



NOTICE OF MEETING

CITY OF PACIFIC GROVE
CITY COUNCIL
ERRATA SHEET



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

ERRATA SHEET

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: 10/16/2024
SUBJECT: City Council Meeting Agenda- Errata Sheet

Attached is additional information for your consideration at the October 16, 2024 City Council Meeting:

Agenda Item	Information Provided/Corrected
5A	Revision to Page 4 of the Minutes to reflect Public Speaker Lisa Ciani (See page 4 attached.)
11A	1) Maps and Figures Regarding Sloat Avenue and Surrounding Areas (See attached maps and figures.) 2) Agreement for Purchase of Right-Of-Way and Joint Escrow Instructions (See attached agreement.) 3) Revised Ordinance (See attached redlined ordinance.) 4) September 18, 2024 Agenda Report on ATC

Attachments

Revised Page 4 of Minutes
Maps & Figures
Agreement
Revised-Redlined Proposed Ordinance

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Contract Amendment for Professional Services

Action: Approved Amendment #1 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previously approved contract by \$50,000 for a total not to exceed amount of \$150,000.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. David Avenue Sidewalk Project (CIP23-21) – Award of Contract

Action: Awarded an agreement with JMS Cement Contractors, Inc. in an amount not to exceed \$510,020 plus a 10% contingency.

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

C. Boards, Commissions and Committee Appointments

Action: Approved appointments of Roger O'Sullivan to Recreation Board ending January 31, 2029 and Greg Marshall to the Economic Development Commission ending January 31, 2027.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

A. Architectural Review Board Meeting Minutes: May 15, 2024, June 11, 2024, and July 9, 2024

Action: Received minutes.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

B. Planning Commission Meeting Minutes: January 2024 through July 2024

Action: Received minutes.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

8.B. Climate Action and Adaptation Planning Committee

Public comment received from Mike Gibbs, Vince Tuminello, and Lisa Ciani.

Action: Received report on Climate Action and Adaptation Planning Committee status.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

A. Introduction of Proposed Ordinance Amending Chapter 7.40 of the City's Municipal Code to Increase Short-Term Rental Penalties in Accordance with SB 60
No public comment received.

