

Exhibit 2. Parcel 4 OTD

23625

RECORDING REQUESTED BY AND RETURN TO:

State Coastal Conservancy
1330 Broadway Suite 1100
Oakland, California 94612
Att: Legal Counsel

Eureka Title Company
1786
DEC 30 3 40 PM '85
C. Bumbela
none

"PARCEL 4"

IRREVOCABLE OFFER TO DEDICATE
OPEN SPACE EASEMENT

THIS IRREVOCABLE OFFER TO DEDICATE EASEMENT (hereinafter "Offer") is made this 20th day of (month) December, 1985, which date shall hereinafter be referred to as the "effective date" of said Offer, by the City of Eureka (hereinafter referred to as "Grantor").

- I. WHEREAS Grantor is the owner in fee simple of certain real property located in the County of Humboldt, State of California, and described in the attached Exhibit A (hereinafter referred to as the "Property"); and
- II. WHEREAS the California State Coastal Conservancy (the "Conservancy") is authorized, pursuant to California Public Resources Code Sections 31251 et seq., to award grants to public agencies for the enhancement of coastal resources which have suffered loss of natural and scenic values, through the assembly of parcels of land within coastal resource enhancement areas to improve resource management, the relocation of improperly located or designed improvements, and other corrective measures which will enhance the natural and scenic character of the areas; and
- III. WHEREAS the Grantor acquired the Property using grant funds of the Conservancy provided pursuant to Public Resources Code Sections 31251 et seq., for a project which further contemplates the enhancement and preservation of wetland habitat and scenic and natural resources on a portion of the Property, and the development of the remainder of the property for coastal dependent industrial use; and
- IV. WHEREAS, the portion of the Property thus designated for coastal dependent industrial use is more particularly described in Exhibit B, attached hereto and incorporated by reference and shall be hereinafter referred to as the "Subject Lands"; and
- V. WHEREAS, in order to implement the enhancement project described above, the Grantor and the Conservancy have agreed that (1) if the Subject Lands are developed for coastal dependent industrial use within ten years from the date of this Offer, then the Grantor shall reimburse the Conservancy for the proportionate amount of the cost of acquisition; and (2) if the Subject Lands are not developed for this use within ten years from the effective date of this Offer, that the Grantor shall dedicate an an open space easement upon

the Subject Lands to the Conservancy or a management entity approved by its Executive Officer; and

VI. WHEREAS the Grantor and the Conservancy have entered into an Agreement, No. 85-019-85-63-A, dated October 25, 1985 (the "Agreement") which provides, inter alia, for the reimbursement by the Grantor to the Conservancy, of up to two hundred seventy-five thousand dollars (\$275,000.00), upon the sale or lease of the Subject Lands for coastal dependent industrial use by the Grantor;

NOW THEREFORE, in consideration of the above and the mutual benefit and conditions set forth herein, Grantor hereby irrevocably offers to dedicate to the State of California, acting through the Conservancy or other agency thereof, or to a private nonprofit organization acceptable to the Executive Officer of the Conservancy (the "Grantee"), an easement in gross and in perpetuity over the Subject Lands, for the preservation of the Subject Lands in a predominantly natural and open space condition, subject to the following terms, conditions, and restrictions:

1. ACCEPTANCE. This Offer to Dedicate may be accepted by the Grantee no earlier than ten (10) years from the date first above written, provided that the Offer has not terminated pursuant to Paragraph 2 below as of that date. Upon recordation of an acceptance of this offer by the Grantee in the form attached hereto as Exhibit C ("Certificate of Acceptance") in the Official Records of Humboldt County, this Offer shall have the effect of a grant of open space and scenic easement in gross and perpetuity for the preservation and enhancement of natural resources and scenic qualities over the Subject Lands that shall run with the land and be binding on the Grantee and its successors and assigns.

2. TERMINATION. This Offer to Dedicate shall automatically terminate if Grantor leases or sells the Subject Lands for coastal dependent industrial development at any time within the ten (10) year period commencing on the date of this Offer, and reimburses the Conservancy pursuant to terms of the Agreement. In that event, the Conservancy shall execute and record, at the request of Grantor, a document having the effect of terminating this Offer and releasing Grantor therefrom.

3. USES OF PROPERTY. Upon acceptance of this Offer as specified in Paragraph (1), the use of the Subject Lands shall be limited to natural open space, habitat and conservation purposes, subject to the terms and conditions set forth below. No development, as defined in California Public Resources Code Section 30106, attached hereto as Exhibit D and incorporated herein by this reference, shall occur or be allowed on the Subject Lands, except for:

- a. The removal of hazardous substances or conditions, or diseased plants or trees;
- b. The installation, maintenance, use or repair of underground

utility lines, septic systems, drainage facilities and related improvements;

c. Any uses permitted for enhancement activity undertaken pursuant to Sections 31251 et seq. of the Public Resources Code. -

4. RIGHT OF ENTRY TO MONITOR COMPLIANCE. The Grantee or its agent may enter onto the Property to ascertain whether the restrictions set forth above in Paragraph (3) are being observed, at times reasonably acceptable to the Grantor.

