. On February 11, 2004 Van Home recorded a boundary line adjustment which effected the transfer of a 1.44 acre portion of parcel 63 to Mary Smith (aka Michelle Ollar-Burris) acting as the trustee of the Mary Smith Living Trust (MST) and their receipt of a (.49) acre portion of the adjacent parcel 60 from MST, for no consideration. (MBR 11248, approved by the Parcel Review Committee (PRC) on 10-8-2003, Surveyor was JKL Surveying.) This boundary adjustment caused Parcel 63 to be renumbered as Parcel 71 (10.3 acres). (See, Weimar Cross #1 Memo re: Parcel 60.)

Authority: Section 66426 of the Subdivision Map Act requires that a parcel map be submitted for a division of land into four or fewer parcels, and that tentative and final subdivision maps be submitted for a division of land into five or more parcels.

Section 66424 of the Subdivision Map Act defines a subdivision of property as the division of any contiguous unit or units of improved or unimproved land for the purpose of sale, lease, or financing, whether immediate or future.

Section 66412 (d) of the Subdivision Map Act provides that boundary line adjustments of four or fewer adjacent parcels are exempt from section 66426.

Analysis: Boundary line adjustments are normally exempt from the requirements of Section 66426 by Section 66412(d), exempting from normal Map Act requirements lot line adjustments between 4 or fewer adjoining parcels "where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created." (Id.) Here, however, it is more likely than not that the purpose of the boundary line adjustment was to facilitate the later 4 lot division accomplished by the Swan Parcel Map (discussed in the Weimar Cross #1 portion of this report), and the Van Horne/Grass Valley Associates Parcel Map (DPM 2004-0297, discussed below).

The applicable minimum lot size is 100,000 square feet (minimum building site size), or just slightly less than 2.3 acres net (Zoning: RA-B100 (minimum lot size 2.3 acres, General Plan Designation: Rural Estate, 2.3 – 4.6 acre minimum lot size). Pursuant to Placer County Code section 17.54.040(A), minimum lot area "shall be defined as the gross area of the lot excluding all road easements, for lots less than five acres in area."

Given the applicable minimum lot size of 2.3 acres net, a 4 parcel division by Van Home/Grass Valley Associates (GVA) of Parcel 71 (10.3 acres; Van Home/GVA Parcel Map discussed below) would not have been possible without the boundary line adjustment. The portion of the Van Home-MST boundary line modification which benefited Van Home added (.49) acres to the eastern portion of the parcel. What became Parcels 1 and 2 of the VanHome/GVA Parcel Map were each increased in size. As approved, Parcel 1 is 2.39 acres net and Parcel 2 is 2.43 acres net. The (.49) acres gained from the boundary line adjustment appears to benefit each parcel roughly equally. Accordingly, if you take away (.245) acres from each parcel, neither would meet the minimum parcel size of 2.3 acres net. Thus, the parcel division created by the Van Home/GVA Parcel Map was likely contemplated, and certainly was facilitated, by the Van Home-MST boundary line adjustment, pursuant to a common plan to divide the subject parcel, and adjoining parcels, multiple times without obtaining a subdivision map.

Thus, it appears more likely than not that the purpose of the boundary line adjustment was to facilitate the division of the adjoining parcels. In other words, MST provided Van Home with the extra land needed to in order to qualify for a 4 parcel split. Without the extra (.49) acres, a 4 parcel split would not have been permissible. The provisions of the Subdivision Map Act are to be read together "in the context of the statutory framework as a whole." (*Kalway v. City of Berkeley*, 151 Cal.App.4th 827, 833 (2007).) The exemption from Map Act requirements set forth in Section 66412(d) for boundary line adjustments applies only "where a greater number of parcels than originally existed is not thereby created." (*Id.*) Here, the purpose of the boundary line adjustment was to facilitate division of the subject property. The boundary line modification, and the resulting subsequent divisions of property should have been the subject of a tentative and final subdivision map.

