

United States Department of Agriculture  
Agricultural Research Service

**EASEMENT DEED**

THE UNITED STATES OF AMERICA, acting by and through the Department of Agriculture, Agricultural Research Service first party, hereinafter called Government, hereby grants and conveys an Easement to the City of Albany, a municipal corporation second party, hereinafter called Grantee to construct, operate and maintain a paved public Bikeway, hereafter referred to as the "Facilities" in, on, across, over or under, as may be, of the property of the Government, described as follows on Exhibit "A" (legal description) attached hereto and made a part hereof, and as shown on Exhibit "B" (plat map) attached hereto and made a part hereof.

The foregoing Easement is given pursuant to USDA's letter of project support dated March 31, 2010, and is made subject to the following terms and conditions:

1. The Location Coordinator, Howard Q. Zhang, is designated as the onsite representative of the Government for the administration of this Easement.
2. The Government does not warrant the title to any of said land, and the rights and privileges herein granted shall be subject to any mineral reservation or other rights, if any, now outstanding in third parties.
3. The rights and privileges hereby granted shall not be assigned by the Grantee without the written consent of the Government.
4. The Grantee shall be liable for any damage resulting to the Government from the use of the property by the Grantee and shall hold the Government harmless from any and all claims or damages by third parties from the use of the property by Grantee.
5. The Government reserves unto itself, its nominees and assigns, the right to use any part of said lands for any purpose, provided such use does not interfere with the rights and privileges hereby granted.
6. The Grantee shall be responsible for the maintenance and security of all of its equipment located within the Easement area covered by this grant.
7. No soil or materials shall be placed on property of the Government outside of the granted area, and refuse, if any, resulting from clearing of the land shall be disposed of to the satisfaction of the onsite representative or designee.
8. Any property of the Government damaged in connection with said construction will be repaired by the Grantee at no expense to the United States.
9. The Grantee shall not use an "active ingredient" as defined in Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (61 Stat. 163; 7 U.S.C. §135 et seq.), in violation of said Act on the land described in this Easement.
10. The area granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the ARS Real Estate Warrant Officer, or his designated representative, to be necessary, without liability or expense to the Government, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the Government.
11. In the event the Grantee fails to use the Easement for a consecutive 2 year period from the date hereof, or in the event the Grantee shall at any time abandon the use of the property for the purpose for which granted, or in the event the Grantee shall violate any of the provisions of this grant, the Government may terminate this grant by giving the Grantee notice in writing 60 days in advance of such termination and the rights thereby granted shall thereupon terminate.
12. This Easement may be terminated at will, by Grantee or Government, upon receipt of written notice of its cancellation by either party. Any notice of termination or cancellation of this Easement must be given to the non-termination party, at least 120 days prior to the actual proposed termination date. This period of notice shall commence from the date notice is actually received by the non-terminating party.  
If any site preparation or construction has begun at the time of the termination, Grantee will be responsible for removing any structures associated with the project from Government property and restore the site to its original condition, or better, within 90 days of the effective date of the termination, unless otherwise agreed upon by the parties to this Easement.
13. The Grantee does by the acceptance of this Easement covenant and agree for itself, its assigns, and its successors in interest to the property herein conveyed or any part thereof, that the covenants set forth below shall attach to and run with the land:

(a) That the aforesaid granted Easement area will be used in full compliance with Title VI of the Civil Rights Act of 1964, and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this deed to the end that no person in the Government shall, on the ground of race, color, religion, sex, age, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any programs or activities provided thereon; and

(b) That the Government shall have the right to judicial enforcement of these covenants not only as to the Grantee, its successors and assigns, but also as to lessees and licensees doing business or extending services under contractual or other arrangements on the land herein conveyed.

(c) In the event of a breach of any of the conditions set forth above, all right, title, and interest in and to the above-described property shall, at the option of the Government, revert to and become the property of the United States of America, which shall have an immediate right-of-entry thereon, and the Grantee, its successors or assigns, shall forfeit all right, title and interest in and to the above-described property and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Government to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee, with respect to such future performance, shall continue in full force and effect.

14. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this grant or to any benefit to arise therefrom. This provision shall not be construed to extend to this grant if made with a corporation for its general benefit.
15. This Easement shall be granted for a period of 30 years and terminate on August 31, 2040.
16. This Easement was granted in consideration of \$1.00 dollar paid by the Grantee to the Government.
17. The Grantee shall be exclusively responsible to pay for or perform all claims, costs, expenses, fines, penalties, fees, actions, or sanctions arising out of or relating to any condition or circumstance which requires or may in the future require investigation, cleanup, removal, remedial action, or other response under any Environmental Laws which are now or may in the future become applicable to or affect the Easement area, except that the Government shall be responsible for any solid waste, hazardous substances, hazardous waste, toxic or hazardous material, pollutants or contaminants contributed after this date to the Lands by the Government. For purposes of this Easement deed, the term "Environmental Laws" shall mean all Federal, State and local laws including statutes, regulations, ordinances, codes, rules and other governmental restriction and requirements relating to the environment or solid waste, hazardous substances, hazardous waste, toxic or hazardous material. Pollutants or contaminants including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ S601, et seq., the Federal Water Pollution Control Act as amended, 33 U.S.C. §§ 1251, et seq., and the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6S01, et seq., now or at any time hereafter in effect.

List any additional provisions or conditions. If none, so state.

None.

<i>IN WITNESS WHEREOF, the United States of America acting by and through the United States Department of Agriculture, has executed these presents.</i>	Signature	
	Authorized Representative* Title	Date
WITNESSES (Signatures)	GRANTEE'S ACCEPTANCE	
	Signature	
	Authorized Representative's Title	
	Date	

UNITED STATES OF AMERICA

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ to me personally known who being duly sworn by me, did say that he is the \_\_\_\_\_, Agricultural Research Service, United States Department of Agriculture, and that the seal affixed to this instrument is the seal of the United States Department of Agriculture and that instrument was signed and sealed on behalf of the United States of America by authority duly given, and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of the United States of America.

Given under my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_

FormARS-495 (9/99)

NOTARY PUBLIC

## EXHIBIT A


### Bikeway Easement

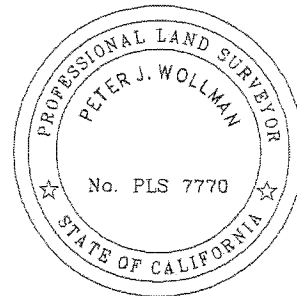
A Bikeway Easement situated in the City of Albany, County of Alameda, State of California, being a portion of the United States Department of Agriculture (USDA) parcel of land described in a deed recorded May 22, 1939 in Book 3780, Pages 81-84, in the Alameda County Records, as shown on the Survey Map filed August 5, 1999 in Book 23 of Records of Survey at Pages 84-86 (ROS 1583), in the Alameda County Records, and being more particularly described as follows:

Commencing at the northeasterly corner of said USDA parcel (3780 OR 81-84) as shown on said ROS 1583 (R/S 23, PG. 84-86) also being an angle point on the southerly Right of Way line of Buchanan Street; thence proceeding southerly along the easterly line of said parcel, South  $1^{\circ}51'23''$  East, 43.50 feet to the southeasterly corner of the parcel of land described in the Revocable Permit granted to the City of Albany by USDA on May 22, 1963, on file with said City (Resolution 63-19), being the **True Point of Beginning**; thence leaving said easterly parcel line (3780 OR 81-84) and following the southerly line of said Revocable Permit parcel along the follow courses and distances, South  $88^{\circ}08'37''$  West, 140.79 feet to a non-tangent curve to the left of which the center bears South  $41^{\circ}13'44''$  West; thence northwesterly along said non-tangent curve, having a radius of 44.50 feet, through a central angle of  $43^{\circ}05'24''$ , an arc length of 33.47 feet; thence South  $88^{\circ}08'37''$  West, 284.24 feet to a tangent curve to the left; thence along said tangent curve, having a radius of 400.00 feet, through a central angle of  $14^{\circ}02'10''$ , an arc length of 97.99 feet; thence South  $74^{\circ}06'27''$  West, 2.71 feet; thence leaving said southerly line of Revocable Permit land, South  $15^{\circ}53'00''$  East, 12.22 feet to a tangent curve to the left; thence along said tangent curve to the left, having a radius of 48.00 feet, through a central angle of  $91^{\circ}13'06''$ , an arc length of 76.42 feet; thence North  $72^{\circ}53'54''$  East, 130.51 feet to a tangent curve to the right, thence along said tangent curve to the right, having a radius of 193.51 feet, through a central angle of  $15^{\circ}09'23''$ , an arc length of 51.19 feet; thence North  $88^{\circ}08'37''$  East, 316.42 feet to the easterly line of said USDA parcel (3780 OR 81-84); thence along said easterly line (3780 OR 81-84) North  $1^{\circ}51'23''$  West, 6.00 feet to the **True Point of Beginning**.