Maps and Figures Regarding Sloat Avenue and Surrounding Areas

Figure 1 – Street Map View of Sloat Avenue and Surrounding Areas

Figure 2 – PG General Plan Transportation Element Circulation Map

Figure 3 – PG General Plan Transportation Element Pedestrian Ways Map

Figure 4 - PG General Plan Transportation Element Bikeways Map

Figure 5 – PG General Plan Health & Safety Element Evacuation Routes Map

Figure 6 – PG Geographic Information System (GIS) Tsunami Line Map

Figure 1 - Street Map View of Sloat Avenue and Surrounding Areas

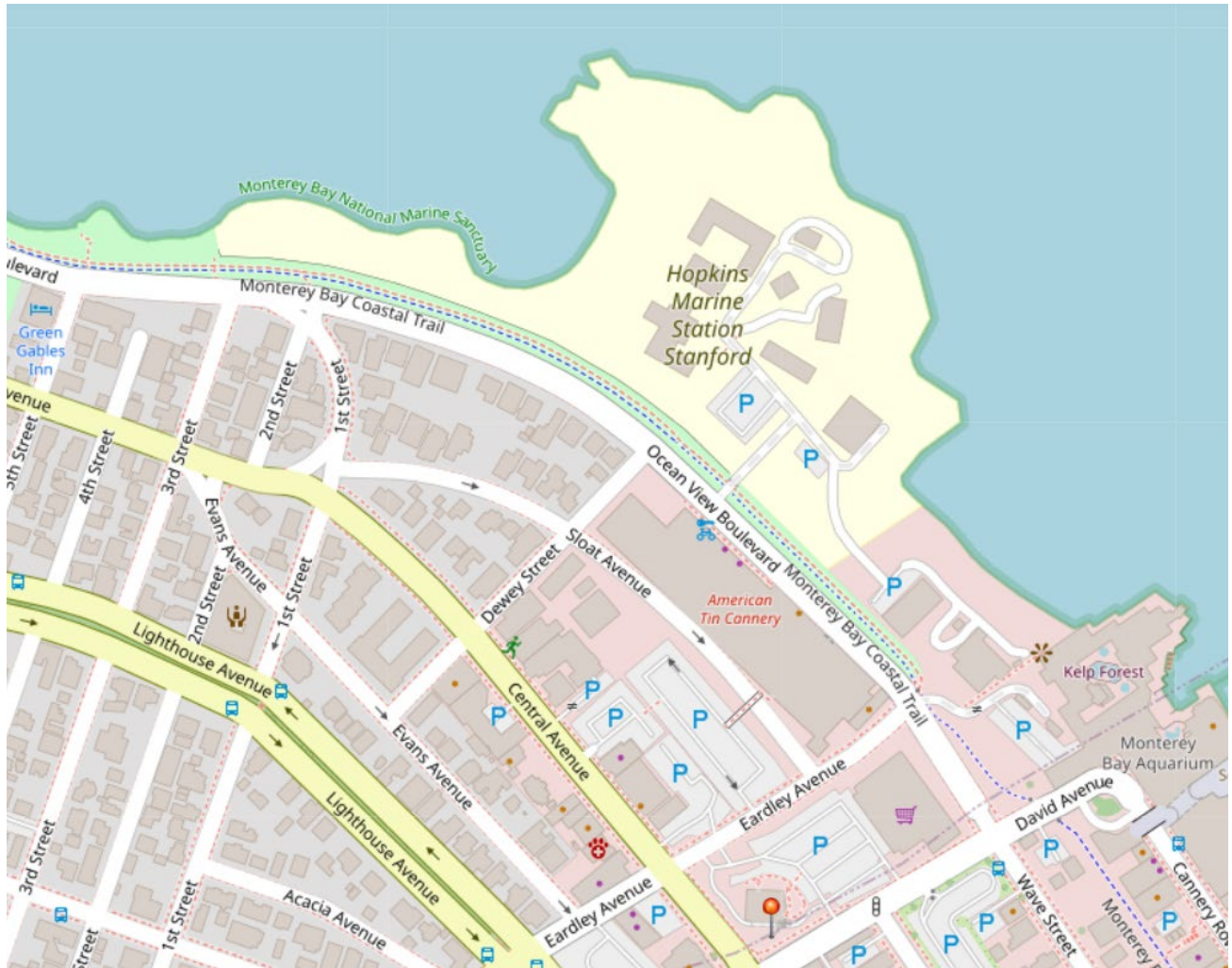


Figure 4-2
Circulation Map

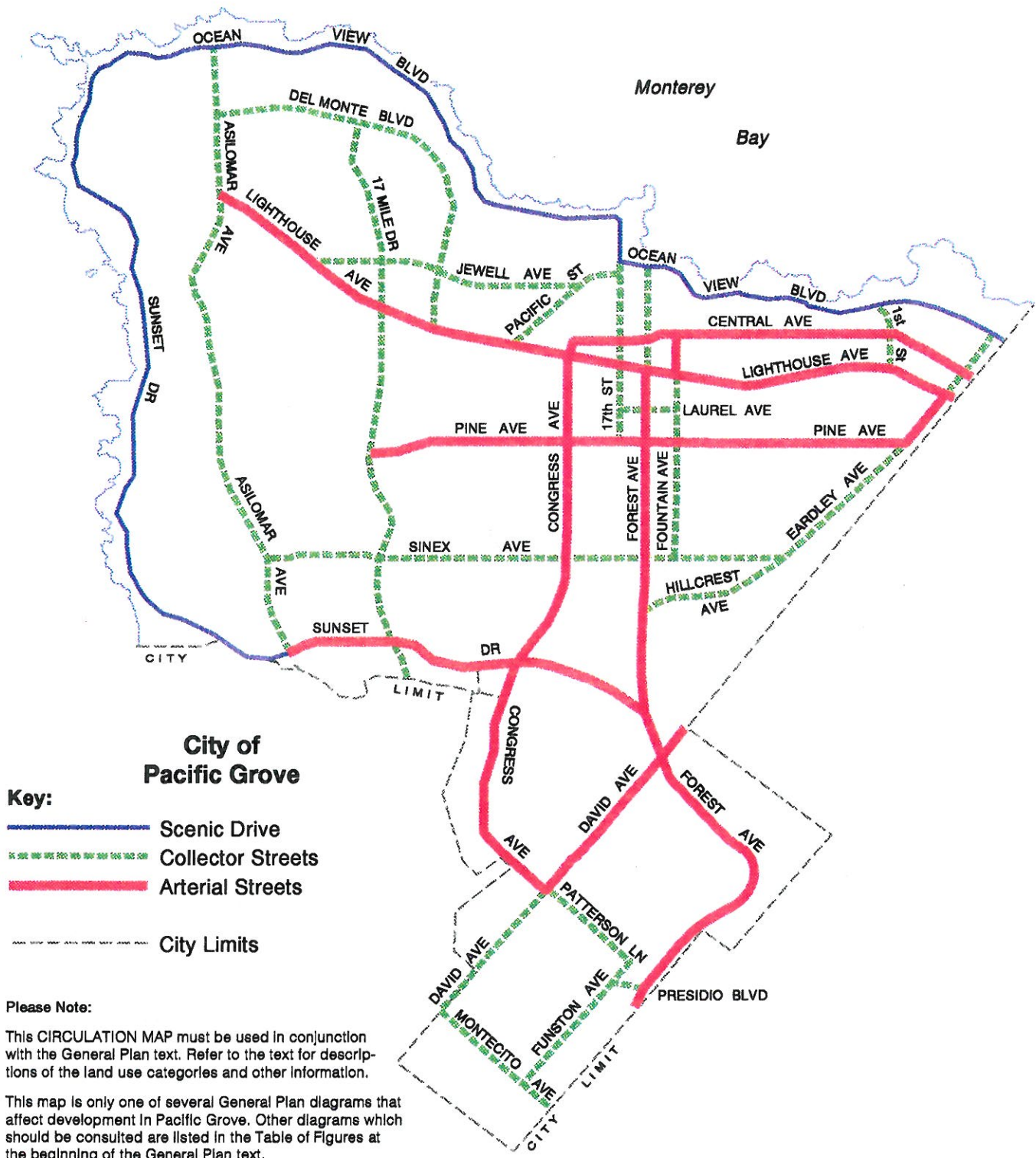


Figure 4-13
Pedestrian Ways

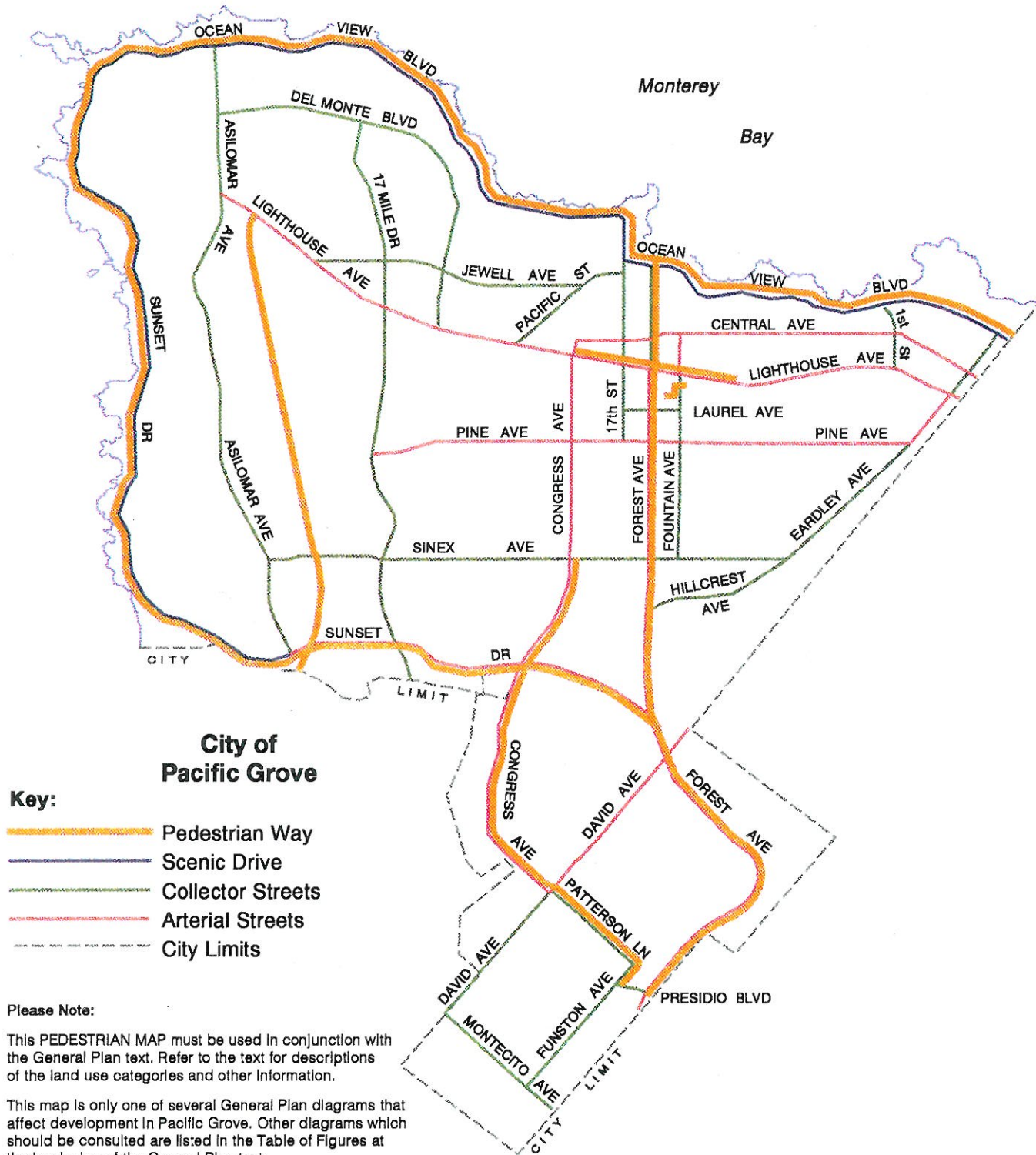


**Figure 4-14
Bikeways**

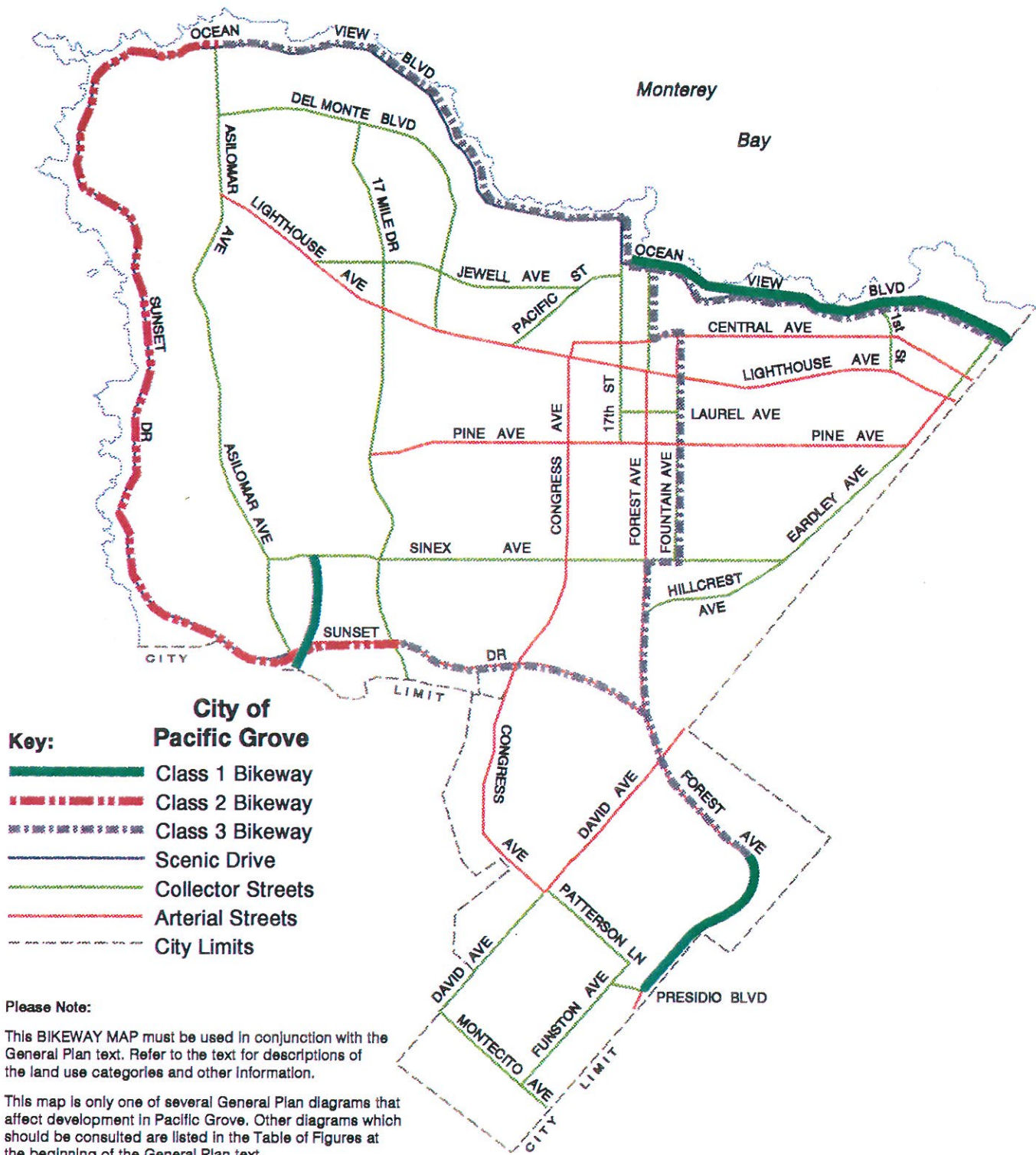


Figure 5 - PG General Plan Health & Safety Element Evacuation Routes Map

Health and Safety, Chapter 10

**Figure 10-2
Evacuation Routes**

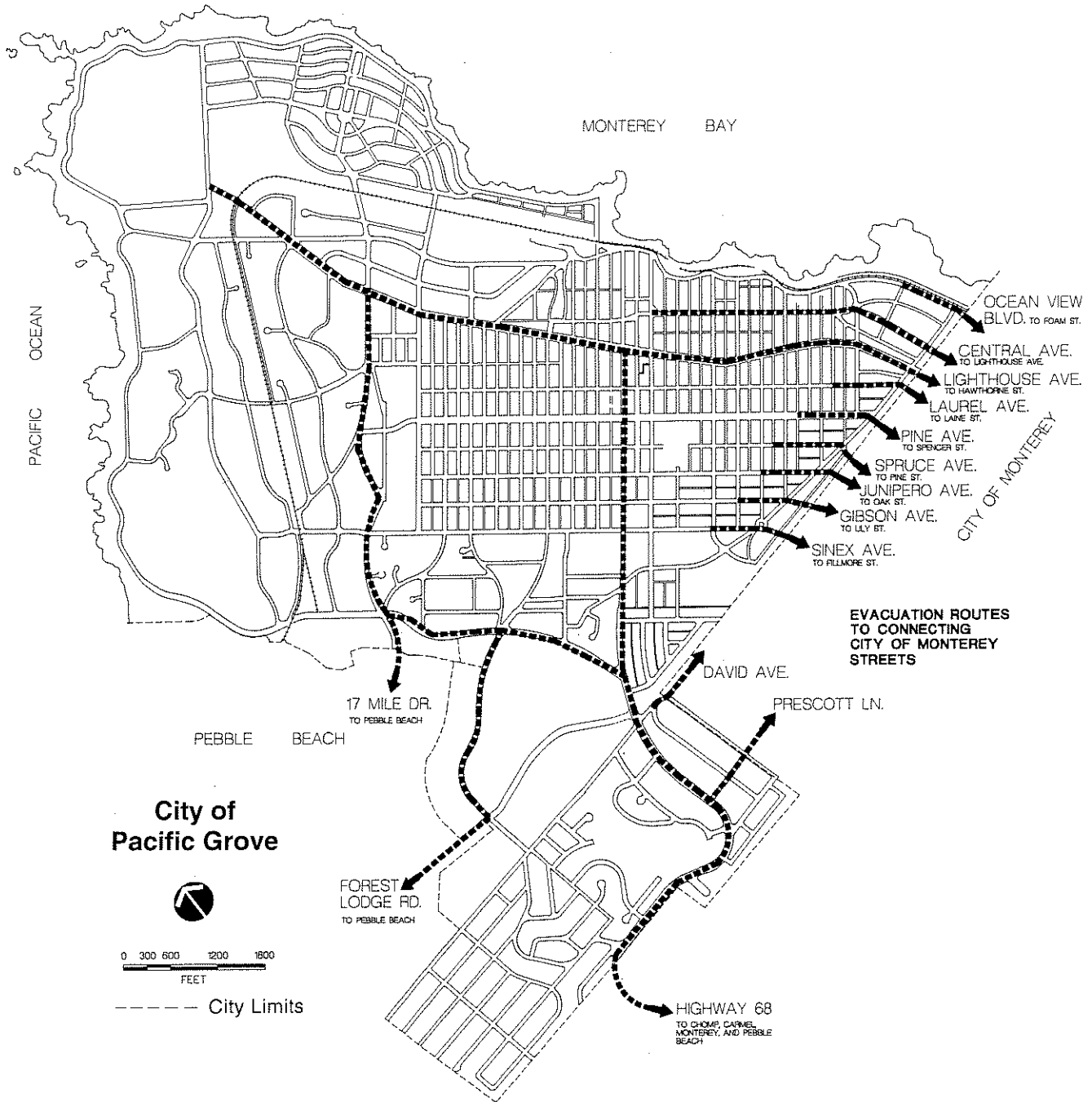