Parcel 71 (Van Home/Grass Valley Associates Parcel Map)

(Formerly Parcel 63)

Facts: On June 17, 2004, Van Home, through George Wasley Planning/JKL Surveying, submitted an application to divide Parcel 71 (10.3 acres) into 4 parcels. (This is the same day Knoblich submitted his application, also using George Wasley Planning/JKL Surveying, for a 4 parcel division of Weimar Cross # 1 Parcel 73 (now known as APN 072-261-037) discussed *supra*.) The Parcel Review Committee (PRC) approved the Van Home tentative parcel map on July 28, 2004 (also the same date the PRC approved Knoblich's Weimar Cross # 1 Parcel Map). On November 5, 2004 Van Home recorded the sale of parcel 71 (10.3 acres) to Michael Butler-Grass Valley Associates, California General Partnership (GVA) for the purchase price of \$884,000. (Thus, GVA paid \$548,000 more for the property than Van Home (VH sales price: \$336,000) reportedly did some 18 months prior.)

(GVA/Butler also purchased Parcel 31 (21.5 acres) of the Moffet Ranch property from the Mary Smith Trust on October 26, 2005.) GVA assumed the Van Home tentative parcel map and then recorded Parcel Map DPM-2004-0297 on April 13, 2005 which divided 71 into 4 parcels: 1 (APN 81: 2.39 acres net), 2 (APN 82: 2.43 acres net), 3 (APN 83: 2.67 acres net), and 4 (APN 84: 2.33 acres net).

GVA later sold all four parcels to separate parties. The parcels all sold in April or May 2005 for a grand total of \$1,114,450, giving GVA a gross profit of \$230,450. Each of the deeds from GVA to the four individual purchasers contain restrictions prohibiting overhead utilities and permanent mobile/modular homes. The deed restrictions prohibiting overhead utilities and permanent mobile/modular homes reflect a common plan to create a residential development (through a series of parcel map divisions) with uniform requirements for underground utilities and a prohibition against mobile/modular homes. These restrictions then "run with the land" to include all parcels created through further division of the affected property. In fact, Sierra Brokers Real Estate (Wes Burris and Michelle Ollar-Burris) later marketed the multiple residential parcels resulting from the successive divisions of Parcels 63 and 60 as a common residential development with a "3 Acre Private Lake" (all parcels have lake access), "Underground Utilities," and "Private Paved Roads." (See attached sales materials.)

Authority: Section 66426 of the Subdivision Map Act requires that a parcel map be submitted for a division of land into four or fewer parcels, and that tentative and final subdivision maps be submitted for a division of land into five or more parcels.

Section 66424 of the Subdivision Map Act defines a subdivision of property as the division of any contiguous unit or units of improved or unimproved land for the purpose of sale, lease, or financing, whether immediate or future.

It has been generally held that a subdivider may not avoid the tentative and final mapping requirements of section 66426 by using a parcel map to divide one parcel into four or fewer lots and then, through the use of agents further divide the property into smaller and smaller lots.

The Attorney General has indicated that an agency relationship for purposes of the Subdivision Map Act will be found to exist in cases where the parties in question are not dealing at arms length. Examples that a party is not dealing at arms length include, a sale for inadequate consideration, a transfer to a close relative or business associate, retention of control or financial interest in the property being transferred, or generally a transfer which is part of a conspiracy to evade the mapping requirements of the Subdivision Map Act. If there is evidence that a transfer and later subdivision of property is not an arms length transaction the total number of lots will be treated as one subdivision.

Thus, if such a transaction results in property being divided into five or more lots without the submission of the necessary tentative and final subdivision maps, the division will be held to constitute a violation of section 66426.

Analysis: As discussed above, the Van Home-MST boundary line modification facilitated the 4 parcel split effected by the Van Home/GVA Parcel Map. Parcels 1 and 2 of the Van Home/GVA Parcel Map were each increased in size. Parcel 1 is 2.39 acres net and Parcel 2 is 2.43 acres net. The (.49) acres from the boundary line adjustment appears to benefit each parcel roughly equally. Accordingly, if you take away (.245) acres from each parcel, neither would meet the minimum parcel size of 2.3 acres net. Thus, the parcel division created by the Van Home/GVA Parcel Map was likely contemplated, and certainly was facilitated, by the Van Home-MST boundary line adjustment, pursuant to a common plan to divide the subject property multiple times without obtaining a subdivision map. The same surveyor, JKL Surveying, prepared the maps for both the Van Home/MST boundary line adjustment and the Van Home/GVA Parcel Map.