CONTAINING 12,996 square feet, more or less.

Signature

  
Professional Land Surveyor  
P.L.S. #7770, Exp. 12/31/11

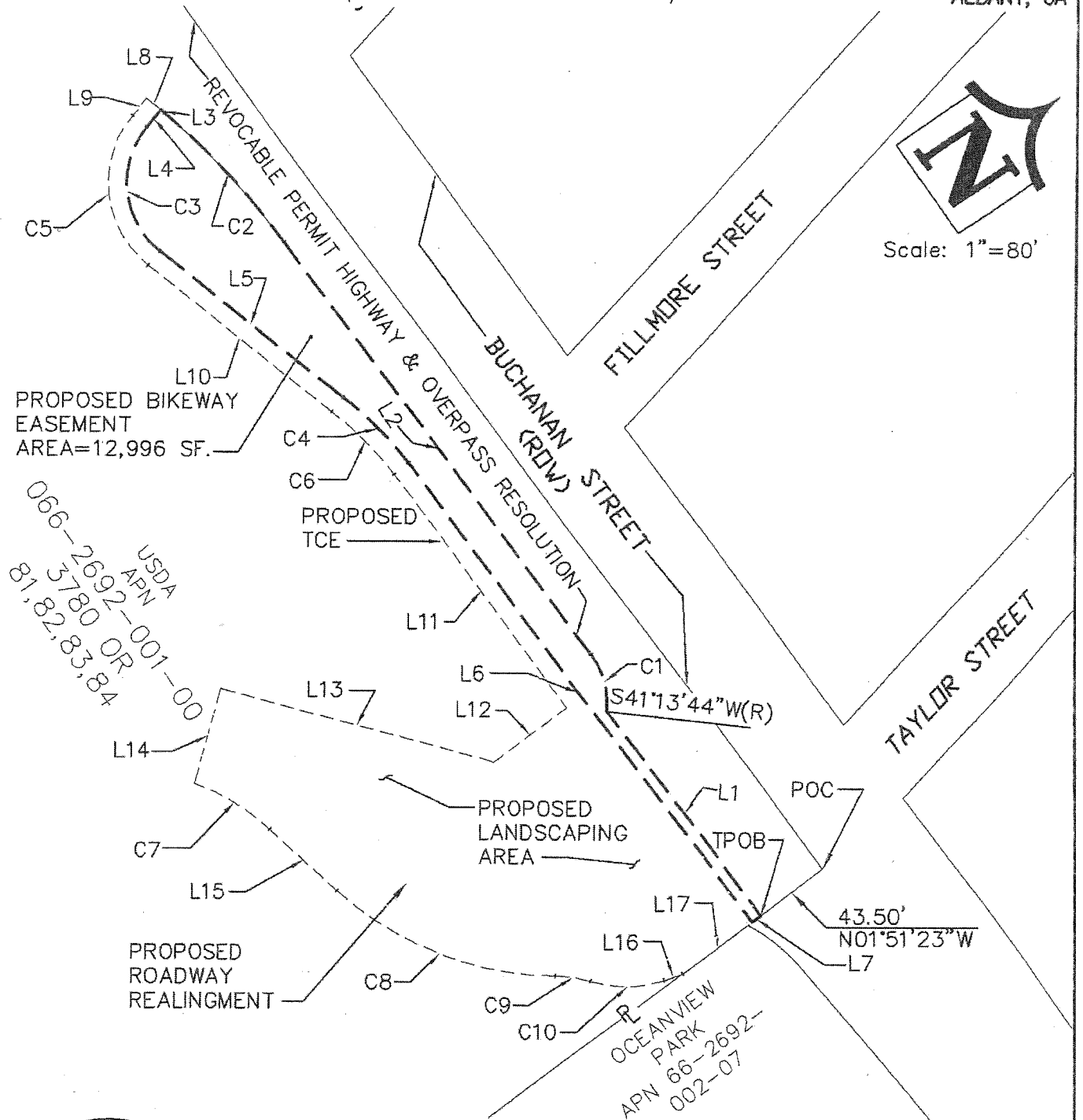


Date 8-24-01

# EXHIBIT B PLAT MAP

(TO ACCOMPANY LEGAL DESCRIPTION)

