



CITY COUNCIL AGENDA REPORT

Meeting Date: September 5, 2019

From: Clay Holstine, City Manager

Subject: Setting a Public Hearing to Consider Vacating Public Rights of Way in the Sierra Point Area

Community Goal

Economic Development, Community Building

Purpose

To accommodate previously approved commercial development in the Sierra Point area.

Recommendation

Direct the City Clerk to set October 3, 2019, at 7:30 p.m. as the date and time for a public hearing to consider vacating portions of the public rights of way in the Sierra Point area.

Background

On April 18, 2019, City Council approved an agreement with HCP LS Brisbane (“HCP”) by which the City would consider vacating public rights of way in the Sierra Point area, one of 12,474 square feet and the other of 1560 square feet, and transferring a portion of a City owned parcel, approximately 4800 square feet, in the Sierra Point area, along with the vacated rights of way, to HCP, to fulfill an obligation under the City’s Development Agreement with HCP. Such transfers will facilitate HCP’s development of its properties in the Sierra Point area for research and development and retail purposes. As part of the approved agreement, HCP will provide \$200,000 to the City towards the planning and development of open space/park in the Sierra Point area. A copy of the Agreement is attached.

Prior to Council’s taking any action to vacate public right of way, the Streets and Highway Code requires Council to set a date, time and place for a public hearing on the proposed vacation.

Discussion

In order to vacate right of way, the Streets and Highway Code requires that the Planning Commission determine whether such vacation complies with the City’s General Plan. As stated above, the Streets and Highway Code also requires that Council conduct a public hearing to consider such vacation.

The Planning Commission on May 23, 2019 made a determination that vacating the public rights of way complies with the City's General Plan.

Staff recommends Council direct the City Clerk to set October 3, 2019, at 7:30 p.m. as the date and time for the Council to consider vacating the public rights of way in question. Schematics depicting the two areas to be vacated are attached.

Fiscal Impact

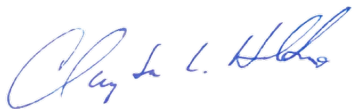
There is no fiscal impact to setting the date and time for the public hearing, other than some incidental costs for the City Clerk to publish notices in the newspaper. Once the properties have been transferred to HCP, the City will receive \$200,000 towards the planning and development of open space/park in the Sierra Point area; otherwise, no impact.

Measure of Success

Development of commercial property in the Sierra Point area will enhance the City's property tax income stream and development of open space/park in the Sierra Point area will provide an important amenity to those who live and work in that area.

Attachments

1. Agreement to Consider Abandonment of Public Right of Way and Transfer of Real Property
2. Schematics depicting areas to be vacated



Clay Holstine, City Manager

**AGREEMENT FOR ABANDONMENT OF PUBLIC RIGHTS-OF WAY AND
TRANSFER OF REAL PROPERTY**

THIS AGREEMENT ("Agreement") is made 4/18 2019 between the City of Brisbane, a Municipal Corporation, ("City) and HCP LS Brisbane, LLC, a Delaware limited liability company ("Owner"). City and Owner individually may be referred to as "Party" and collectively may be referred to as "Parties" in this Agreement.