Thus, it appears more likely than not that the purpose of the boundary line adjustment was to facilitate the division of the adjoining parcels. In other words, MST provided Van Home with the extra land needed to in order to qualify for a 4 parcel split. Without the extra (.49) acres, a 4 parcel split would not have been permissible. The provisions of the Subdivision Map Act are to be read together "in the context of the statutory framework as a whole." (*Kalway v. City of Berkeley*, 151 Cal.App.4th 827, 833. (2007).) The exemption from Map Act requirements set forth in Section 66412(d) for boundary line adjustments applies only "where a greater number of parcels than originally existed is not thereby created." (*Id.*) Here, the purpose of the boundary line adjustment was to facilitate division of the subject parcels.

It is more likely than not that there was a common plan to modify the parcel boundaries to facilitate the division accomplished by the Van Home/GVA Parcel Map and the adjoining Swan Parcel Map (discussed in the Weimar Cross #1 portion of this report). The common plan is also reflected in the effort to create a residential development (through a series of parcel map divisions) with uniform requirements for underground utilities and a prohibition against mobile/modular homes. Sierra Brokers Real Estate (Wes Burris and Michelle Ollar-Burris) later marketed the multiple residential parcels resulting from the successive divisions of Parcels 63 and 60 as a common residential development with a "3 Acre Private Lake" (all parcels have lake access), "Underground Utilities," and "Private Paved Roads." Thus, Van Home, MST, GVA and the Swans, should be considered a single subdivider. The boundary line modification, and the resulting subsequent divisions of property should have been the subject of a tentative and final subdivision map.

- 1 S 89°01'52" E 175.00'
- 2 N 30°02'00" E 140.47'
- 3 S 46°51'03" E 171.85'
- 4 S 15°15'17" E 144.92'
- 5 N 89°01'52" W 150.00'
- 6 N 56°44'40" W 156.58'
- 7 S 36°03'30" W 234.37'
- 8 N 02°24'28" E 239.97'

22 23

OWNER / APPLICANT:

ASSESSOR'S PARCEL: 072-260-063

THOMAS VAN HORNE

6186 ELVAS AVENUE
SACRAMENTO, CA 95814

ASSESSOR'S PARCEL: 072-260-060

MARY SMITH, TRUST

900 LINCOLN WAY
AUBURN, CA 95603

PREPARED BY:

LS. 7379

**JKL SURVEYING AND
GEORGE WASLEY PLANNING**

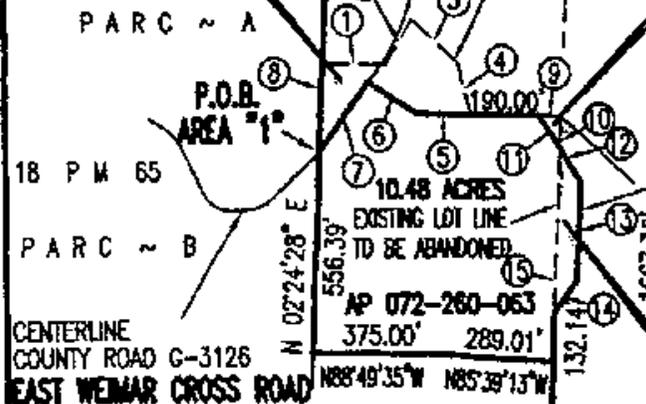
10936 LOVAS COURT
GRASS VALLEY, CA 95945
PH. (530) 477-7343



**TRANSFER AREA 1
VAN HORNE TO
M. SMITH TRUST
1.38 ACRES**

**TRANSFER AREA 2
VAN HORNE TO
M. SMITH TRUST
0.06 ACRES**

- 9 S 89°01'52" E 60.00'
- 10 S 02°26'37" W 87.73'
- 11 N 32°23'36" W 105.00'