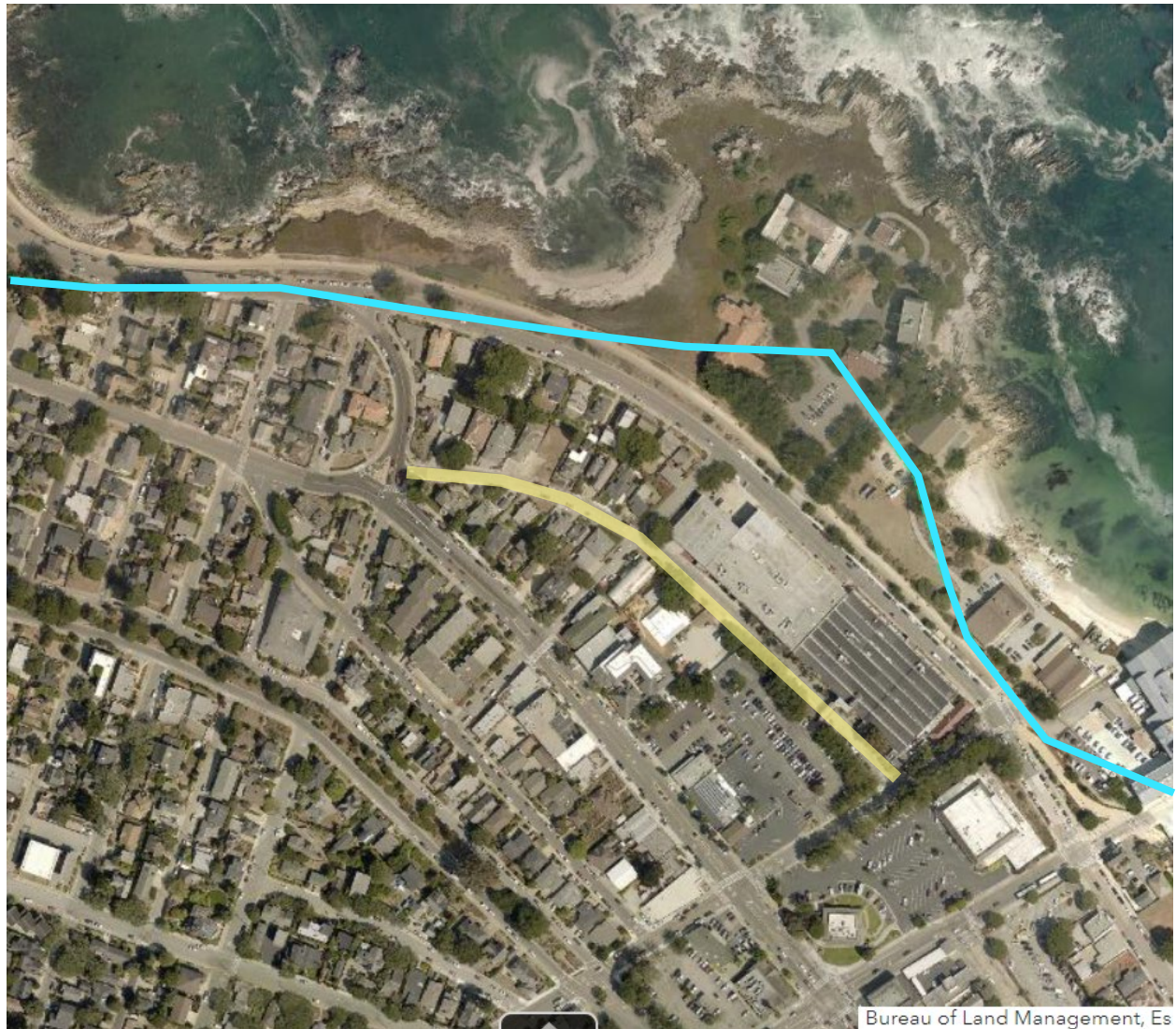


Figure 6 - PG Geographic Information System (GIS) Tsunami Line Map



-  Tsunami Line (GIS)
-  Sloat Avenue

AGREEMENT FOR PURCHASE OF RIGHT-OF-WAY AND JOINT ESCROW INSTRUCTIONS

This Agreement For Purchase Of Right-Of-Way And Joint Escrow Instructions (the "Agreement") is entered into by the City of Pacific Grove, a California municipal corporation ("City") and Foursome Development Company, a California general partnership ("Purchaser") and CCS Pacific Grove, LLC, a Delaware limited liability company ("Developer"). The City, the Developer, and the Purchaser are sometimes referred to in this Agreement, each individually, as a "Party," or collectively, as the "Parties." Purchaser and Developer are sometimes collectively referred to in this Agreement as the "Buyer Parties." This Agreement will be effective as of the date the Agreement is signed by last of the City, the Purchaser and Developer ("Effective Date").

RECITALS

This Agreement is entered into with reference to the following recitals of fact ("Recitals") that City, Purchaser, and Developer believe to be true as of the Effective Date of this Agreement:

A. Developer is the Optionee, and Purchaser is the Optionor, pursuant to that certain Option to Lease Real Property dated as of August 16, 2018 (the "Option"), with respect to the real property described in Exhibit A hereto (the "ATC Site"). Developer, pursuant to the Option intends to enter into a Lease with Purchaser for the ATC Site (the "Lease"), and upon exercise of the Option and entering into the Lease desires to demolish the 165,000 square feet of factory outlet space located at the ATC Site and construct a 222 room hotel with spa, fitness center, restaurant, bars, meeting space, approximately 11,000 square feet of retail space, and other commercial uses on the ATC Site and adjacent parcels, which project is more commonly known as the ATC Hotel and Commercial Project (the "Project").