Recitals

- A. City is the fee simple owner of the real property bearing Assessor Parcel Number 007-165-060 ("Parcel 6") and of the real property identified as "MARINA ENTRY RD." ("Marina Entry Road") on the Assessor Map, Book 7, page 16 as the successor agency of the Redevelopment Agency of the City of Brisbane.
- B. For purposes of this Agreement, Marina Entry Road includes the land described in the Offers of Dedication recorded on February 27, 1987 as Instrument Number 87-029876 in the Official Records of San Mateo County, California, pursuant to which it is subject to the dedication to the City "for street and public service easement purposes" ("Dedication").
- C. City and Owner have entered into a Development Agreement, dated June 16, 2008 and recorded August 26, 2008, Instrument No. 2008-097434, San Mateo County Records, ("the Development Agreement") concerning Owner's properties located at Assessor Parcel Numbers 007-165-080, 007-165-090, and 007-165-100, Brisbane, CA ("Owner's Properties").
- D. In part the Development Agreement provides that in order to facilitate development of Owner's Properties, the City will transfer to Owner the City's fee title in the portion of Parcel 6 and Marina Entry Road within the area identified in the schematic attached as Exhibit A ("Subject Property").
- E. In order to effectuate this transfer, it will be necessary for the City to vacate the public rights-of-way within the Subject Property including the Dedication ("Rights of Way"), which vacation the City is willing to do.
- F. As part of this transfer, City has discussed with Owner the fair market value of the Subject Property and Owner has informed the City that it is willing to pay fair market value for the Subject Property free and clear of the Rights of Way except as otherwise specified in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises expressed below, the Parties agree as follows:

- 1. Owner shall prepare and provide to the City a map and legal description of the Subject Property.
- 2. City shall undertake to vacate the Rights of Way within the Subject Property in accordance with the procedures set forth in the Streets and Highways Code.
- 3. If the City vacates the Rights of Way within the Subject Property, the City shall, upon its receipt from the Owner of the fair market value of the Subject Property (as set forth in paragraph 5 below), (a) record a resolution or resolutions vacating

the Rights of Way within the Subject Property and authorizing the transfer of the Subject Property to Owner but reserving within the Subject Property any necessary easements for public pedestrian access and public utility purposes, and (b) quitclaim to Owner any and all of the City's right, title and interest to the Subject Property subject to the reserved easements ("Quitclaim").

4. Owner and City shall process a lot line adjustment to encompass the Subject Property within the boundaries of Owner's Properties, Assessor Parcel Numbers 007-165-130 and 007-165-140, and the Quitclaim shall be recorded in connection with that lot line adjustment. City shall cooperate in the process of that lot line adjustment, in accordance with its normal procedures.
5. The fair market value of the Subject Property shall be \$200,000.
6. City shall use these funds toward the planning and development of the public park/open space area immediately adjacent to Owner's Properties.
7. If Owner or City fails to perform any obligation under this Agreement and fails to cure the default within 30 days after the other Party has notified it in writing of the alleged default, the non-breaching Party shall have the right to enforce this Agreement by bringing an action at law or in equity to compel the breaching Party's performance of its obligations under the Agreement, for damages, restitution and reimbursement and any other remedy as provided by law.
8. In any action to enforce this Agreement the prevailing Party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This paragraph shall be interpreted in accordance with California Civil Code section 1717 and judicial decisions interpreting that statute.
9. The obligations of this Agreement shall run with the land and be binding on the Parties, their successors and assigns.
10. Formal notices, demands and communications between the Parties shall be given by registered or certified mail, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:
 - City: City Manager, City of Brisbane, 50 Park Place, Brisbane, CA 94005
 - Owner: Scott Bohn, HCP LS Brisbane LLC, 950 Tower Lane #1650, Foster City, CA 94404
11. This Agreement shall be governed by the laws of the State of California. Venue for any action to enforce or interpret this Agreement shall be in the Superior Court of the State of California, County of San Mateo. Any ambiguity shall not be construed against one of the Parties in favor of another.
12. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels any prior agreements or understandings, whether oral or written, regarding the subject matter of this Agreement.
13. This Agreement may be amended only by a written instrument executed by the Parties or their successors in title.
14. Any of the requirements of this Agreement may be expressly waived in writing by the Parties but no waiver of any requirement of this Agreement shall, or shall be deemed, to extend or effect any other provision of this Agreement.

15. If any provision of this Agreement is invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.
16. Each of the individuals executing this Agreement represents and warrants that he or she has been authorized to do so and has the power to bind the Party for whom they are signing.
17. This Agreement may be executed in counterparts. Each counterpart shall have the same force and effect as an original and shall together constitute an effective, binding agreement on each of the Parties. Electronic and facsimile signatures shall be deemed original signatures.