PROPOSED LOT LINE

AP 072-260-060

96.24 ACRES

**TRANSFER AREA 3
M. SMITH TRUST TO
VAN HORNE
0.40 ACRES**

- 12 S 32°23'36" E 105.03'
- 13 S 02°26'37" W 268.79'
- 14 S 35°32'06" W 109.89'
- 15 N 02°26'37" E 447.07'

CENTERLINE
COUNTY ROAD G-3126
EAST WEIMAR CROSS ROAD

PARC ~ A
17 P M 157

SE COR OF THE
SW 1/4 OF THE NE 1/4

E 1/4 COR SEC 27

EXHIBIT "B" FOR MBR #11248

THOMAS VAN HORNE

BEING A PORTION OF THE E 1/2 OF

SEC. 27, T.14 N., R.9 E., M.D.M.

IN THE UNINCORPORATED TERRITORY OF

PLACER COUNTY, CALIFORNIA

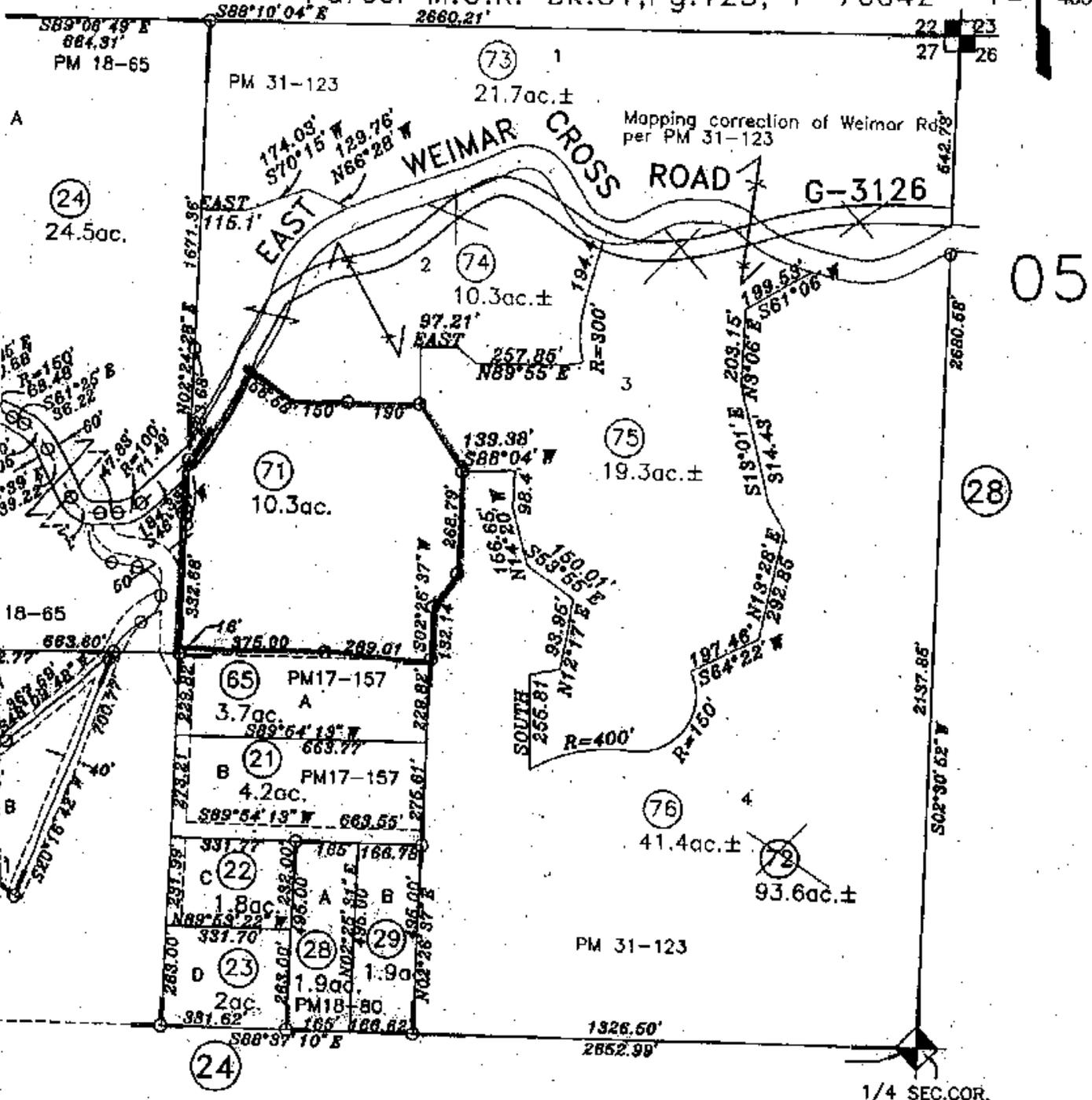
SCALE: 1" = 500' AUGUST, 2003

JKL SURVEYING

Parcel	M.O.R.	Bk.18, Pgs.80,	73860
Parcel	M.O.R.	Bk.18, Pgs.123,	73756
Parcel	M.O.R.	Bk.22, Pg.105,	74663
Parcel	M.O.R.	Bk.23, Pg. 51,	74732
Parcel	M.O.R.	Bk.24, Pg.30,	74648
Parcel	M.O.R.	Bk.25, Pg.60,	75013
Parcel	M.O.R.	Bk.31, Pg.123,	P-76042

Bk.71

1" = 400'



NOTE
 This map was prepared for assessment purposes only, and is not intended to illustrate legal building lines or establish precedence over local ordinances. Official information concerning size or use of any parcel should be obtained from recorded documents and local governing agencies.

**Assessor's Map Bk.72 Pg.26
 County of Placer, Calif.**

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

COUNTY ROAD G-3125
EAST WEIMAR CROSS ROAD