5. SUCCESSORS AND ASSIGNS. This Offer shall run with and burden the Property, binding Grantor and its successors and assigns from the date of its recordation. The obligations, terms, conditions and restrictions set forth in this Offer regarding use of the Subject Lands shall be deemed to be covenants and restrictions running with the land and shall benefit and bind the Grantor, the Grantee, and their respective successors and assigns, and shall be effective from the date of recordation of Grantee's acceptance. This Offer shall benefit the State of California.

6. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or becomes unenforceable for any reason, no other provision shall be thereby affected or impaired.

7. ENFORCEMENT. Any act or any conveyance, contract, or authorization, whether written or oral, by the Grantor, which uses or would cause to be used or would permit use of the Property contrary to the terms of this easement shall be deemed a breach thereof. The Grantee may bring any action in court necessary to enforce this easement, including but not limited to injunction to terminate the breaching activity and to force the restoration of all damage done by such activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that the Grantee may pursue any appropriate legal and equitable remedies. The Grantee shall have sole discretion to determine under what circumstances an action to enforce terms and conditions of this easement shall be brought in law or in equity. Any forbearance on the part of the Grantee to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of Grantee's rights regarding any subsequent breach.

8. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid all real property taxes and assessments levied or assessed against the Property.

9. MAINTENANCE. Grantor shall bear all costs and expenses for the maintenance, improvement, or possession of the Property, except for Grantee's costs for monitoring compliance with the terms of this easement.

10. LIABILITY AND INDEMNIFICATION. This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or for damage to property of any kind whatsoever and to whomsoever belonging,

including Grantor, from any cause or causes whatsoever, except matters arising out of the sole negligence of the Grantee, while in, upon, or in any way connected with the Property; and Grantor hereby covenants and agrees to indemnify and hold harmless the Grantee, its agencies, departments, officers, agents and employees from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses, however occurring. The Grantee shall have no right of control over the Property, nor duties or responsibilities with respect to the Property, which would subject the Grantee to any liability occurring upon the land by virtue of the fact that the right of the Grantee to enter the land is limited to monitoring compliance with the terms of this easement, and does not include the right to enter the land for the purposes of correcting any dangerous condition as defined in California Government Code Section 830.

11. TRANSFERABILITY. At any time following the acceptance of this Offer, Grantee, may transfer its easement interest conveyed by this grant to another public agency or private non-profit organization which agrees to accept this grant and all rights, duties and obligations of the Grantee hereunder.

12. RELOCATION OF EASEMENT BOUNDARIES. The precise boundaries of Property subject to this Easement and Irrevocable Offer to Dedicate may be relocated in accordance with a boundary agreement or tidelands settlement between the Grantor and the State Lands Commission, by amendment of this document executed by both the Grantor and the Conservancy. The recordation of such an amendment shall have the effect of making all property therein described subject to this Easement and Irrevocable Offer to Dedication, and releasing from the effect hereof any of the Property excluded from the amended description.

13. GRANTOR'S RETAINED RIGHTS. Grantor retains the right to use the property in any manner not inconsistent with this easement and offer to dedicate . Grantor further expressly reserved the right to use all easements and offers of dedication shown on the parcel map described in Exhibit A.

Executed on this 20 day of December 1985 at Eureka, California

Dated: DEC. 20, 1985

Signed: _____



CERTIFICATE OF ACKNOWLEDGEMENT

On this 20th day of December, in the year 1985
before me, the undersigned, a Notary Public of the State of
California, personally appeared ROBERT STOCKWELL,
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the City Manager of the City of Eureka, whose name
subscribed to the within instrument on behalf of said agency, and acknowledged
to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal
in the City of Eureka County of Humboldt
on the date set forth above in this certificate.



Deanna Sallady
Notary Public
Notary Public, State of California

My commission expires 2/20/88

EXHIBIT A
The Property

All that certain real property in the City of Eureka, County of Humboldt, State of California,, shown and described as ^{Parcel} Parcels 3 and 4 in Parcel Map No. 2380 Book 21 Page 40-42 of Maps in the Official Records of Humboldt County which lies above the Ordinary High Water Line.

EXHIBIT B
Subject Lands

All that certain real property in the City of Eureka, County of Humboldt, State of California, which lies above the Ordinary High Water Line within Parcel ⁴ as shown and described in Parcel Map No. 2380, Book 21 Page 40-42 of Maps, in the Official Records of Humboldt County.

Subject to all easements shown on said Parcel Map.

RECORDING REQUESTED BY AND RETURN TO:

EXHIBIT C
Certificate of Acceptance

THIS IS TO CERTIFY that the interest in real property conveyed by grant or deed, dated _____, 1985, and recorded as _____, in the Official Records of the County of Humboldt, from the City of Eureka to the State of California, or to a nonprofit organization acceptable to the Executive Officer of the State Coastal Conservancy, is hereby accepted by the undersigned officer of [the State of California] / [nonprofit organization], and the grantee consents to the recordation thereof by its duly authorized officer.

Date _____ By _____

CERTIFICATE OF ACKNOWLEDGEMENT

On this _____ day of _____ in the year _____,
before me _____, a Notary Public, State of California,
duly commissioned and sworn, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence)
to be the Executive Officer of the State Coastal Conservancy whose name
_____ subscribed to the within instrument on behalf of said agency,
and acknowledged to me that ___ he ___ executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal
in the _____ County of _____
on the date set forth above in this certificate.

Notary Public, State of California

My commission expires _____

EXHIBIT D
Public Resources Code Section 30106

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.