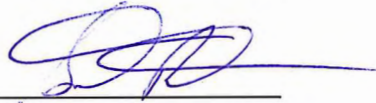
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

CITY OF BRISBANE



Madison Davis, Mayor

HCP LS Brisbane, LLC



By:
Managing Partner

Attest:



Ingrid Padilla,
City Clerk

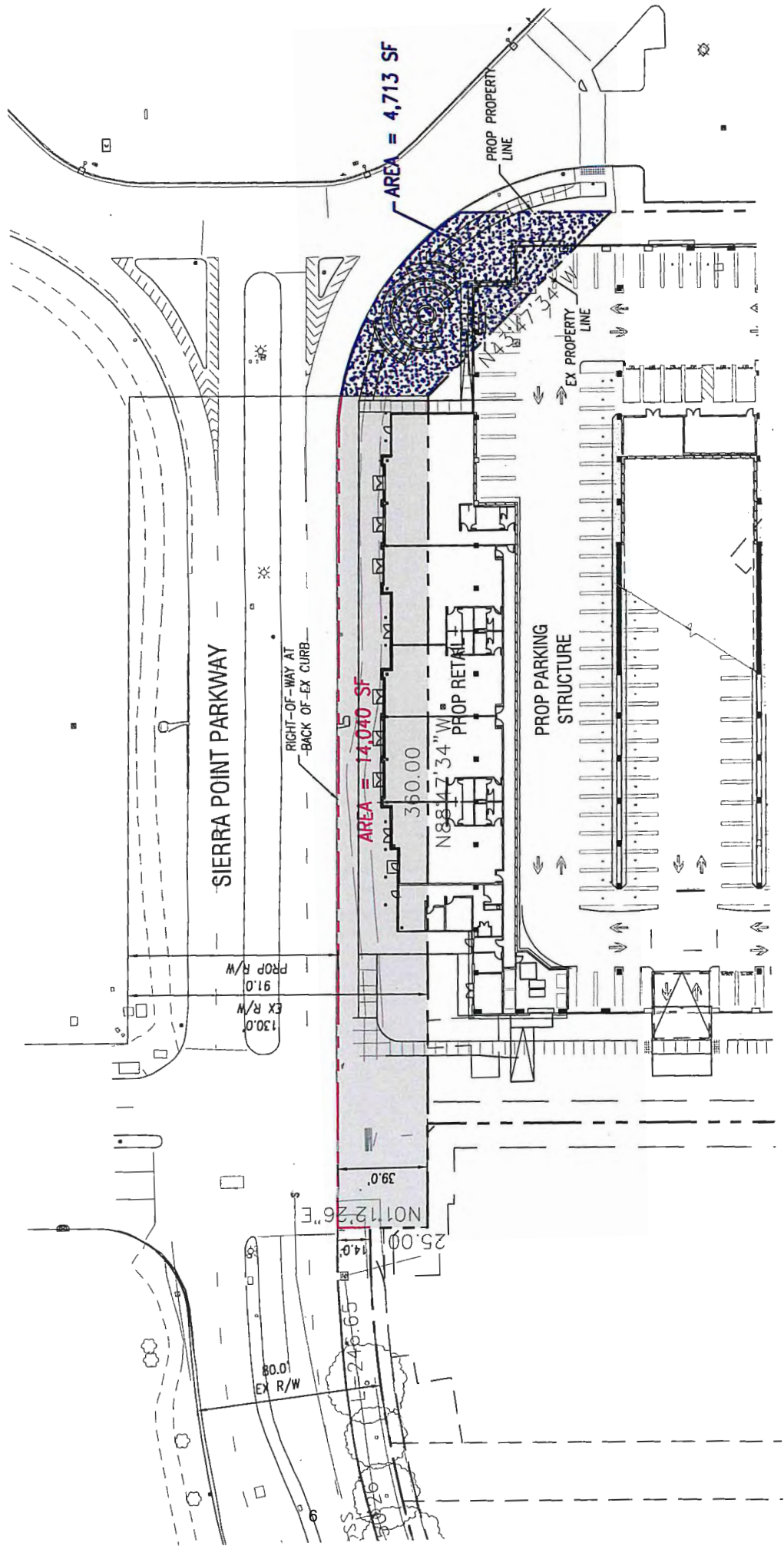
Approved as to form:

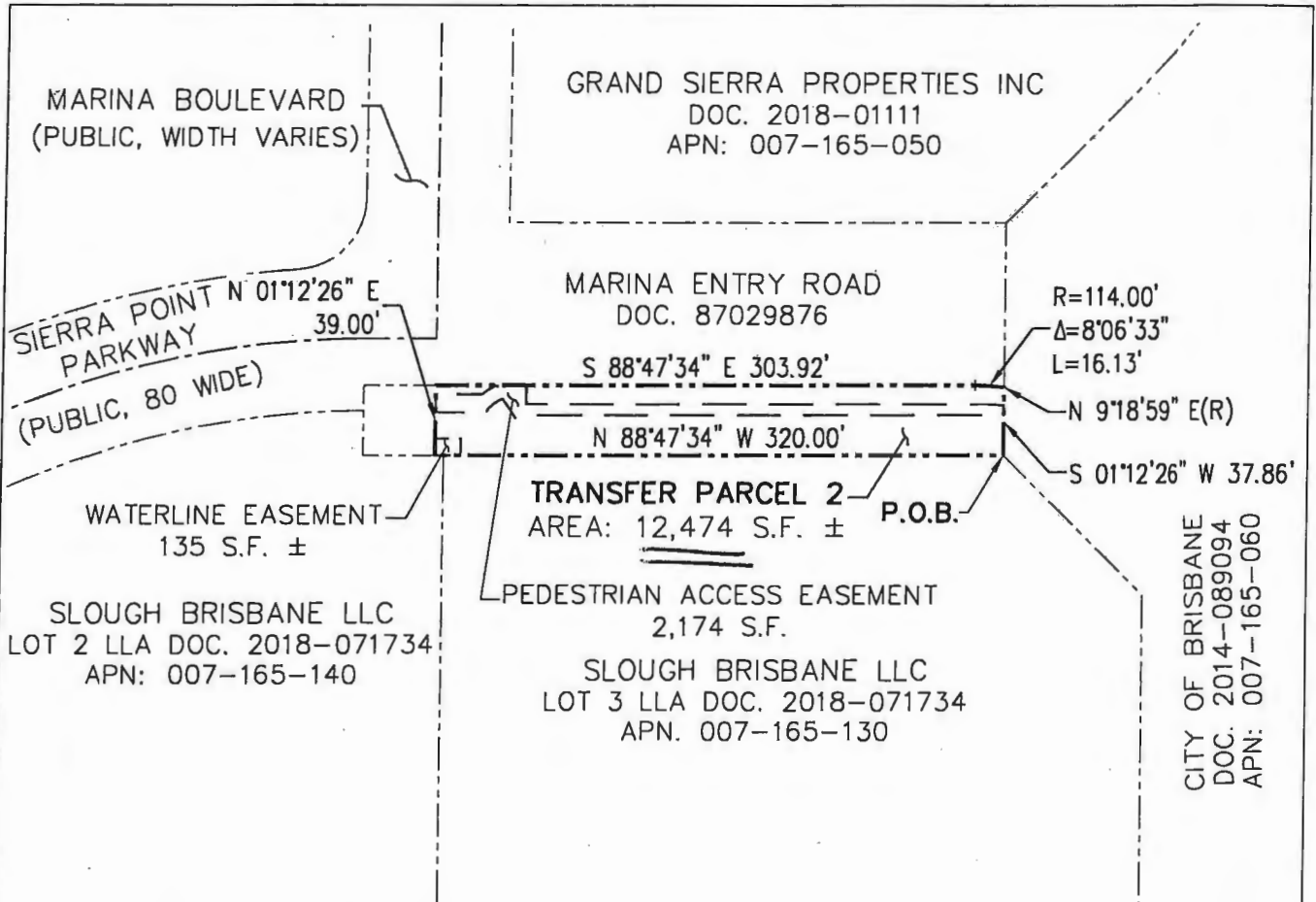


Thomas McMorrow
City Attorney

LAND TRANSFER AT SIERRA POINT BIOTECH PROJECT

1"=40' (at 11"x17")





LEGEND:

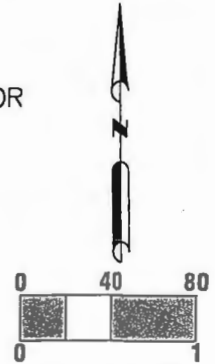
- PARCEL LINE
- ADJOINING PROPERTY LINE
- CENTER LINE
- EASEMENT LINE
- APN: ASSESSOR'S PARCEL NUMBER
- DOC. DOCUMENT NUMBER
- P.A.E. PEDESTRIAN ACCESS EASEMENT
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- (T) TOTAL DISTANCE
- S.F. SQUARE FEET
- W.L.E. WATER LINE EASEMENT

BASIS OF BEARINGS:

THE BASIS FOR THE BEARINGS SHOWN HEREON IS IDENTICAL TO THAT SHOWN ON LLA DOC. 2018-071734

NOTE:

SEE SHEET 5 OF 5 FOR EASEMENT DETAIL.



T:\635-PMA-HCP\635-093 Sierra Pt 2019 LLA and Easements\Master Survey Drawings\Exhibits\2019-07-02 City Parcel 2.dwg