USDA  
APN 066-2692-001-00  
3780 OR 81, 82, 83, 84  
ALBANY, CA



066-2692-001-00  
USDA  
APN  
3780 OR  
81, 82, 83, 84

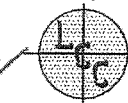
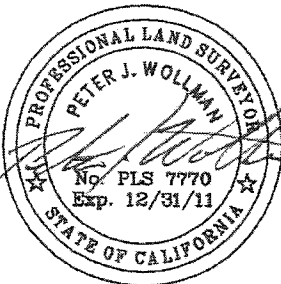
PROPOSED BIKEWAY  
EASEMENT  
AREA=12,996 SF.

PROPOSED  
TCE

PROPOSED  
LANDSCAPING  
AREA

PROPOSED  
ROADWAY  
REALIGNMENT

OCEANVIEW  
PARK  
APN 66-2692-  
002-07



8-24-10  
DATE

Leptien, Cronin, Cooper, Morris & Poore, Inc.

dba LCC, Inc.

Civil Engineering - Land Surveying

930 Estudillo Street  
Martinez, California 94553-1620  
(925) 228-4218 Fax (925) 228-4638  
LCC JOB No. 2006.033.52

### NOTES:

1. UNLESS INDICATED EXISTING EASEMENTS ARE NOT SHOWN HEREON.
2. SEE SHEET 2 OF 2 FOR LINE AND CURVE TABLES

# EXHIBIT B

## PLAT MAP

(TO ACCOMPANY LEGAL DESCRIPTION)

USDA  
APN 066-2692-001-00  
3780 OR 81, 82, 83, 84  
ALBANY, CA

BIKEWAY EASEMENT LINE TABLE

LINE#	BEARING	LENGTH
L1	S88°08'37"W	140.79'
L2	S88°08'37"W	284.24'
L3	S74°06'27"W	2.71'
L4	S15°53'00"E	12.22'
L5	N72°53'54"E	130.51'
L6	N88°08'37"E	316.42'
L7	N01°51'23"W	6.00'

BIKEWAY EASEMENT CURVE TABLE

CURVE#	DELTA	LENGTH	RADIUS
C1	$\Delta=43^{\circ}05'24''$	33.47'	44.50'
C2	$\Delta=14^{\circ}02'10''$	97.99'	400.00'
C3	$\Delta=91^{\circ}13'06''$	76.42'	48.00'
C4	$\Delta=15^{\circ}09'23''$	51.19'	193.51'

TCE

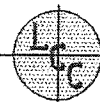
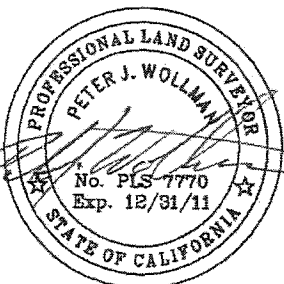
(TEMPORARY CONSTRUCTION EASEMENT)  
LINE TABLE

LINE#	BEARING	LENGTH
L8	S74°07'00"W	10.00'
L9	S15°53'00"E	12.21'
L10	N72°53'54"E	130.51'
L11	N88°08'37"E	160.87'
L12	S01°55'03"E	50.63'
L13	S49°46'49"W	156.12'
L14	N39°28'47"W	54.65'
L15	N77°14'39"E	49.83'
L16	N14°53'32"E	10.70'
L17	N01°51'23"W	47.41'

TCE

(TEMPORARY CONSTRUCTION EASEMENT)  
CURVE TABLE

CURVE#	DELTA	LENGTH	RADIUS
C5	$\Delta=91^{\circ}13'06''$	92.34'	58.00'
C6	$\Delta=15^{\circ}14'43''$	48.83'	183.51'
C7	$\Delta=23^{\circ}26'24''$	50.11'	122.50'
C8	$\Delta=42^{\circ}36'54''$	132.02'	177.50'
C9	$\Delta=17^{\circ}15'21''$	19.43'	64.50'
C10	$\Delta=35^{\circ}22'29''$	40.44'	65.50'