B. On January 12, 2022, the City Council approved a conditional development permit ("CDP") for the development of a 225-room hotel-resort facility on the approximately 6-acre American Tin Cannery site, including portions of right-of-way on Sloat Avenue and Ocean View Boulevard.

C. On April 11, 2024, the California Coastal Commission ("CCC") acted on Appeal Number A-3-PGR-22-0004, taking jurisdiction over the CDP application for the proposed project and approved a conditioned CDP, contemplating the vacation of Sloat Avenue between Eardley Avenue and Dewey Avenue and a City issued encroachment permit for the private use of public right of way on Ocean View Avenue.

D. Developer's Project, in part, contemplates the vacation of portions of, and the acquisition of any remaining City interest in portions of Sloat Avenue east of Dewey Avenue and west of Eardley Avenue in Pacific Grove (the "Sloat Property"), as described in Exhibit B attached hereto. The Project also requires Developer to obtain an encroachment permit over that certain portion of Ocean View Boulevard (the "Ocean View Property"), as described in Exhibit C attached hereto. The Sloat Property and the Ocean View Property shall collectively be referred to as the "Property" in this Agreement.

E. Pursuant to the Option, Purchaser proposes to acquire the Sloat Property and will include the legal descriptions of the Sloat Property and the Ocean View Property in the legal

description of the ATC Site as of the Closing Date, as said term is defined herein. For the purposes of this Agreement, all references to the ATC Site that pertain to a time period or date after the Closing Date, as said term is hereinafter defined, shall include the Sloat Property and the Ocean View Property. Accordingly, Purchaser's acquisition of the Sloat Property, and Developer's obtaining an Encroachment Permit for the Ocean View Property and Developer's subsequent construction and completion of the Project (as defined below), in part, on the Property pursuant to the terms of this Agreement is in the best interest of the City and the health, safety and welfare of the City's taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City's general plan by: (i) strengthening the City's land use and social structure, and (ii) alleviating economic and physical blight on the Property and in the surrounding community.

F. The City desires, after all necessary public hearings and actions, and subject to the terms of this Agreement, to vacate its existing interest and rights in the Sloat Property and to convey any remaining interest of City in the Sloat Property to the Purchaser to facilitate the development of the Project and the Purchaser desires to obtain title to the Sloat Property free and clear of all easements and rights of way which prohibit or encumber development of the Project, in order to permit Developer to obtain commercially available financing and to develop the Project.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by City, Purchaser and Developer, the Parties agree as follows:

TERMS AND CONDITIONS

1. Recitals.

The foregoing Recitals are true and correct and are hereby incorporated by this reference as though set forth in full.

2. Project

The Project which is the subject of this Agreement is the Project as described in Recital A hereinabove.

3. Conditions of Approval

The Developer agrees to comply with all conditions of approval and other approvals and permits issued by the City and the California Coastal Commission.

4. Agreement to Commence Right-of-Way Vacation Proceedings for Sloat Avenue.

City agrees, upon the terms and for the compensation ("Compensation") set forth in this Agreement, to commence proceedings for the vacation of that certain right-of-way over a portion of the street commonly known as Sloat Avenue, (the "Sloat Avenue Property"), situated in the City of Pacific Grove, County of Monterey, State of California, which is legally described in the Legal Description attached hereto as Exhibit B and incorporated herein.

5. Agreement Regarding Encroachment Permit for Ocean View Avenue

City agrees, upon the terms set forth in this Agreement, and applicable provisions of the City Municipal Code and city policies, to process an application by Developer for an encroachment permit for a portion of the street commonly known as Ocean View Boulevard (the “Ocean View Avenue Property”), situated in the City of Pacific Grove, County of Monterey, State of California, which is legally described in the Legal Description attached hereto as Exhibit "C" and incorporated herein.

6. Compensation.

The compensation to be paid to the City by Purchaser for the vacation of the Sloat Avenue Property will be \$1,917,665 (One million nine hundred seventeen thousand six hundred sixty-five Dollars). Purchaser shall pay the Compensation by depositing into Escrow, on or prior to the Closing Date, immediately available funds in the total amount of the Compensation.

7. Conveyance of Title to Sloat Avenue Property.

Subject to the City Council, in its sole and absolute discretion, affirmatively vacating the Sloat Property, and subsequent thereto, City agrees to convey by deed (the “Deed”) to Purchaser title to the Sloat Avenue Property, free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes except current taxes not yet due and payable; covenants, conditions, restrictions and reservations of records; and easements created by Purchaser, provided, however, that Developer and Purchaser shall cause all tenants of the ATC Site to vacate their leaseholds before closing Sloat Avenue to such tenants and their invitees.

8. Contribution to Transportation.

Developer to make a monetary contribution in the amount ~~not to exceed~~ of \$50,000, toward a local transportation program (local shuttle, trolley, MST route extension, or similar program). To the extent permissible, the monetary contribution may be credited toward the required Transportation Demand Management (TDM) program as required in ATC Hotel and Commercial Project Environmental Impact Report (EIR) greenhouse gas (GHG) mitigation measure MM GHG 2.1. Monetary contribution to be provided at building permit issuance for the Project.

9 Utilities

Developer, at its sole expense, shall relocate, if necessary, any and all utilities which may exist in the vacated portion of Sloat Avenue Property.

10. Parking

Developer agrees to provide 17 public parking spaces at 124 Central Avenue before the Developer takes action to remove the public parking on the portion of Sloat Avenue that is vacated.

11. Public Improvement Agreement.

Prior to the Close of Escrow, Developer shall enter into a public improvement agreement with the City, obligating Developer to construct the public improvements required as a CDP condition of approval of the Project by the City and the CCC. Such public improvement agreement shall be secured by one of the forms of security set forth in Government Code Section 66410 et seq. and shall include requirements for the Developer name the City and its officers, officials, employees and agents as insureds, or additional insureds, for liability insurance. The public improvement agreement will require that if the project is not completed that the Developer will restore all public improvements to their pre-construction condition to the extent feasible. The public improvement agreement shall be subject to approval by the City Manager in consultation with the City Attorney.

12. Reimbursement.

Developer agrees to reimburse City for staff costs associated with the processing of the Sloat Avenue in the lump sum amount of Thirty Thousand and 00/100 Dollars (\$30,000.00). Said amount shall be deposited by Developer with the Escrow Agent and the Escrow Agent shall disburse the \$30,000.00 to the City at Close of Escrow or upon the earlier termination of the Escrow.