WILSEY HAM

3130 LA SELVA STREET, SUITE 100, SAN MATEO, CA 94403 PHONE 650-349-2151 WWW.WILSEYHAM.COM



EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION

JOB NO:
635-093

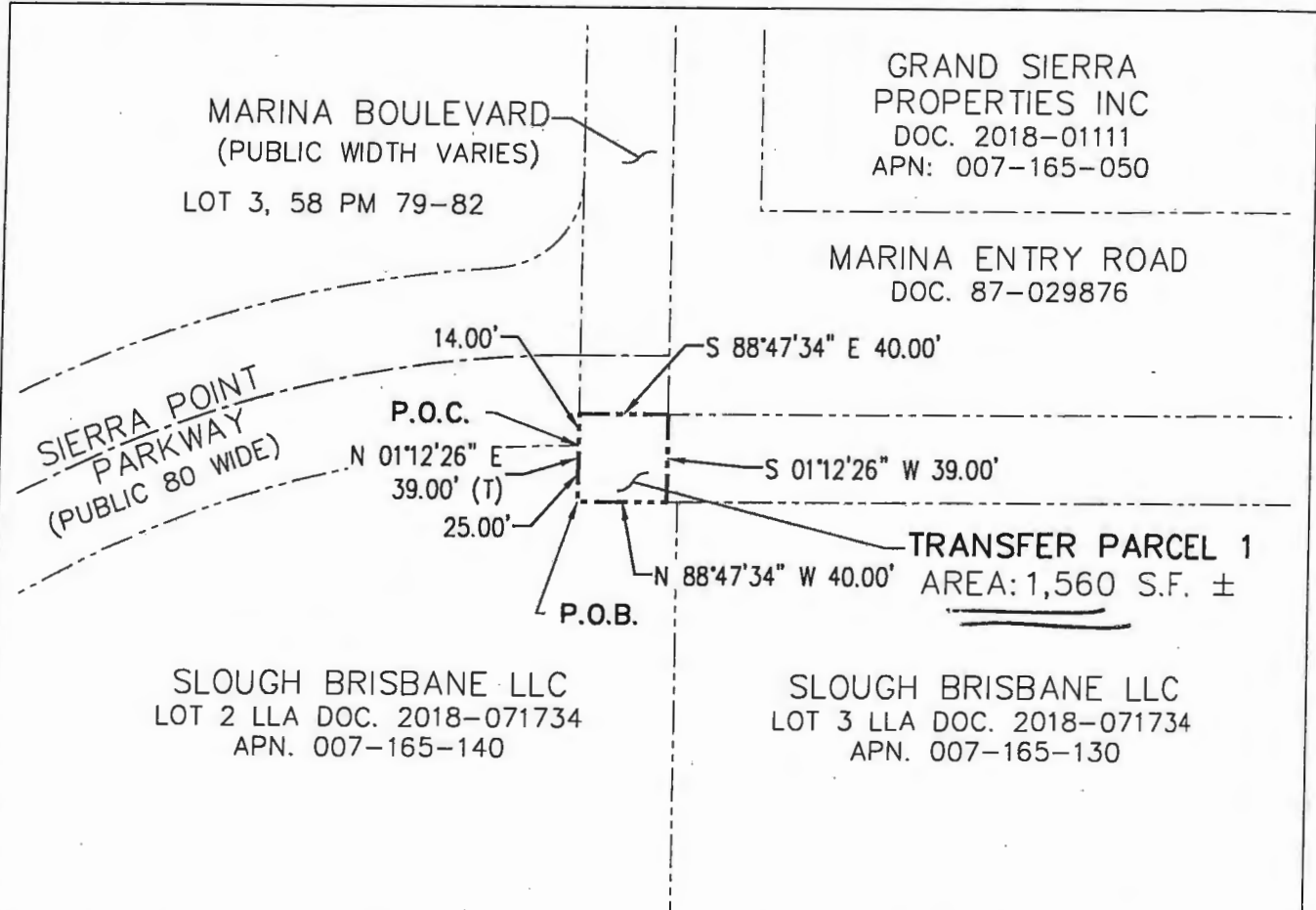
TRANSFER PARCEL 2

SHEET: 4 OF 5

CITY OF BRISBANE, SAN MATEO COUNTY, CALIFORNIA

SCALE: 1"=80'

DATE: 07/02/19

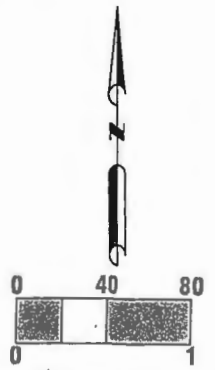


LEGEND:

- BOUNDARY LINE
- ADJOINING PROPERTY LINE
- CENTER LINE
- APN: ASSESSOR'S PARCEL NUMBER
- DOC. DOCUMENT NUMBER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- (T) TOTAL DISTANCE
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T:\635-PMA-HCP\635-093 Sierra Pt 2019 LLA and Easements\Master Survey Drawings\LLA\2019-07-01 Transfer Parcel 1.dwg

WILSEY HAM

3130 LA SELVA STREET, SUITE 100, SAN MATEO, CA 94403 PHONE 650-349-2151 WWW.WILSEYHAM.COM

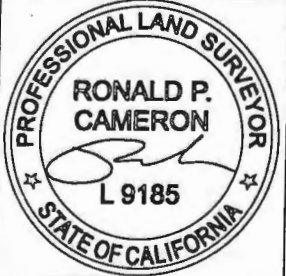


EXHIBIT A
PLAT TO ACCOMPANY LEGAL DESCRIPTION

JOB NO:
635-093

TRANSFER PARCEL 1
CITY OF BRISBANE, SAN MATEO COUNTY, CALIFORNIA

SHEET: 2 OF 2
SCALE: 1"=80'
DATE: 07/02/19