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LCC JOB No. 2006.033.52

8-24-10  
DATE

**Recording Requested By  
and When Recorded Mail to:**

**City Clerk  
City of Albany  
1000 San Pablo Avenue  
Albany, CA 94706**

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**TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT**

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No recording fee pursuant to Government Code §6103

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **UNITED STATES DEPARTMENT OF AGRICULTURE**, Agricultural Research Service, hereinafter referred to as "Grantor", and, the **CITY OF ALBANY**, a municipal corporation, hereinafter referred to as "Grantee".

**WHEREAS**, Grantor is the owner of the real property situate in the City of Albany, County of Alameda commonly known as APN 066-2692-001-00, and more particularly described in the grant deed from The Regents of the University of California to the United States of America recorded on the 22<sup>nd</sup> day of May, 1939 as Image 3708 Reel 81-84 Alameda County Records (hereinafter the "Land");

**WHEREAS**, by separate document Grantor has granted to Grantee a permit to construct, operate and maintain a paved public path (hereafter referred to as the "Bikeway") adjacent to Buchanan Street from the intersection of Pierce Street to the easterly property line over said Land; and

**WHEREAS**, in order to construct Bikeway, Grantee and its authorized agents, employees and Contractors require a Temporary Construction Easement (hereafter "TCE") upon that portion of Land shown and designated as "TCE AREA" on Exhibit "A", attached, for the purpose of relocating existing driveway and landscaping installing temporary fencing, storing materials and equipment during construction, constructing graded conforms to landscaping and pavement, and restoring existing improvements immediately adjacent to the Bikeway.

**NOW, THEREFORE,**

1. Grantor hereby grants to Grantee TCE for the express purpose of installing temporary fencing, storing materials and equipment during construction, excavating and constructing graded conforms to landscaping and pavement, and restoring existing improvements immediately adjacent to the Bikeway.
2. TERM: The term of TCE shall begin upon commencement of construction within TCE Area and expire upon completion of Bikeway improvements and restoration of TCE by Grantee.
3. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense.
4. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on any real property of the Grantor.
5. Grantee shall not materially interfere with the use by and operation and activities of Grantor on its property, and Grantee shall use such routes and follow such procedures on Grantor's property as result in the least damage and inconvenience to Grantor.
6. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property, including, but not limited to, roads, utilities, irrigation system, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the TCE.
7. TCE is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of Grantee's, agents', officers', employees', invitees' (including contractors), or licensees' exercise of rights granted pursuant to this TCE or use of the TCE Area or of the improvements or personal property of Grantee thereto or thereon, including any liability for injury or death to the person or property of Grantee, its contractors, agents, officers, members, employees, invitees, or licensees or to any

property under the control or custody of Grantee during the term of TCE. Grantee hereby covenants and agrees to defend and indemnify Grantor, its officers, employees, agents, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the TCE or use of the TCE Area by Grantee, however occurring, other than those caused solely by the willful or negligent acts or omissions of Grantor.

8. Grantee shall not cause liens of any kind to be placed against the any of the Grantor's real property.
9. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**GRANTOR: UNITED STATES DEPARTMENT OF AGRICULTURE**

By \_\_\_\_\_

Its \_\_\_\_\_

**GRANTEE: THE CITY OF ALBANY**

By \_\_\_\_\_

Its \_\_\_\_\_

Attachment: Exhibit A - Plat Map



**CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC**

STATE OF CALIFORNIA,            )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public in and for said County and 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 acknowledged 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 of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