13. Ordinance

The City Council, in its sole and absolute discretion, shall consider an ordinance ("Ordinance") authorizing the vacation of Sloat Avenue. The Ordinance shall include conditions prior to the Ordinance becoming effective. The Developer agrees to provide the City prior to Close of Escrow with documentation which shall be subject to approval of the City Manager in consultation with the City Attorney that all conditions set forth in the Ordinance have been satisfied.

14. Indemnification

Developer and Purchaser shall, to the fullest extent permitted by law, indemnify, release, defend (with counsel approved in writing by the City), and hold harmless City and its officers, agents, contractors, and employees (collectively, the "City Indemnitees"), from and against any and all claims, actions, liabilities, losses, damages, fees, costs and expenses, including for and on account of any damage or injury to any person or to real or personal property of any person, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation (collectively, "Claims"), arising out of (a) the City's vacation of Sloat Avenue; (b) the closure of Sloat Avenue; and/or (c) the encroachment permit for the Ocean View Property.

15. Escrow.

The Parties have opened or shall open an escrow (the "Escrow") in accordance with this Agreement at Chicago Title Company, Attn: Jennifer Lewis (the "Escrow Agent"). The Escrow Agent shall also act as the issuer of title insurance in connection with the transaction contemplated herein (the "Title Company").

15.1 This Agreement, together with the escrow instructions prepared by Escrow Agent and executed by the Parties, constitutes the joint escrow instructions of the Parties, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement.

15.2 Prior to the Close of escrow, as defined herein, the City shall deliver into Escrow a certified copy of its Resolution of Vacation of the Property, as recorded in the official records of the County of Monterey, and shall execute, acknowledge and deliver into Escrow the Deed in a form approved by Parties and reasonably acceptable to the Title Company.

15.3 The term “Close of Escrow” shall mean the date on which the Deed and other necessary instruments of vacation and conveyance are recorded in the office of the Monterey County Recorder. The Close of Escrow shall occur 30 days after the last to occur of satisfaction of the following conditions, or such earlier date as agreed to by the parties: (a) the expiration of the deadline to file a legal challenge to the Ordinance approving the sale of Sloat Avenue to the Purchaser without a legal challenge being filed, (b) Title Company shall be unconditionally committed to issue to Purchaser an ALTA owners’ extended policy of title insurance, with coverage in the full amount of the Purchase Price and insuring fee title to the Sloat Property; (c) Developer has obtained the Regulatory Approvals, subject to conditions of approval acceptable to Buyer Parties in their sole discretion, any applicable appeal period has expired without appeal having been filed or, if an appeal is filed, such appeal has been denied, and no legal action has been instituted against Developer, the Purchaser, or the City alleging the invalidity of such entitlements. “Regulatory Approvals” means those land use entitlements and utility capacity service agreements required for the Project, including without limitation: grading, demolition and building permits, water and sewer capacity agreements, all to the extent applicable for Developer’s intended development and use of the Property for the Project. Notwithstanding the foregoing, Developer and Purchaser may each waive this condition to Closing in their respective sole discretion; and (d) Developer has exercised its Option to enter into a Lease with respect to the ATC Site, provided that the exercise of the Option may be concurrent with the Close of Escrow at the option of Developer and Purchaser.

15.4 Purchaser agrees to deposit into Escrow the sum of \$1,917,665 (One million nine hundred and seventeen thousand and six hundred and sixty-five dollars) on or prior to the Close of Escrow.

15.5 Upon the conditions for Close of Escrow being met, the Escrow Agent shall make payment to the City the amount of \$1,917,665 (One million nine hundred and seventeen thousand and six hundred and sixty-five dollars).

15.6 If the Close of Escrow does not occur on or prior to the date that is five (5) years after the Effective Date, then this Agreement shall be terminated and of no further force and effect.

16. Closing Costs, Prorations, Possession.

16.1 Purchaser shall pay the premium for any ALTA extended coverage Title Policy, cost of procuring a survey and all requested ALTA survey policy endorsements, and the cost of recording the Deed.

16.2 City shall pay 100% of any documentary or other transfer taxes payable on account of the conveyance of the Property to Purchaser, CLTA standard coverage title policy fees, and the Title Company's charges and fees which may be charged by the Title Company in connection with the Close of Escrow.

16.3 Purchaser shall be entitled to exclusive possession of the Property immediately upon the Close of Escrow.

16.4 All prorations shall be made in accordance with customary practice in Monterey County, except as otherwise expressly provided in this Agreement. All prorations shall be on an "actual day" basis and a three hundred sixty-five (365) day year.

17. Broker's Commission.

City and Purchaser and Developer each warrant and represent that they have not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that they are not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the sale of the Property.

18. Notices.

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by reputable overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, three (3) business days after the date of posting by the United States post office; or (iii) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day. Notice of change of address shall be given by written notice in the manner described in this Section. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City: City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950
Attention: City Manager

COPY TO: Burke, Williams & Sorensen, LLP
2310 East Ponderosa Drive, Suite 25
Camarillo, CA 93010
Attention: Brian A. Pierik

Purchaser: Foursome Development Company,
a California general partnership
555 Abrego Street
Monterey, CA 93940
Attention: Michael W. Zimmerman

COPY TO: The Law Offices of Hubbard & Hubbard
400 Camino Aguajito
Monterey, CA 93940
Attention: Alex Hubbard

Developer: CCS Pacific Grove Manager, LLC
3760 Kilroy Airport Way, Suite 130
Long Beach, CA 90806
Attn: Nicholas Long

COPY TO: Lubin Olson & Niewiadomski LLP
The Transamerica Pyramid
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Attn: Robert Miller

19. Default.

Failure or delay by either party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default complained of. The defaulting party shall immediately commence to cure such default and shall diligently complete such cure within ten (10) days from the date of the notice. The injured party shall have the right to terminate this Agreement by written notice to the other party in the event of a default which is not cured within such ten (10) day period. In the event of default by Purchaser or Developer under this Agreement, City waives the right to seek specific performance of Purchaser's obligation to purchase the Property as provided in this Agreement, or to seek speculative, consequential, contingent or punitive damages, including any claim for lost profits. City's remedies in the event of a default by Purchaser or Developer under this Agreement shall be limited to an action at law to recover City's actual damages incurred by City resulting directly from such default, and the City waives all other remedies, damages and causes of action.