AREA ~ A
ROAD AND PUBLIC UTILITY EASEMENT
P.U.E., PER DDC24-22365

AREA ~ B
30' ROAD AND PUBLIC UTILITY
EASEMENT, P.U.E.

10' P.M. 65
P.M. - A

PARCEL ~ 4
2.50 AC. (GROSS)
2.33 AC. (NET)

CL. PCE EASEMENT
PER 482 OR 57

CL. PCE EASEMENT
PER 234 OR 149

10' P.M. 65
P.M. - A

LOT 12
D.W.P.S. 2

ME COR SEC 27
P.M. 130 DRILL SHEET
MAGNE 27P, MARKED
(1)(X)

17' P.M. 157
P.M. - A

SEE DETAIL "A"
AREA ~ C AND P.U.E.
CL. 50' ACCESS, DRAINAGE
& PUBLIC UTILITY EASEMENT

32' P.M. 53
P.M. - 2

PARCEL ~ 1
2.60 AC. (GROSS)
2.39 AC. (NET)

PARCEL ~ 2
2.52 AC. (GROSS)
2.43 AC. (NET)

PARCEL ~ 3
2.72 AC. (GROSS)
2.67 AC. (NET)

AREA ~ C AND P.U.E.
CL. 50' ACCESS, DRAINAGE
& PUBLIC UTILITY EASEMENT

1	R = 30.00'	Δ = 117.20'	L = 46.31'
2	R = 25.00'	Δ = 149.56'	L = 45.42'
3	R = 67.00'	Δ = 16.45'	L = 45.21'
4	R = 100.00'	Δ = 95.57'	L = 182.25'
5	R = 19.52'	Δ = 5.16'	L = 42.17'
6	R = 25.00'	Δ = 67.152'	L = 3.80'
7	R = 25.00'	Δ = 39.530'	L = 17.40'
8	R = 50.00'	Δ = 137.131'	L = 114.51'
9	R = 30.00'	Δ = 117.473'	L = 80.00'
10	R = 30.00'	Δ = 53.172'	L = 46.31'
11	R = 25.00'	Δ = 44.020'	L = 45.21'
12	R = 19.52'	Δ = 11.00'	L = 42.17'
13	R = 30.00'	Δ = 97.574'	L = 82.17'
14	R = 67.00'	Δ = 32.04'	L = 79.11'
15	R = 100.00'	Δ = 67.152'	L = 3.80'
16	R = 25.00'	Δ = 67.362'	L = 28.82'
17	R = 46.50'	Δ = 55.03'	L = 55.03'

NOTES:

- AN OFFER OF DEDICATION AND REPORT OF PARCEL MAP NO. DPM 20040297, SIGNED AND ACKNOWLEDGED BY THOSE PARTIES HAVING ANY RECORD TITLE INTEREST IN THE REAL PROPERTY BEING SUBDIVIDED IS BEING RECORDED CONCURRENTLY HERewith IN INSTRUMENT NO. 2005-15433 O.R.P.C.
- SOURCE OF METES AND BOUNDS INFORMATION 2003A-01483A.
- THOSE AREAS NOTED AS "P.U.E." ARE FOR PUBLIC UTILITY EASEMENTS AND ARE BEING DEDICATED TO PLACER COUNTY CONCURRENTLY HERewith IN INSTRUMENT NO. 2005-15433 O.R.P.C.
- AREA "C" IS A 30 FOOT WIDE HIGHWAY EASEMENT GRANTED TO THE COUNTY PLACER AND IS RECORDED CONCURRENTLY HERewith IN INSTRUMENT NO. 2005-15433 O.R.P.C.
- AREA "B" IS A 30 FOOT WIDE EASEMENT FOR ROAD AND PRIVATE AND PUBLIC UTILITY PURPOSES AND IS APPURTENANT TO PARCELS 1, 2, 3 AND 4.
- MEMORANDUM DRAINAGE EASEMENTS ARE FOR THE FLOW OF WATER THROUGH THE NATURAL SWALES AS SHOWN ON THIS PARCEL MAP AND DESIGNATED MEMORANDUM DRAINAGE EASEMENTS (M.D.E.).

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE. AT THE REQUEST OF MICHAEL BUTLER IN NOVEMBER, 2004, I HEREBY STATE THAT THIS PARCEL MAP IS SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP. IF ANY, ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

Joyce K. Loftus
JOYCE K. LOFTUS
REGISTRATION EXPIRES: 12-31-05



COUNTY SURVEYOR'S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THIS PARCEL MAP IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

WESLEY K. ZOOKER, P.C.E. 31150
COUNTY SURVEYOR
REGISTRATION EXPIRES: 6-30-06

Charles B. Hunt
BY DEPUTY: CHARLES B. HUNT
EXPIRES 3-31-06



RECORDER'S STATEMENT:

FILED THIS 15TH DAY OF APRIL AT 1:39 P.M. IN BOOK 32 OF PARCEL MAPS AT PAGE 61 AT THE REQUEST OF JOYCE LOFTUS.

FEES \$11.00

FILE NO. 2005-15433

Jim McCawley
JIM MCCAWLEY, COUNTY RECORDER
BY: *Debra J. Lane*
DEPUTY

MONUMENT LEGEND:

- SET 5/8" IRON & CAP STAMPED L.S. 7379
- FWD 5/8" IRON & CAP STAMPED L.S. 7379 (1)
- UNLESS NOTED
- + NOTHING FOUND, NOTHING SET

RECORD DATA:

- (1) 31 PM 123 (2) 17 PM 157
- (3) 04-2014758 (4) 32 PM 53
- (5) 16 PM 45
- (6) 00-001501

BASIS OF BEARING:

THE MERIDIAN OF THIS SURVEY IS IDENTICAL WITH BOOK 31 OF PARCEL MAPS AT PAGE 123 AND WAS ESTABLISHED FROM THE MONUMENTS SHOWN THEREON AS FOUND.