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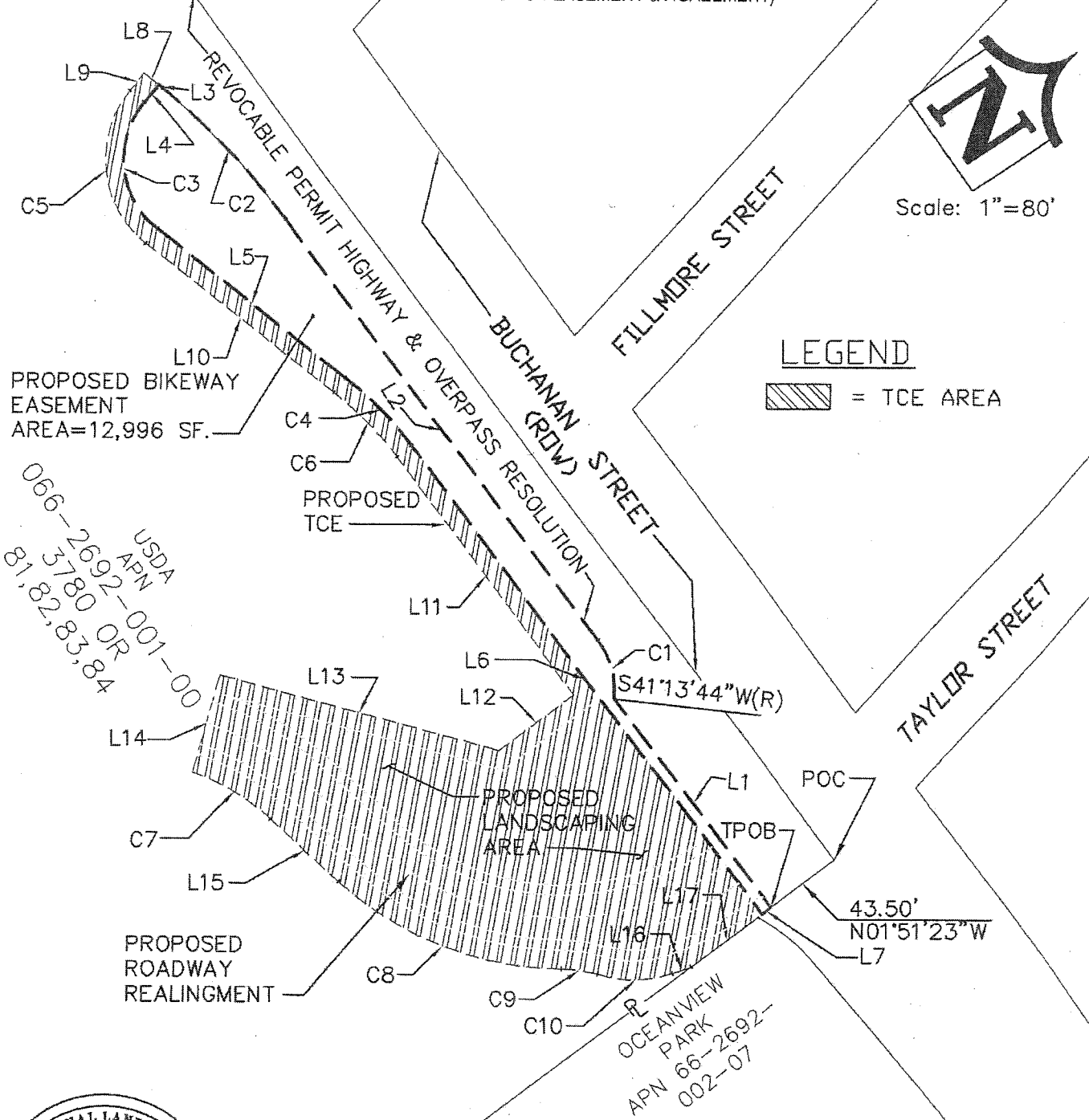
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# EXHIBIT A PLAT MAP

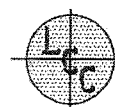
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CONSTRUCTION EASEMENT & AGREEMENT)

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3780 OR 81, 82, 83, 84  
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066-2692-001-00  
USDA  
APN  
3780 OR  
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OCEANVIEW  
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(TO ACCOMPANY GRANT OF TEMPORARY  
CONSTRUCTION EASEMENT & AGREEMENT)

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APN 066-2692-001-00  
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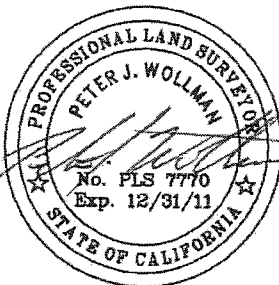
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