20. City's Repurchase Option.

Purchaser and Developer represent that the purpose of the acquisition of the Property is solely for the benefit of the Project, and acknowledge that City would not agree to convey the Property to Purchaser except in consideration of the benefit of the Project to the City. Accordingly, Purchaser hereby grants to City an option to repurchase the Property ("Repurchase Option") on the terms and conditions set forth in this Section. Seller shall be entitled to exercise the Repurchase Option if Developer fails to complete the construction of the Project in substantial conformity with the plans for the Project approved by the City (as such approval may be changed from time to time) within four (4) years from the date on which Developer commences construction of the Project, which date shall be within one year of the City's issuance of the building permit, subject to Unavoidable Delay. City shall exercise the Repurchase Option by delivering notice to Purchaser of its intent to exercise the Repurchase Option ("Option Notice"). The Option Notice shall describe in reasonable detail the basis for the Option Notice. If City exercises the Repurchase Option, City shall pay to Purchaser for the purchase of the Property an amount equal to the original Compensation less an amount equal to the City's cost of restoring the Property to its condition immediately prior to the Close of Escrow under this Agreement. Closing Costs shall be allocated as provided in Section 12, except City shall pay the costs allocated to Purchaser, and Purchaser shall pay the costs allocated to City. "Unavoidable Delay" means any delay that is caused by the other party or that is beyond the control of the City, the Developer, or the Purchaser including delay caused by strikes, acts of God, weather, earthquake, tsunami, inability to obtain labor or materials, inability to obtain governmental permits or approvals, moratoria, governmental restrictions, including, but not limited to restrictions in response to a pandemic, epidemic, or contagion, declared state of emergency, civil commotion, fire or other causes beyond the reasonable control of the parties.

21. Entire Agreement.

This Agreement and its exhibits constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understanding of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

22. Governing Law.

This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California without regard to its choice of law principles.

23. Amendments.

No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by the Parties.

24. Counterparts and Electronic Signatures.

This Agreement may be executed in one or more counterparts, and executed and transmitted electronically, and each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

25. Binding Upon Successors.

The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the Parties hereof.

26. Cooperation.

Each party agrees to cooperate with the other in the Closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement:

SIGNATURES ON FOLLOWING PAGE

City:

CITY OF PACIFIC GROVE, a charter city and
municipal corporation

Date: _____

By: _____
Bill Peake, Mayor

ATTEST:

Sandra Kandell, City Clerk

Purchaser:

Date:_____

FOURSOME DEVELOPMENT COMPANY, a
California general partnership

By:_____

THEODORE J. BALESTRERI

Its: Managing General Partner

Developer:

CCS PACIFIC GROVE, LLC,
a Delaware limited liability company

Date: _____

By: CCS PACIFIC GROVE MANAGER, LLC
Its Manager

By: CCA MANAGEMENT, LLC
Its Manager

By: _____
Name: Nicholas Long
Its: CFO and authorized signatory

Exhibit A

ATC Site

EXHIBIT A Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF MONTEREY, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

Lots 1 through 28, inclusive, in Block 1, as said Lots and Block are shown on that certain Map entitled, "Map of The University Addition to Pacific Grove", filed August 17, 1909 in Volume 2, Maps of "Cities and Towns", at Page 21, in the Office of the County Recorder of the County of Monterey, State of California.

[APN: 006-231-001-000](#)

PARCEL II:

Lots 1 through 10, inclusive, in Block 4, as said Lots and Block are shown on that certain Map entitled, "Map of The University Addition to Pacific Grove", filed August 17, 1909 in Volume 2, Maps of "Cities and Towns", at Page 21, in the Office of the County Recorder of the County of Monterey, State of California.

[APN: 006-234-004-000 006-234-005-000](#)

EXHIBIT "B"
AREA PROPOSED FOR VACATION: SLOAT AVENUE
LEGAL DESCRIPTION

Certain real property situate in the City of Pacific Grove, County of Monterey, State of California, described as follows:

Being a portion of that certain street shown as Sloats Avenue (commonly known as Sloat Avenue) on that certain map filed on August 17, 1909 as Volume 2 Cities and Towns at Page 21 of said County, more particularly described as follows:

Being that portion right of way of Sloat Avenue lying between Blocks 1 and 4 lying southeasterly of the northeasterly prolongation of the northwesterly line of Lot 10 in said Block 4.

Containing an area of 0.45 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof

END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS

RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 3400.00



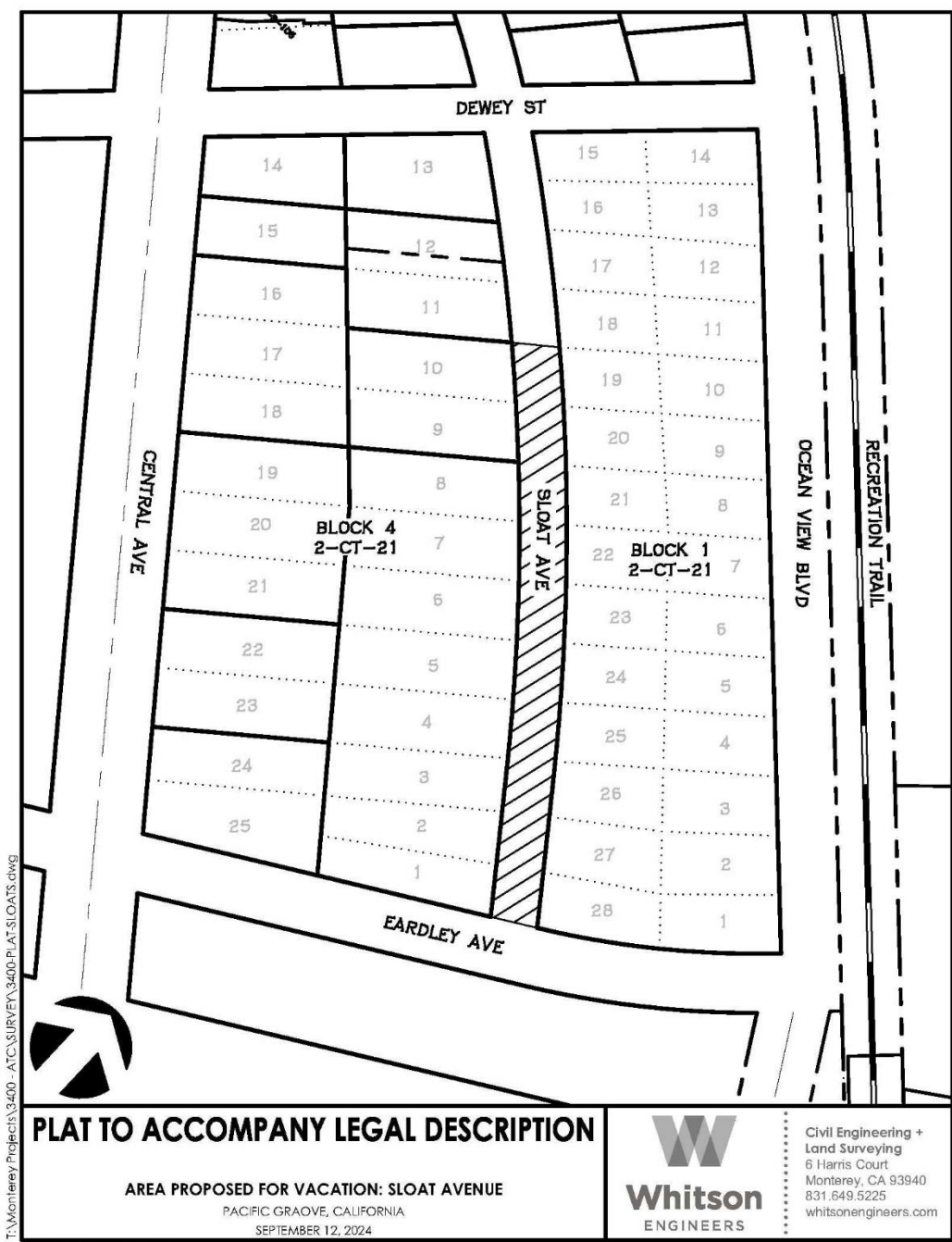


EXHIBIT “C”