PARCEL MAP DPM 20040297

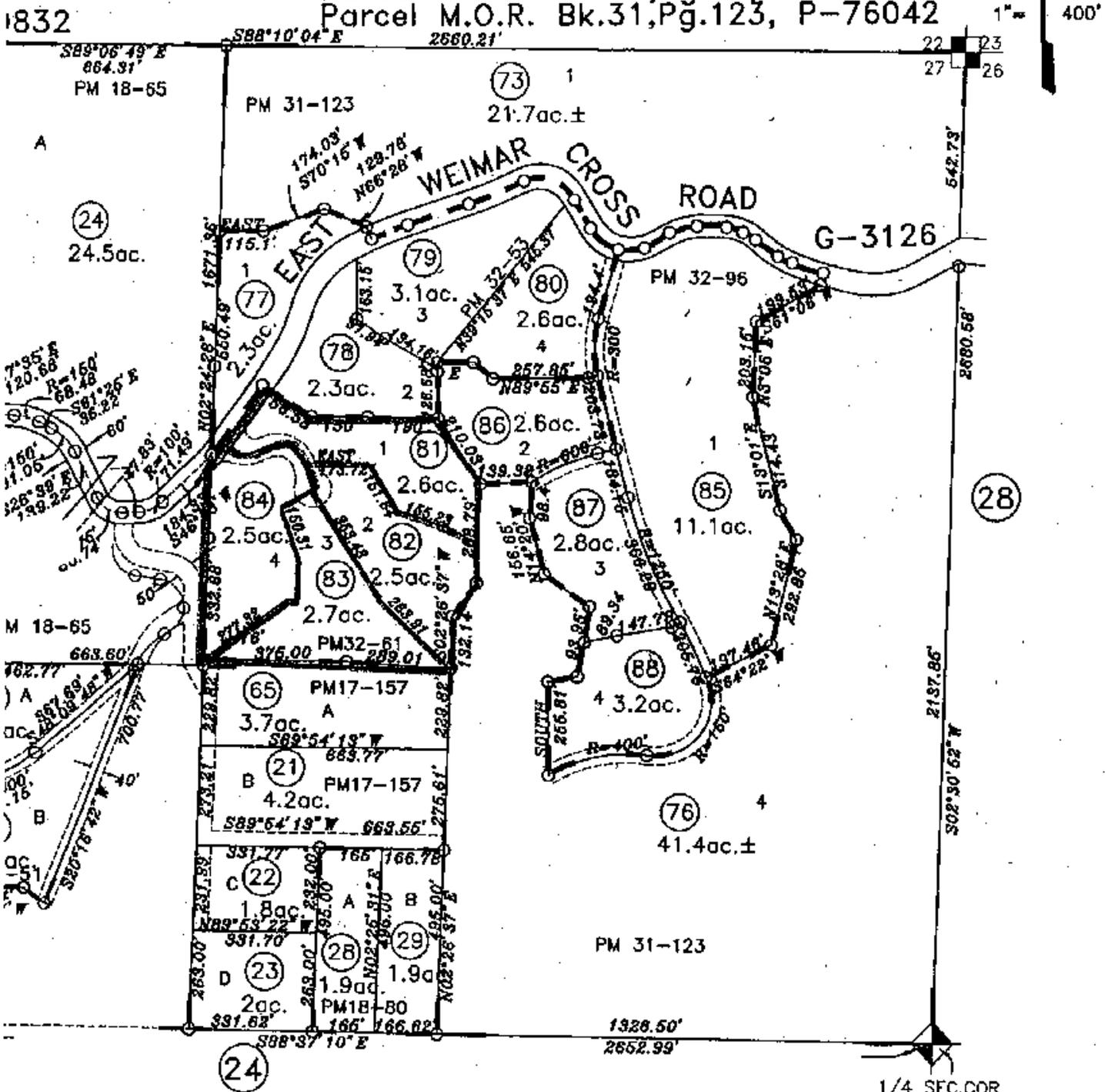
GRASS VALLEY ASSOCIATES

BEING A PORTION OF THE N.E. 1/4 OF
SECTION 27, T.14 N., R.9 E., M.D.M.
IN THE UNINCORPORATED TERRITORY OF
PLACER COUNTY, CALIFORNIA

SCALE: 1" = 100'
NOVEMBER, 2004
JKL SURVEYING
GRASS VALLEY, CALIFORNIA

Parcel M.O.R. Bk.18, Pgs.80, 73860
Parcel M.O.R. Bk.18, Pgs.123, 73756
Parcel M.O.R. Bk.22, Pg.105, 74663
Parcel M.O.R. Bk.23, Pg. 51, 74732
Parcel M.O.R. Bk.24, Pg.30, 74648
Parcel M.O.R. Bk.25, Pg.60, 75013
Parcel M.O.R. Bk.31, Pg.123, P-76042

Bk.71



04
012
9y

NOTE
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Assessor's Map Bk.72 Pg.26
County of Placer, Calif.

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