LEGAL DESCRIPTION FOR OCEAN VIEW AVENUE
(APN _____)

[to be inserted]

ORDINANCE NO. 24-__

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE CONDITIONALLY ORDERING THE VACATION OF EXCESS RIGHT-OF-WAY LOCATED ON SLOAT AVENUE, EXCEPTING AND RESERVING RIGHTS FOR EXISTING AND PROPOSED PUBLIC UTILITY FACILITIES

FACTS

1. The City of Pacific Grove (“City”) passed Resolution No. 24-__ on September 18, 2024, declaring its intention to vacate the excess public right-of-way easement on the real property located on Sloat Avenue (the “Excess Right-of-Way”), which is approximately 19,602 square feet and adjacent to the proposed American Tin Cannery Hotel and Commercial development (together, the “ATC Development”).

2. The proposed adjacent ATC Development includes certain development and uses on a portion of the Excess Right-of-Way which the City will no longer need to maintain once the ATC Development is approved and constructed.

3. The City certified an Environmental Impact Report (EIR) on January 12, 2022, for the ATC Development (SCH #2019110152) and made the requisite CEQA findings for the certification of the EIR. The EIR evaluated the environmental impacts of the project including the development and uses of the subject Excess Right-Of-Way, and as such, no additional CEQA review is required.

4. On October 28, 2021 and November 18, 2021, the Planning Commission conducted a duly-noticed public hearing on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402.

5. On January 12, 2022, the City Council heard an appeal of the Planning Commission’s decision on the ATC Development and reviewed the vacation for conformity with the General Plan in accordance with Government Code Section 65402. The City Council found the vacation of the subject Excess Right-of-Way to be in conformance with the City’s General Plan.

6. On April 11, 2024, the California Coastal Commission (“CCC”) conducted appellate proceedings on the City’s approval of the ATC Development, determined that the ATC Development as modified will not result in any significant environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A), and approved the ATC Development subject to five (5) standard conditions and sixteen (16) special conditions.

7. No further CEQA review or action is required in connection with this condition order of vacation of the Excess Right-of Way pursuant to Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California (the “Vacation Statute”).

8. The Vacation Statute allows the City Council to adopt a resolution vacating excess street rights-of-way that are no longer required for street purposes, excepting and reserving rights for existing and proposed public utility facilities.

9. Article 15(g) of the City's Charter provides, in pertinent part, that except as provided by General Law, or by this Charter, no action providing for the....acquisition, sale, lease, encumbrancing or disposition of real property of the City, or any interest therein....shall be taken except by ordinance.

10. Government Code Section 50020 provides that "[w]hen a statute requires a local agency to take legislative action by resolution and the local agency is required by its charter to take legislative action by ordinance, action by ordinance is compliance with the statute for all purposes."

11. The Excess Right-of-Way described in both legal and map form in Exhibits A and B, is no longer needed for street purposes should the ATC Development receive all necessary Building Permits as well as approvals for any associated relocation or rerouting of existing public and private utilities; and

12. The City Council has duly considered the staff report and public comments, if any, and desires to vacate the Excess Right-of-Way.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ORDAINS AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION 2. The City Council hereby elects to proceed under and pursuant to the provision of Division 9, Part 3, Chapter 3 of the Streets and Highways Code of the State of California, and in particular, Sections 8324 thereof, and hereby orders the vacation of the Excess Right-of-Way described in Exhibit A, and shown on the plot labeled Exhibit B, each such Exhibit attached hereto and made a part hereof by this reference.

SECTION 3. This ordinance shall take effect only upon, and the vacation of the Excess Right-of-Way is conditioned upon and shall not be effective until, the occurrence of all of the following:

- a. Developer of the ATC Development (the "Developer") has submitted a plan or plans for utility relocation and maintenance (including the temporary protection or provision for utility connection to adjacent properties throughout the course of construction) of existing public and private utilities, including but not limited to fiber optics owned by the Monterey Bay Aquarium Foundation, which is approved by the City and the appropriate utility; and
- b. The City and Developer have entered into a legally binding agreement (the "Agreement") for the conveyance of the City's interest in the land underlying the existing easement. If the City and Developer do not enter into such

agreement within ninety (90) days of the date of adoption of this ordinance, this ordinance will be null and void; and

- c. The City has to its reasonable satisfaction determined that the existing rights of the property owners in the vicinity of the Excess Right-of-Way, including the right to access, use, and develop their parcels now and in the future, consistent with state and local law, have been maintained or an alternative arrangement has been made consistent with the terms of the ATC Development approvals, including CEQA and applicable mitigation measures.
- d. Pursuant to the Agreement the City's interest in the land underlying the Excess Right-of-Way has been conveyed from the City to the [Purchaser \(Foursome Development Company\)](#) ~~Developer~~; and
- e. This ordinance has been recorded by the City Clerk with the Monterey County Recorder following the Close of Escrow, as that term is defined in the Agreement, and the City's interest in the underlying property has been quit claimed from the City to the [Purchaser](#) ~~Developer~~.
- f. The passage of thirty (30) days following the adoption of this ordinance in accordance with Article 15 of the City Charter.

SECTION 4. That from and after the date this ordinance is recorded, the Excess Right-of-Way is vacated and no longer constitutes a public right-of-way.

SECTION 5. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 6. The Mayor shall sign and the City Clerk shall attest to the passage of this Resolution.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 16th day of October, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED:_____

SANDRA ANN KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney
Burke, Williams & Sorensen, LLP

Exhibit A

Legal Description

EXHIBIT "A"
AREA PROPOSED FOR VACATION: SLOAT AVENUE
LEGAL DESCRIPTION

Certain real property situate in the City of Pacific Grove, County of Monterey, State of California, described as follows:

Being a portion of that certain street shown as Sloats Avenue (commonly known as Sloat Avenue) on that certain map filed on August 17, 1909 as Volume 2 Cities and Towns at Page 21 of said County, more particularly described as follows:

Being that portion right of way of Sloat Avenue lying between Blocks 1 and 4 lying southeasterly of the northeasterly prolongation of the northwesterly line of Lot 10 in said Block 4.

Containing an area of 0.45 acres, more or less.

Attached hereto is a plat to accompany legal description, and by this reference made a part hereof

END OF DESCRIPTION

PREPARED BY:
WHITSON ENGINEERS

RICHARD P. WEBER P.L.S.
L.S. NO. 8002
Job No.: 3400.00



Exhibit B

Plot Depiction

